

Texas Historical Statutes Project

1977 SUPPLEMENT
VOLUME 1

Alcoholic Beverage Code
Business and Commerce
Education Code
Family Code
Natural Resources Code

Parks and Wildlife Code
Penal Code
Penal Auxiliary Laws
Code of Criminal Procedure
Water Code

Corporations
Election Code
Insurance Code
Probate Code
Taxation



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West's Texas Statutes and Codes

1977 Supplement
to
Compact Edition

Volume 1

Constitution

Codes and Indexes

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PREFACE

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

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

New Codes

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

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

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

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

Disposition Tables, providing a means of tracing repealed subject matter into the new Codes, and detailed descriptive word Indexes, facilitating the search for specific provisions therein, are included following the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

Special Law Tables

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

PREFACE

Indexes

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

THE PUBLISHER

February, 1978

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EFFECTIVE DATES

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

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

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

*

CITE THIS BOOK

Thus:

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

†

**CONSTITUTION
OF THE
STATE OF TEXAS 1876**

PROPOSED AMENDMENTS

ARTICLE III

**LEGISLATIVE DEPARTMENT
REQUIREMENTS AND LIMITATIONS**

§ 51-b. State Building Commission; State Building Fund

Repeal proposed by Senate Joint Resolution No. 48, Acts 1977, 65th Leg., p. 3367. For submission to the people in November, 1978.

§ 52. Counties, Cities, Towns or Other Political Corporations or Subdivisions; Lending Credit; Grants

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

(d) Any defined district created under this section that is authorized to issue bonds or otherwise lend its credit for the purposes stated in Subdivisions (1) and (2) of Subsection (b) of this section may engage in fire-fighting activities and may issue bonds or otherwise lend its credit for fire-fighting purposes as provided by law and this constitution.

Proposed by House Joint Resolution No. 42, § 1, Acts 1977, 65th Leg., p. 3374. For submission to the people in November, 1978.

§ 52a. Revenue Bonds by Political Subdivisions to Develop Employment Opportunities

Sec. 52a. Political subdivisions of this state are empowered to develop employment opportunities for its citizens through the issuance of obligations payable solely from revenues derived from the lease or sale to others of facilities (land, equipment, and improvements) under such terms and conditions as the legislature may prescribe; provided that such facilities are found by the governing body of such political subdivision to be required to develop employment opportunities.

No facilities acquired hereunder shall be exempt from ad valorem taxes unless used exclusively by the political subdivision nor shall any revenues from the utilization of facilities so acquired be utilized for purposes other than the retirement of obligations issued while the same are outstanding.

1 West's Tex.Stats. & Codes '77 Supp.

This provision shall be effective notwithstanding other provisions of this constitution. Any law adopted shall not be void because of its anticipatory nature.

Proposed by Senate Joint Resolution No. 55, Acts 1977, 65th Leg., p. 3371. For submission to the people in November, 1978.

ARTICLE V

JUDICIAL DEPARTMENT

§ 6. Courts of Civil Appeals; Transfer of Cases; Terms of Judges

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

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

jurisdiction, original and appellate as may be prescribed by law. Each Court of Civil Appeals shall appoint a clerk in the same manner as the clerk of the Supreme Court which clerk shall receive such compensation as may be fixed by law.

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

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

Proposed by Senate Joint Resolution No. 45, Acts 1977, 65th Leg., p. 3366. For submission to the people in November, 1978.

§ 16. County Courts; Jurisdiction; Appeals to Court of Civil Appeals and Court of Criminal Appeals; Disqualification of Judge

Sec. 16. The County Court shall have original jurisdiction of all misdemeanors of which exclusive original jurisdiction is not given to the Justices Court as the same is now or may hereafter be prescribed by law, and when the fine to be imposed shall exceed \$200, and they shall have concurrent jurisdiction with the Justice Court in all civil cases when the matter in controversy shall exceed in value \$200, and not exceed \$500, exclusive of interest, unless otherwise provided by law, and concurrent jurisdiction with the District Court when the matter in controversy shall exceed \$500, and not exceed \$1,000, exclusive of interest, but shall not have jurisdiction of suits for the recovery of land. They shall have appellate jurisdiction in cases civil and criminal of which Justices Courts have original jurisdiction, but of such civil cases only when the judgment of the court appealed from shall exceed \$20, exclusive of cost, under such regulations as may be prescribed

by law. In all appeals from Justices Courts there shall be a trial de novo in the County Court, and appeals may be prosecuted from the final judgment rendered in such cases by the County Court, as well as all cases civil and criminal of which the County Court has exclusive or concurrent or original jurisdiction of civil appeals in civil cases to the Court of Civil Appeals and in such criminal cases to the Court of Criminal Appeals, with such exceptions and under such regulations as may be prescribed by law.

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

Proposed by House Joint Resolution No. 37, § 2, Acts 1977, 65th Leg., p. 3372. For submission to the people in November, 1978.

§ 19. Justices of the Peace; Jurisdiction; Appeals; Ex Officio Notaries Public; Times and Places of Holding Court

Sec. 19. Justices of the peace shall have jurisdiction in criminal matters of all cases where the penalty or fine to be imposed by law may not be more than for two hundred dollars, and exclusive jurisdiction in civil matters of all cases where the amount in controversy is two hundred dollars or less, exclusive of interest, unless exclusive original jurisdiction is given to the District or County Courts, and concur-

rent jurisdiction with the County Courts when the matter in controversy exceeds two hundred dollars and does not exceed five hundred dollars, exclusive of interest, unless exclusive jurisdiction is given to the County Courts, and, as provided by law, when the matter in controversy exceeds five hundred dollars, concurrent jurisdiction with both the County Courts and the District Courts in an amount not to exceed one thousand dollars exclusive of interest, unless exclusive jurisdiction is given to the County Courts or the District Courts; and such other jurisdiction, criminal and civil, as may be provided by law, under such regulations as may be prescribed by law; and appeals to the County Courts shall be allowed in all cases decided in Justices' Courts where the judgment is for more than twenty dollars exclusive of costs; and in all criminal cases under such regulations as may be prescribed by law. And the justices of the peace shall be ex officio notaries public. And they shall hold their courts at such times and places as may be provided by law.

Proposed by House Joint Resolution No. 37, § 1, Acts 1977, 65th Leg., p. 3372. For submission to the people in November, 1978.

ARTICLE VIII

TAXATION AND REVENUE

§ 1-g. Financing Redevelopment of Urban Blighted Areas

Sec. 1-g. (a) Notwithstanding the requirements of Section 1 of this article or of Section 14 of Article VIII, the legislature may, subject to the limitations provided herein, authorize cities and towns to issue tax increment bonds, the proceeds of which shall be used to finance the redevelopment of blighted areas, and the payment of which shall be provided from tax increments, as such term is defined by the legislature.

(b) Neither tax revenues, utility revenues, nor revenues from any services of any city or town or the state shall be used to pay any bonds issued pursuant to the authority conferred under this section, nor shall such bonds give rise to a charge against the general credit or taxing powers of any city or town or the state.

Proposed by Senate Joint Resolution No. 44, Acts 1977, 65th Leg., p. 3365. For submission to the people in November, 1978.

§ 2. Occupation Taxes; Equality and Uniformity; Exemptions from Taxation

Sec. 2. (a) All occupation taxes shall be equal and uniform upon the same class of subjects within the limits of the authority levying the tax; but the legislature may, by general laws, exempt from taxation public property used for public purposes; actual places of religious worship, also any property owned by a church or by a strictly religious society for the

exclusive use as a dwelling place for the ministry of such church or religious society, and which yields no revenue whatever to such church or religious society; provided that such exemption shall not extend to more property than is reasonably necessary for a dwelling place and in no event more than one acre of land; places of burial not held for private or corporate profit; solar or wind-powered energy devices; all buildings used exclusively and owned by persons or associations of persons for school purposes and the necessary furniture of all schools and property used exclusively and reasonably necessary in conducting any association engaged in promoting the religious, educational and physical development of boys, girls, young men or young women operating under a State or National organization of like character; also the endowment funds of such institutions of learning and religion not used with a view to profit; and when the same are invested in bonds or mortgages, or in land or other property which has been and shall hereafter be bought in by such institutions under foreclosure sales made to satisfy or protect such bonds or mortgages, that such exemption of such land and property shall continue only for two years after the purchase of the same at such sale by such institutions and no longer, and institutions of purely public charity; and all laws exempting property from taxation other than the property mentioned in this Section shall be null and void.

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

Proposed by Senate Joint Resolution No. 53, Acts 1977, 65th Leg., p. 3370. For submission to the people in November, 1978.

ARTICLE XVI

GENERAL PROVISIONS

§ 21. Public Printing and Binding; Repairs and Furnishings; Contracts

Sec. 21. All stationery, printing, fuel used in the legislature and departments of the government other than the judicial department, printing and binding of the laws, journals, and department reports, and all other printing and binding and the repairing and furnishing of the halls and rooms used during meetings of the legislature and in committees, except proclamations and such products and services as may be done by handicapped individuals employed in nonprofit rehabilitation facilities providing sheltered employment to the handicapped in Texas, shall be performed under contract, to be given to the lowest responsible bidder, below such maximum price and under such regulations as shall be prescribed by law. No member or officer of any department of the

government shall in any way have a financial interest in such contracts, and all such contracts or programs involving the state use of the products and services of handicapped individuals shall be subject to such requirements as might be established by the legislature.

Proposed by Senate Joint Resolution No. 50, Acts 1977, 65th Leg., p. 3369. For submission to the people in November, 1978.

§ 59. Conservation and Development of Natural Resources; Conservation and Reclamation Districts

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

(f) A conservation and reclamation district created under this section to perform any or all of the purposes of this section may engage in fire-fighting activities and may issue bonds or other indebtedness for fire-fighting purposes as provided by law and this constitution.

Proposed by House Joint Resolution No. 42, § 2, Acts 1977, 65th Leg., p. 3374. For submission to the people in November, 1978.

**CONSTITUTION
OF THE
STATE OF TEXAS 1876**

Adopted February 15, 1876

As amended to November 8, 1977

ARTICLE III

LEGISLATIVE DEPARTMENT

REQUIREMENTS AND LIMITATIONS

Section

48-a, 48-b. Repealed.

49-d-1. Additional Texas Water Development Bonds.

51-e, 51-f. Repealed.

§ 11a. Multiple Convictions; Denial of Bail

Sec. 11a. Any person (1) accused of a felony less than capital in this State, who has been theretofore twice convicted of a felony, the second conviction being subsequent to the first, both in point of time of commission of the offense and conviction therefor, (2) accused of a felony less than capital in this State, committed while on bail for a prior felony for which he has been indicted, or (3) accused of a felony less than capital in this State involving the use of a deadly weapon after being convicted of a prior felony, after a hearing, and upon evidence substantially showing the guilt of the accused of the offense in (1) or (3) above or of the offense committed while on bail in (2) above, may be denied bail pending trial, by a district judge in this State, if said order denying bail pending trial is issued within seven calendar days subsequent to the time of incarceration of the accused; provided, however, that if the accused is not accorded a trial upon the accusation under (1) or (3) above or the accusation and indictment used under (2) above within sixty (60) days from the time of his incarceration upon the accusation, the order denying bail shall be automatically set aside, unless a continuance is obtained upon the motion or request of the accused; provided, further, that the right of appeal to the Court of Criminal Appeals of this State is expressly accorded the accused for a review of any judgment or order made hereunder, and said appeal shall be given preference by the Court of Criminal Appeals.

[Adopted Nov. 8, 1977.]

§ 49-b. Veterans' Land Program

Sec. 49-b. By virtue of prior Amendments to this Constitution, there has been created a governmental agency of the State of Texas performing governmental duties which has been designated the Veterans' Land Board. Said Board shall continue to function for the purposes specified in all of the prior Constitutional Amendments except as modified herein. Said Board shall be composed of the Commissioner of the General Land Office and two (2) citizens of the State of Texas, one (1) of whom shall be well versed in veterans' affairs and one (1) of whom shall be well versed in finances. One (1) such citizen member shall, with the advice and consent of the Senate, be appointed biennially by the Governor to serve for a term of four (4) years; but the members serving on said Board on the date of adoption hereof shall complete the terms to which they were appointed. In the event of the resignation or death of any such citizen member, the Governor shall appoint a replacement to serve for the unexpired portion of the term to which the deceased or resigning member had been appointed. The compensation for said citizen members shall be as is now or may hereafter be fixed by the Legislature; and each shall make bond in such amount as is now or may hereafter be prescribed by the Legislature.

The Commissioner of the General Land Office shall act as Chairman of said Board and shall be the administrator of the Veterans' Land Program under such terms and restrictions as are now or may hereafter be provided by law. In the absence or illness of said Commissioner, the Chief Clerk of the General Land Office shall be the Acting Chairman of said Board with the same duties and powers that said Commissioner would have if present.

The Veterans' Land Board may provide for, issue and sell not to exceed Seven Hundred Million Dollars (\$700,000,000) in bonds or obligations of the State of Texas for the purpose of creating a fund to be known as the Veterans' Land Fund, Five Hundred Million Dollars (\$500,000,000) of which have heretofore been authorized. Such bonds or obligations shall be sold for not less than par value and

accrued interest; shall be issued in such forms, denominations, and upon such terms as are now or may hereafter be provided by law; shall be issued and sold at such times, at such places, and in such installments as may be determined by said Board; and shall bear a rate or rates of interest as may be fixed by said Board but the weighted average annual interest rate, as that phrase is commonly and ordinarily used and understood in the municipal bond market, of all the bonds issued and sold in any installment of any bonds may not exceed the rate specified in Section 65 of this Article. All bonds or obligations issued and sold hereunder shall, after execution by the Board, approval by the Attorney General of Texas, registration by the Comptroller of Public Accounts of the State of Texas, and delivery to the purchaser or purchasers, be incontestable and shall constitute general obligations of the State of Texas under the Constitution of Texas; and all bonds heretofore issued and sold by said Board are hereby in all respects validated and declared to be general obligations of the State of Texas. In order to prevent default in the payment of principal or interest on any such bonds, the Legislature shall appropriate a sufficient amount to pay the same.

In the sale of any such bonds or obligations, a preferential right of purchase shall be given to the administrators of the various Teacher Retirement Funds, the Permanent University Funds, and the Permanent School Funds.

Said Veterans' Land Fund shall consist of any lands heretofore or hereafter purchased by said Board, until the sale price therefor, together with any interest and penalties due, have been received by the said Board (although nothing herein shall be construed to prevent said Board from accepting full payment for a portion of any tract), and of the moneys attributable to any bonds heretofore or hereafter issued and sold by said Board which moneys so attributable shall include but shall not be limited to the proceeds from the issuance and sale of such bonds; the moneys received from the sale or resale of any lands, or rights therein, purchased with such proceeds; the moneys received from the sale or resale of any lands, or rights therein, purchased with other moneys attributable to such bonds; the interest and penalties received from the sale or resale of such lands, or rights therein; the bonuses, income, rents, royalties, and any other pecuniary benefit received by said Board from any such lands; sums received by way of indemnity or forfeiture for the failure of any bidder for the purchase of any such bonds to comply with his bid and accept and pay for such bonds or for the failure of any bidder for the purchase of any lands comprising a part of said Fund to comply with his bid and accept and pay for any such lands; and interest received from invest-

ments of any such moneys. The principal and interest on the bonds heretofore and hereafter issued by said Board shall be paid out of the moneys of said Fund in conformance with the Constitutional provisions authorizing such bonds; but the moneys of said Fund which are not immediately committed to the payment of principal and interest on such bonds, the purchase of lands as herein provided, or the payment of expenses as herein provided may be invested in bonds or obligations of the United States until such funds are needed for such purposes.

All moneys comprising a part of said Fund and not expended for the purposes herein provided shall be a part of said Fund until there are sufficient moneys therein to retire fully all of the bonds heretofore or hereafter issued and sold by said Board, at which time all such moneys remaining in said Fund, except such portion thereof as may be necessary to retire all such bonds which portion shall be set aside and retained in said Fund for the purpose of retiring all such bonds, shall be deposited to the credit of the General Revenue Fund to be appropriated to such purposes as may be prescribed by law. All moneys becoming a part of said Fund thereafter shall likewise be deposited to the credit of the General Revenue Fund.

When a Division of said Fund (each Division consisting of the moneys attributable to the bonds issued and sold pursuant to a single Constitutional authorization and the lands purchased therewith) contains sufficient moneys to retire all of the bonds secured by such Division, the moneys thereof, except such portion as may be needed to retire all of the bonds secured by such Division which portion shall be set aside and remain a part of such Division for the purpose of retiring all such bonds, may be used for the purpose of paying the principal and the interest thereon, together with the expenses herein authorized, of any other bonds heretofore or hereafter issued and sold by said Board. Such use shall be a matter for the discretion and direction of said Board; but there may be no such use of any such moneys contrary to the rights of any holder of any of the bonds issued and sold by said Board or violative of any contract to which said Board is a party.

The Veterans' Land Fund shall be used by said Board for the purpose of purchasing lands situated in the State of Texas owned by the United States or any governmental agency thereof, owned by the Texas Prison System or any other governmental agency of the State of Texas, or owned by any person, firm, or corporation. All lands thus purchased shall be acquired at the lowest price obtainable, to be paid for in cash, and shall be a part of said Fund. Such lands heretofore or hereafter purchased and comprising a part of said Fund are hereby declared to be held for a governmental purpose,

although the individual purchasers thereof shall be subject to taxation to the same extent and in the same manner as are purchasers of lands dedicated to the Permanent Free Public School Fund.

The lands of the Veterans' Land Fund shall be sold by said Board in such quantities, on such terms, at such prices, at such rates of interest and under such rules and regulations as are now or may hereafter be provided by law to veterans who served not less than ninety (90) continuous days, unless sooner discharged by reason of a service-connected disability, on active duty in the Army, Navy, Air Force, Coast Guard or Marine Corps of the United States after September 16, 1940, and who, upon the date of filing his or her application to purchase any such land is a citizen of the United States, is a bona fide resident of the State of Texas, and has not been dishonorably discharged from any branch of the Armed Forces above-named and who at the time of his or her enlistment, induction, commissioning, or drafting was a bona fide resident of the State of Texas, or who has resided in Texas at least five (5) years prior to the date of filing his or her application, and provided that in the event of the death of an eligible Texas Veteran after the veteran has filed with the Board an application and contract of sale to purchase through the Board the tract selected by him or her and before the purchase has been completed, then the surviving spouse may complete the transaction. The unmarried surviving spouses of veterans who died in the line of duty may also apply to purchase a tract through the Board provided the deceased veterans meet the requirements set out in this Article with the exception that the deceased veterans need not have served ninety (90) continuous days and provided further that the deceased veterans were bona fide residents of the State of Texas at the time of enlistment, induction, commissioning, or drafting. The foregoing notwithstanding, any lands in the Veterans' Land Fund which have been first offered for sale to veterans and which have not been sold may be sold or resold to such purchasers, in such quantities, and on such terms, and at such prices and rates of interest, and under such rules and regulations as are now or may hereafter be provided by law.

Said Veterans' Land Fund, to the extent of the moneys attributable to any bonds hereafter issued and sold by said Board may be used by said Board, as is now or may hereafter be provided by law, for the purpose of paying the expenses of surveying, monumenting, road construction, legal fees, recordation fees, advertising and other like costs necessary or incidental to the purchase and sale, or resale, of any lands purchased with any of the moneys attributable to such additional bonds, such expenses to be added to the price of such lands when sold, or resold,

by said Board; for the purpose of paying the expenses of issuing, selling, and delivering any such additional bonds; and for the purpose of meeting the expenses of paying the interest or principal due or to become due on any such additional bonds.

All of the moneys attributable to any series of bonds hereafter issued and sold by said Board (a "series of bonds" being all of the bonds issued and sold in a single transaction as a single installment of bonds) may be used for the purchase of lands as herein provided, to be sold as herein provided, for a period ending eight (8) years after the date of sale of such series of bonds; provided, however, that so much of such moneys as may be necessary to pay interest on bonds hereafter issued and sold shall be set aside for that purpose in accordance with the resolution adopted by said Board authorizing the issuance and sale of such series of bonds. After such eight (8) year period, all of such moneys shall be set aside for the retirement of any bonds hereafter issued and sold and to pay interest thereon, together with any expenses as provided herein, in accordance with the resolution or resolutions authorizing the issuance and sale of such additional bonds, until there are sufficient moneys to retire all of the bonds hereafter issued and sold, at which time all such moneys then remaining a part of said Veterans' Land Fund and thereafter becoming a part of said Fund shall be governed as elsewhere provided herein.

This Amendment being intended only to establish a basic framework and not to be a comprehensive treatment of the Veterans' Land Program, there is hereby reposed in the Legislature full power to implement and effectuate the design and objects of this Amendment, including the power to delegate such duties, responsibilities, functions, and authority to the Veterans' Land Board as it believes necessary.

Should the Legislature enact any enabling laws in anticipation of this Amendment, no such law shall be void by reason of its anticipatory nature.

This Amendment shall become effective upon its adoption.

[Adopted Nov. 8, 1977.]

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

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

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

[Adopted April 22, 1975.]

REQUIREMENTS AND LIMITATIONS

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

See, now, art. 16, § 67.

§ 49-d-1. Additional Texas Water Development Bonds

(a) The Texas Water Development Board shall upon direction of the Texas Water Quality Board, or any successor agency designated by the Legislature, issue additional Texas Water Development Bonds up to an additional aggregate principal amount of \$200,000,000 to provide grants, loans, or any combination of grants and loans for water quality enhancement purposes as established by the Legislature. The Texas Water Quality Board or any successor agency designated by the Legislature may make such grants and loans to political subdivisions or bodies politic and corporate of the State of Texas, including municipal corporations, river authorities, conservation and reclamation districts, and districts created or organized or authorized to be created or organized under Article XVI, Section 59, or Article III, Section 52, of this Constitution, State agencies, and interstate agencies and compact commissions to which the State of Texas is a party, and upon such terms and conditions as the Legislature may authorize by general law. The bonds shall be issued for such terms, in such denominations, form and installments, and upon such conditions as the Legislature may authorize.

(b) The proceeds from the sale of such bonds shall be deposited in the Texas Water Development Fund to be invested and administered as prescribed by law.

(c) The bonds authorized in this Section 49-d-1 and all bonds authorized by Sections 49-c and 49-d of Article III shall bear interest at not more than 6% per annum and mature as the Texas Water Development Board shall prescribe, subject to the limitations as may be imposed by the Legislature.

(d) The Texas Water Development Fund shall be used for the purposes heretofore permitted by, and subject to the limitations in Sections 49-c, 49-d and 49-d-1; provided, however, that the financial assistance may be made pursuant to the provisions of Sections 49-c, 49-d and 49-d-1 subject only to the availability of funds and without regard to the provisions in Section 49-c that such financial assistance shall terminate after December 31, 1982.

(e) Texas Water Development Bonds are secured by the general credit of the State and shall after approval by the Attorney General, registration by the Comptroller of Public Accounts of the State of Texas, and delivery to the purchasers, be incontestable and shall constitute general obligations of the State of Texas under the Constitution of Texas.

(f) Should the Legislature enact enabling laws in anticipation of the adoption of this amendment, such Acts shall not be void by reason of their anticipatory character.

[Adopted Nov. 2, 1976.]

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

See, now, art. 16, § 67.

ARTICLE V

JUDICIAL DEPARTMENT

§ 1. Judicial Power; Courts in Which Vested

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

The Legislature may establish such other courts as it may deem necessary and prescribe the jurisdiction and organization thereof, and may conform the jurisdiction of the district and other inferior courts thereto.

[Adopted Nov. 8, 1977.]

§ 1-a. Retirement, Censure, Removal and Compensation of Justices and Judges; State Commission on Judicial Conduct; Procedure

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

(2) The name of the State Judicial Qualifications Commission is changed to the State Commission on Judicial Conduct. The Commission consists of eleven (11) members, to wit: (i) two (2) Justices of Courts of Civil Appeals; (ii) two (2) District Judges; (iii) two (2) members of the State Bar, who have respectively practiced as such for over ten (10) consecutive years next preceding their selection; (iiii) four (4) citizens, at least thirty (30) years of age, not licensed to practice law nor holding any salaried public office or employment; and (v) one (1) Justice of the Peace; provided that no person shall be or remain a member of the Commission, who does not maintain physical residence within this State, or who resides in, or holds a judgeship within or for, the same Supreme Judicial District as another member of the Commission, or who shall have ceased to retain the qualifications above specified for his respective class of membership, except that the Justice of the Peace shall be selected at large without regard to whether he resides or holds a judgeship in the same Supreme Judicial District as another member of the Commission. Commissioners of classes (i) and (ii) above shall be chosen by the Supreme Court with advice and consent of the Senate, those of class (iii) by the Board of Directors of the State Bar under regulations to be prescribed by the Supreme Court with advice and consent of the Senate, those of class

(iii) by appointment of the Governor with advice and consent of the Senate, and the commissioner of class (v) by appointment of the Supreme Court from a list of five (5) names submitted by the executive committee of the Justice of the Peace and Constables Association of Texas, with the advice and consent of the Senate. The initial term of the commissioner of class (v) and the fourth commissioner of class (iii) added by this amendment terminates on November 19, 1979. Each person holding office as a member of the Commission on the effective date of this amendment continues to hold the office for the term for which he was appointed.

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

(5) The Commission may hold its meetings, hearings and other proceedings at such times and places as it shall determine but shall meet at Austin at least once each year. It shall annually select one of its members as Chairman. A quorum shall consist of six (6) members. Proceedings shall be by majority vote of those present, except that recommendations for retirement, censure, suspension, or removal of any person holding an office named in Paragraph A of Subsection (6) of this Section shall be by affirmative vote of at least six (6) members.

(6) A. Any Justice or Judge of the Appellate Courts and District and Criminal District Courts, and any County Judge, and any Judge of a County Court at Law, a Court of Domestic Relations, a Juvenile Court, a Probate Court, or a Corporation or Municipal Court, and any Justice of the Peace, and any Judge or presiding officer of any special court created by the Legislature as provided in Section 1, Article V, of this Constitution, may, subject to the other provisions hereof, be removed from office for willful or persistent conduct, which is clearly inconsistent with the proper performance of his said duties or casts public discredit upon the judiciary or administration of justice; or any person holding such office may be censured, in lieu of removal from office, under procedures provided for by the Legislature. Any person holding an office named in this subsection may be suspended from office with or without pay by the Commission immediately on being indicted by a State or Federal grand jury for a felony offense; or, on the filing of a sworn complaint charging a person holding such office with willful and persistent conduct which is clearly inconsistent with the proper performance of his duties or which casts public discredit on the judiciary or on the administration of justice, the Commission, after giving the person notice and an opportunity to appear before the Commission, may recommend to the Supreme Court the suspension of such person from office. The Supreme Court, after considering the record of such appearance and the recommendation

of the Commission, may suspend the person from office with or without pay, pending final disposition of the charge.

[See Compact Edition, Volume 1, for text of (6) B]

(7) The Commission shall keep itself informed as fully as may be of circumstances relating to the misconduct or disability of particular persons holding an office named in Paragraph A of Subsection (6) of this Section, receive complaints or reports, formal or informal, from any source in this behalf and make such preliminary investigations as it may determine. Its orders for the attendance or testimony of witnesses or for the production of documents at any hearing or investigation shall be enforceable by contempt proceedings in the District Court or by a Master.

(8) After such investigation as it deems necessary, the Commission may in its discretion issue a private or public reprimand, or if the Commission determines that the situation merits such action, it may institute formal proceedings and order a formal hearing to be held before it concerning the public censure, removal, or retirement of a person holding an office named in Paragraph A of Subsection (6) of this Section, or it may in its discretion request the Supreme Court to appoint an active or retired District Judge or Justice of a Court of Civil Appeals, or retired Judge or Justice of the Court of Criminal Appeals or the Supreme Court, as a Master to hear and take evidence in any such matter, and to report thereon to the Commission. The Master shall have all the power of a District Judge in the enforcement of orders pertaining to witnesses, evidence, and procedure. If, after formal hearing, or after considering the record and report of a Master, the Commission finds good cause therefor, it shall issue an order of public censure or it shall recommend to the Supreme Court the removal, or retirement, as the case may be, of the person in question holding an office named in Paragraph A of Subsection (6) of this Section and shall thereupon file with the Clerk of the Supreme Court the entire record before the Commission.

(9) The Supreme Court shall review the record of the proceedings on the law and facts and in its discretion may, for good cause shown, permit the introduction of additional evidence and shall order public censure, retirement or removal, as it finds just and proper, or wholly reject the recommendation. Upon an order for involuntary retirement for disability or an order for removal, the office in question shall become vacant. The Supreme Court, in an order for involuntary retirement for disability or an order for removal, may prohibit such person from holding judicial office in the future. The rights of an incumbent so retired to retirement

benefits shall be the same as if his retirement had been voluntary.

(10) All papers filed with and proceedings before the Commission or a Master shall be confidential, unless otherwise provided by law, and the filing of papers with, and the giving of testimony before, the Commission, Master or the Supreme Court shall be privileged, unless otherwise provided by law; provided that upon being filed in the Supreme Court the record loses its confidential character. However, the Commission may issue a public statement through its executive director or its Chairman at any time during any of its proceedings under this Section when sources other than the Commission cause notoriety concerning a Judge or the Commission itself and the Commission determines that the best interests of a Judge or of the public will be served by issuing the statement.

[See Compact Edition, Volume 1, for text of (11)]

(12) No person holding an office named in Paragraph A of Subsection (6) of this Section shall sit as a member of the Commission in any proceeding involving his own suspension, censure, retirement or removal. A recommendation of the Commission for the suspension, censure, retirement, or removal of a Justice of the Supreme Court shall be determined by a tribunal of seven (7) Court of Civil Appeals Justices selected by lot to serve in place of the Supreme Court.

[See Compact Edition, Volume 1 for text of (13)]
 [Adopted Nov. 8, 1977.]

§ 4. Court of Criminal Appeals; Judges

Sec. 4. The Court of Criminal Appeals shall consist of eight Judges and one Presiding Judge. The Judges shall have the same qualifications and receive the same salaries as the Associate Justices of the Supreme Court, and the Presiding Judge shall have the same qualifications and receive the same salary as the Chief Justice of the Supreme Court. The Presiding Judge and the Judges shall be elected by the qualified voters of the state at a general election and shall hold their offices for a term of six years. In case of a vacancy in the office of a Judge of the Court of Criminal Appeals, the Governor shall, with the advice and consent of the Senate, fill said vacancy by appointment until the next succeeding general election.

For the purpose of hearing cases, the Court of Criminal Appeals may sit in panels of three Judges, the designation thereof to be under rules established by the court. In a panel of three Judges, two Judges shall constitute a quorum and the concurrence of two Judges shall be necessary for a decision. The Presiding Judge, under rules established by the court, shall convene the court en banc for the trans-

action of all other business and may convene the court en banc for the purpose of hearing cases. The court must sit en banc during proceedings involving capital punishment and other cases as required by law. When convened en banc, five Judges shall constitute a quorum and the concurrence of five Judges shall be necessary for a decision. The Court of Criminal Appeals may appoint Commissioners in aid of the Court of Criminal Appeals as provided by law.

[Adopted Nov. 8, 1977.]

§ 5. Jurisdiction of Court of Criminal Appeals; Terms of Court; Clerk

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

Subject to such regulations as may be prescribed by law, regarding criminal law matters, the Court of Criminal Appeals and the Judges thereof shall have the power to issue the writs of habeas corpus, mandamus, procedendo, prohibition, certiorari, and such other writs as may be necessary to protect its jurisdiction or enforce its judgments. The court shall have the power upon affidavit or otherwise to ascertain such matters of fact as may be necessary to the exercise of its jurisdiction.

The Court of Criminal Appeals may sit for the transaction of business at any time during the year and each term shall begin and end with each calendar year. The Court of Criminal Appeals shall appoint a clerk of the court who shall give bond in such manner as is now or may hereafter be required by law, and who shall hold his office for a term of four years unless sooner removed by the court for good cause entered of record on the minutes of said court.

The Clerk of the Court of Criminal Appeals who may be in office at the time when this Amendment takes effect shall continue in office for the term of his appointment.

[Adopted Nov. 8, 1977.]

ARTICLE VIII

TAXATION AND REVENUE

§ 1-f. Ad Valorem Tax Relief

Sec. 1-f. The legislature by law may provide for the preservation of cultural, historical, or natural history resources by:

- (1) granting exemptions or other relief from state ad valorem taxes on appropriate property so designated in the manner prescribed by law; and

(2) authorizing political subdivisions to grant exemptions or other relief from ad valorem taxes on appropriate property so designated by the political subdivision in the manner prescribed by general law.

[Adopted Nov. 8, 1977.]

ARTICLE XVI GENERAL PROVISIONS

Section

62, 63. Repealed. April 22, 1975.

67. State and Local Retirement Systems [NEW].

§§ 62, 63. Repealed. April 22, 1975

See, now, § 67 of this article.

§ 67. State and Local Retirement Systems

Sec. 67. (a) General Provisions. (1) The legislature may enact general laws establishing systems and programs of retirement and related disability and death benefits for public employees and officers. Financing of benefits must be based on sound actuarial principles. The assets of a system are held in trust for the benefit of members and may not be diverted.

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

(3) Each statewide benefit system must have a board of trustees to administer the system and to invest the funds of the system in such securities as the board may consider prudent investments. In making investments, a board shall exercise the judgment and care under the circumstances then prevailing that persons of ordinary prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation, but in regard to the permanent disposition of their funds, considering the probable income therefrom as well as the probable safety of their capital. The legislature by law may further restrict the investment discretion of a board.

(4) General laws establishing retirement systems and optional retirement programs for public employ-

ees and officers in effect at the time of the adoption of this section remain in effect, subject to the general powers of the legislature established in this subsection.

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

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

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

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

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

(B) a statewide system of benefits for the officers and employees of counties or other political subdivisions of the state in which counties or other political subdivisions may voluntarily participate; and

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

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

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

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

(e) Anticipatory Legislation. Legislation enacted in anticipation of this amendment is not void because it is anticipatory.
[Adopted April 22, 1975.]

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CHAPTER 1. GENERAL PROVISIONS

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§ 1.01. Purpose of Code

(a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 448, Acts of the 58th Legislature, 1963 (Article 5429b-1, Vernon's Texas Civil Statutes). The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the general and permanent alcoholic beverage law more accessible and understandable, by:

- (1) rearranging the statutes into a more logical order;
- (2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;
- (3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and
- (4) restating the law in modern American English to the greatest extent possible.

[Acts 1977, 65th Leg., p. 393, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 1.02. Construction of Code

The Code Construction Act (Article 5429b-2, Vernon's Texas Civil Statutes) applies to the construction of each provision in this code, except as otherwise expressly provided by this code.

[Acts 1977, 65th Leg., p. 393, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 1.03. Public Policy

This code is an exercise of the police power of the state for the protection of the welfare, health, peace, temperance, and safety of the people of the state. It shall be liberally construed to accomplish this purpose.

[Acts 1977, 65th Leg., p. 393, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 1.04. Definitions

In this code:

(1) "Alcoholic beverage" means alcohol, or any beverage containing more than one-half of one percent of alcohol by volume, which is capable of use for beverage purposes, either alone or when diluted.

(2) "Consignment sale" means:

(A) the delivery of alcoholic beverages under an agreement, arrangement, condition, or system by which the person receiving the beverages has the right at any time to relinquish possession to them or to return them to the shipper and in which title to the beverages remains in the shipper;

(B) the delivery of alcoholic beverages under an agreement, arrangement, condition, or system by which the person designated as the receiver merely acts as an intermediary for the shipper or seller and the actual receiver;

(C) the delivery of alcoholic beverages to a factor or broker;

(D) any method employed by a shipper or seller by which a person designated as the purchaser of alcoholic beverages does not in fact purchase the beverages;

(E) any method employed by a shipper or seller by which a person is placed in actual or constructive possession of an alcoholic beverage without acquiring title to the beverage; or

(F) any other type of transaction which may legally be construed as a consignment sale.

(3) "Distilled spirits" means alcohol, spirits of wine, whiskey, rum, brandy, gin, or any liquor produced in whole or in part by the process of distillation, including all dilutions or mixtures of them.

(4) "Illicit beverage" means an alcoholic beverage:

(A) manufactured, distributed, bought, sold, bottled, rectified, blended, treated, fortified, mixed, processed, warehoused, stored, possessed, imported, or transported in violation of this code;

(B) on which a tax imposed by the laws of this state has not been paid and to which the tax stamp, if required, has not been affixed; or

(C) possessed, kept, stored, owned, or imported with intent to manufacture, sell, distribute, bottle, rectify, blend, treat, fortify, mix, process, warehouse, store, or transport in violation of this code.

(5) "Liquor" means any alcoholic beverage containing alcohol in excess of four percent by weight, unless otherwise indicated. Proof that an alcoholic beverage is alcohol, spirits of wine, whiskey, liquor, wine, brandy, gin, rum, ale, malt liquor, tequila, mescal, habanero, or barre-teago, is prima facie evidence that it is liquor.

(6) "Person" means a natural person or association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them.

(7) "Wine and vinous liquor" means the product obtained from the alcoholic fermentation of juice of sound ripe grapes, fruits, or berries.

(8) "Hotel" means the premises of an establishment:

(A) where, in consideration of payment, travelers are furnished food and lodging;

(B) in which are located at least 10 adequately furnished completely separate rooms with adequate facilities so comfortably disposed that persons usually apply for and receive overnight accommodations in the establishment, either in the course of usual and regular travel or as a residence; and

(C) which operates a regular dining room constantly frequented by customers each day.

(9) "Applicant" means a person who submits or files an original or renewal application with the county judge, commission, or administrator for a license or permit.

(10) "Commission" means the Texas Alcoholic Beverage Commission.

(11) "Permittee" means a person who is the holder of a permit provided for in this code, or an agent, servant, or employee of that person.

(12) "Ale" or "malt liquor" means a malt beverage containing more than four percent of alcohol by weight.

(13) "Mixed beverage" means one or more servings of a beverage composed in whole or part of an alcoholic beverage in a sealed or unsealed container of any legal size for consumption on the premises where served or sold

by the holder of a mixed beverage permit, the holder of a daily temporary mixed beverage permit, the holder of a caterer's permit, the holder of a mixed beverage late hours permit, the holder of a private club registration permit, or the holder of a private club late hours permit.

(14) "Barrel" means, as a standard of measure, a quantity of beer equal to 31 standard gallons.

(15) "Beer" means a malt beverage containing one-half of one percent or more of alcohol by volume and not more than four percent of alcohol by weight, and does not include a beverage designated by label or otherwise by a name other than beer.

(16) "Licensee" means a person who is the holder of a license provided in this code, or any agent, servant, or employee of that person.

(17) "Manufacturer" means a person engaged in the manufacture or brewing of beer, whether located inside or outside the state.

(18) "Original package," as applied to beer, means a container holding one barrel, one-half barrel, one-quarter barrel, or one-eighth barrel of beer in bulk, or any box, crate, carton, or other device used in packing beer that is contained in bottles or other containers.

(19) "Premises" has the meaning given it in Section 11.49 of this code.

(20) "Citizen of Texas" and "citizen of this state" mean a person who is a citizen of both the United States and Texas.

[Acts 1977, 65th Leg., p. 393, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 1.05. General Penalty

(a) A person who violates a provision of this code for which a specific penalty is not provided is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$1,000 or by confinement in the county jail for not more than one year or by both.

(b) The term "specific penalty," as used in this section, means a penalty which might be imposed as a result of a criminal prosecution.

[Acts 1977, 65th Leg., p. 395, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 1.06. Code Exclusively Governs

Unless otherwise specifically provided by the terms of this code, the manufacture, sale, distribution, transportation, and possession of alcoholic beverages shall be governed exclusively by the provisions of this code.

[Acts 1977, 65th Leg., p. 395, ch. 194, § 1, eff. Sept. 1, 1977.]

TITLE 2. ADMINISTRATION OF CODE

CHAPTER 5. ALCOHOLIC BEVERAGE COMMISSION

SUBCHAPTER A. ADMINISTRATIVE PROVISIONS

Section

- 5.01. Texas Alcoholic Beverage Commission.
- 5.02. Members of Commission; Appointment.
- 5.03. Terms of Office.
- 5.04. Chairman.
- 5.05. Relationship With Alcoholic Beverage Business Prohibited.
- 5.06. Commission Office.
- 5.07. Commission Meetings.
- 5.08. Per Diem, Expenses.
- 5.09. Annual Report.
- 5.10. Employees; Compensation; Bonds.
- 5.11. Administrator.
- 5.12. Concurrent Duties of Administrator.
- 5.13. Assistant Administrator.
- 5.14. Inspectors and Representatives.
- 5.15. Assistant Attorneys General.
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- 5.33. Regulate Licensees and Permittees.
- 5.34. Delegation of Authority.
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- 5.46. Security for Costs.
- 5.47. Records of Violations.
- 5.48. Private Records.
- 5.49. Printed Copies of Code.

SUBCHAPTER A. ADMINISTRATIVE PROVISIONS

§ 5.01. Texas Alcoholic Beverage Commission

The Texas Alcoholic Beverage Commission is an agency of the state.

[Acts 1977, 65th Leg., p. 397, ch. 194, § 1, eff. Sept. 1, 1977.]

Application of Sunset Act

Acts 1977, 65th Leg., p. 1851, ch. 735, § 2.135, purports to add art. 666-5c without reference to repeal of the Liquor Control Act by Acts 1977, 65th Leg., p. 557, ch. 194, § 2. As so added, art. 666-5c reads:

"The Texas Alcoholic Beverage Commission is subject to the Texas Sunset Act [Civil Statutes art. 5429k]; and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1987."

§ 5.02. Members of Commission; Appointment

(a) The commission is composed of three members, who are appointed by the governor with the advice and consent of the senate.

(b) Each member must be a Texas resident, must have resided in the state for at least five years next preceding his appointment and qualification, and must be a qualified voter in the state at the time of his appointment and qualification.

[Acts 1977, 65th Leg., p. 397, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.03. Terms of Office

The members of the commission hold office for staggered terms of six years, with the term of one member expiring every two years. Each member holds office until his successor is appointed and has qualified. A member may be appointed to succeed himself.

[Acts 1977, 65th Leg., p. 397, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.04. Chairman

The governor shall designate one member of the commission as chairman.

[Acts 1977, 65th Leg., p. 397, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.05. Relationship With Alcoholic Beverage Business Prohibited

(a) No person may be appointed to or serve on the commission, or hold an office under the commission, or be employed by the commission, who:

- (1) has any financial connection with a person engaged in an alcoholic beverage business;
- (2) holds stocks or bonds in an alcoholic beverage business; or
- (3) has a pecuniary interest in an alcoholic beverage business.

(b) No member of the commission, or anyone holding an office under the commission, or any employee of the commission, may receive a commission or profit from or have an interest in the sale or purchase of alcoholic beverages.

[Acts 1977, 65th Leg., p. 397, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.06. Commission Office

The office of the commission shall be in the city of Austin.

[Acts 1977, 65th Leg., p. 397, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.07. Commission Meetings

(a) The commission may meet in the city of Austin at times it determines.

(b) A majority of the members constitutes a quorum for the transaction of business or for the exercise of any of the powers or duties of the commission.

[Acts 1977, 65th Leg., p. 397, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.08. Per Diem, Expenses

Members of the commission receive per diem of \$10 a day, for not more than 60 days a year, plus actual expenses, while attending commission meetings or otherwise engaged in the performance of their duties.

[Acts 1977, 65th Leg., p. 397, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.09. Annual Report

In January each year, the commission shall report to the governor concerning its administration of this code.

[Acts 1977, 65th Leg., p. 397, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.10. Employees; Compensation; Bonds

(a) The commission or administrator may employ clerks, stenographers, inspectors, chemists, and other employees necessary to properly enforce this code.

(b) The commission or administrator shall determine the duties of all employees. The employees shall be compensated as provided by legislative appropriation.

(c) The commission may require an employee to give bond for the faithful performance of his duties in an amount it considers adequate and under conditions it considers proper.

[Acts 1977, 65th Leg., p. 398, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.11. Administrator

The commission shall appoint an administrator to serve at its will and, subject to its supervision, administer this code. Unless the commission orders otherwise, the administrator shall be manager, secretary, and custodian of all records. The administrator shall devote his entire time to the office and shall receive a salary as appropriated by the legislature. The administrator shall execute a bond in the sum of \$10,000, payable to the state, and conditioned as the commission requires.

[Acts 1977, 65th Leg., p. 398, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.12. Concurrent Duties of Administrator

The commission shall specify the duties and powers of the administrator by printed rules and regulations entered in its minutes. When this code imposes concurrent powers or duties on the commission and the administrator, the commission shall designate those powers and duties which it delegates to the administrator. An order, decision, or judgment rendered and entered by the administrator in a matter in which he has been authorized to act is not subject to change, review, or revision by the commission. A concurrent power or duty which has not been specifically delegated to the administrator by the commission's order is retained by the commission, and an order, decision, or judgment rendered and entered by the commission in a matter in which the commission has retained authority is not subject to change, review, or revision by the administrator.

[Acts 1977, 65th Leg., p. 398, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.13. Assistant Administrator

The administrator shall appoint an assistant administrator. The assistant administrator must meet the same qualifications as the administrator. The assistant administrator shall take the constitutional oath of office and make a bond in the same amount and on the same conditions as the administrator's bond. In the absence of the administrator, or in case of his inability to act, the assistant administrator shall perform the duties conferred on the administrator by law or delegated to the administrator by the commission. If there is a vacancy in the office of administrator, the assistant administrator shall perform the duties of the administrator until an administrator has been appointed by the commission. At other times he shall perform those duties and have those functions, powers, and authority as may be delegated to him by the administrator.

[Acts 1977, 65th Leg., p. 398, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.14. Inspectors and Representatives

The commission or administrator may commission as many inspectors and representatives as are necessary to enforce this code. Each inspector and representative shall take the constitutional oath of office, which shall be filed in the office of the commission. Each commissioned inspector and representative has all the powers of a peace officer coextensive with the boundaries of the state. Each commissioned inspector and representative shall make and execute a bond as required by the commission.

[Acts 1977, 65th Leg., p. 398, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.15. Assistant Attorneys General

The attorney general shall appoint as many as six assistant attorneys general, as the commission determines necessary, to enable the commission to more efficiently enforce this code. The attorney general and the assistant attorneys general shall prosecute all suits requested by the commission and defend all suits against the commission. The commission shall provide the assistant attorneys general with necessary stenographers and office space. The assistant attorneys general shall be paid by the commission out of funds appropriated to it for the administration of this code. Their compensation shall be on the same basis as assistant attorneys general devoting their time to general state business.

[Acts 1977, 65th Leg., p. 399, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.16. Representation in Appeal to Commission

No member of the legislature or other person may appear for compensation in a representational capacity in an appeal to the commission unless he first files an affidavit supplied by the commission and makes a full disclosure of whom he represents and of the fact that he is being compensated for doing so. The commission shall provide appropriate forms, and these records are a public record of the commission.

[Acts 1977, 65th Leg., p. 399, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.17. Suits Against the Commission: Venue

In all suits against the commission, except appeals governed by Section 11.67 or 32.18 of this code, venue is in Travis County.

[Acts 1977, 65th Leg., p. 399, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 5.18 to 5.30 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES

§ 5.31. General Powers and Duties

The commission may exercise all powers, duties, and functions conferred by this code, and all powers incidental, necessary, or convenient to the administration of this code. It shall inspect, supervise, and regulate every phase of the business of manufacturing, importing, exporting, transporting, storing, selling, advertising, labeling, and distributing alcoholic beverages, and the possession of alcoholic beverages for the purpose of sale or otherwise. It may prescribe and publish rules necessary to carry out the provisions of this code.

[Acts 1977, 65th Leg., p. 399, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.32. May Require Reports

The commission may require the filing of reports and other data by persons engaged in the alcoholic beverage business which the commission finds necessary to accomplish the purposes of this code.

[Acts 1977, 65th Leg., p. 399, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.33. Regulate Licensees and Permittees

The commission shall supervise and regulate licensees and permittees and their places of business in matters affecting the public. This authority is not limited to matters specifically mentioned in this code.

[Acts 1977, 65th Leg., p. 399, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.34. Delegation of Authority

The commission may authorize its agents, servants, and employees to carry out, under its direction, the provisions of this code.

[Acts 1977, 65th Leg., p. 400, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.35. Issuance of Permits and Licenses

The commission may grant, refuse, suspend, or cancel alcoholic beverage permits and licenses as provided in this code.

[Acts 1977, 65th Leg., p. 400, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.36. Investigation of Violations

The commission shall investigate violations of this code and of other laws relating to alcoholic beverages, and shall cooperate in the prosecution of offenders before any court of competent jurisdiction. The commission may seize alcoholic beverages manufac-

tured, sold, kept, imported, or transported in violation of this code and apply for the confiscation of the beverages if required to do so by this code.

[Acts 1977, 65th Leg., p. 400, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.37. Federal Collection of Taxes at Source

If the federal government provides a method of collecting liquor taxes at the source, the commission may enter contracts and comply with regulations, even to the extent of abrogating provisions of this code which are inconsistent with federal law or regulations, in order to receive the portion of the taxes allocated to the state. The taxes received shall be distributed as provided in this code.

[Acts 1977, 65th Leg., p. 400, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.38. Quality and Purity of Beverages

The commission shall require by rule that any alcoholic beverage sold in this state conform in all respects to its advertised quality. The commission shall promulgate and enforce rules governing the labeling and advertising of all alcoholic beverages sold in the state, and shall adopt and enforce a standard of quality, purity, and identity of all alcoholic beverages. The commission shall promulgate and enforce necessary rules to safeguard the public health and to insure sanitary conditions in the manufacturing, refining, blending, mixing, purifying, bottling, rebottling, and sale of alcoholic beverages.

[Acts 1977, 65th Leg., p. 400, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.39. Regulation of Liquor Containers

The commission shall adopt rules to standardize the size of containers in which liquor may be sold in the state and relating to representations required or allowed to be displayed on or in the containers. To accommodate the alcoholic beverage industry's conversion to the metric system, the commission shall adopt rules permitting the importation and sale of liquor in metric-sized containers as well as in containers sized according to the United States standard gallon system.

[Acts 1977, 65th Leg., p. 400, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.40. Regulation of Beer Container Deposits

If the commission finds it necessary to effectuate the purposes of this code, it may adopt rules to provide a schedule of deposits required to be obtained on beer containers delivered by a licensee.

[Acts 1977, 65th Leg., p. 400, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.41. Alcohol Used for Scientific Purposes, Etc.

The commission shall license and regulate the use of alcohol and liquor for scientific, pharmaceutical, and industrial purposes. The commission shall provide by rule for the withdrawal of alcohol or liquor for those purposes from warehouses or denaturing plants, and shall prescribe the manner in which the

alcohol or liquor may be used, tax free, for scientific research, in hospitals or sanitoriums, in industrial plants, or for other manufacturing purposes.

[Acts 1977, 65th Leg., p. 400, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.42. Penalty for Violation of Rule

A person who violates a valid rule of the commission is guilty of a misdemeanor and on conviction is punishable by the penalty prescribed in Section 1.05 of this code.

[Acts 1977, 65th Leg., p. 401, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.43. Who May Hold Hearing; Rules of Evidence

The commission or administrator may designate a member of the commission or other representative to conduct and make a record of any hearing authorized by this code. The commission or administrator may render a decision on the basis of the record or the proposal for decision if one is required under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes) as if the administrator or entire commission had conducted the hearing. The commission may prescribe its rules of procedure.

[Acts 1977, 65th Leg., p. 401, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.44. Subpoena of Witnesses; Witness Fees; Contempt

(a) The commission, administrator, or an inspector under the direction of the commission, for the purposes of this code, may:

- (1) issue subpoenas;
- (2) compel the attendance of witnesses;
- (3) administer oaths;
- (4) certify to official acts;
- (5) take depositions inside or outside the state, as provided by law; and
- (6) compel the production of pertinent books, accounts, records, documents, and testimony.

(b) If a witness in attendance before the commission or before an authorized representative refuses without reasonable cause to be examined or answer a legal or pertinent question, or to produce a book, record, or paper when ordered by the commission to do so, the commission may apply to the district court for a rule or order returnable in not less than two nor more than five days, directing the witness to show cause before the judge why he should not be punished for contempt. The commission may apply to the district court of any county where the witness is in attendance, on proof by affidavit of the fact, unless the order of contempt is sought under the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), in which case the commission shall apply to a district court of Travis County in conformity with that Act.

On return of the order, the judge hearing the matter shall examine the witness under oath, and the witness shall be given an opportunity to be heard. If the judge determines that the witness has refused, without reasonable cause or legal excuse, to be examined or answer a legal or pertinent question, or to produce a book, record, or paper which he was ordered to bring or produce, he may forthwith punish the offender as for contempt of court.

(c) Subpoenas are served and witness fees and mileage paid as in civil cases in the district court in the county to which the witness is called, unless the proceeding for which the service or payment is made is pursuant to the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes), in which case the service or payment shall be made as provided in that Act. Witnesses subpoenaed at the instance of the commission shall be paid their fees and mileage by the commission out of funds appropriated for that purpose.

[Acts 1977, 65th Leg., p. 401, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.45. Proof of Document

(a) In a suit by the state or the commission or in which either is a party, a transcript from the papers, books, records, or proceedings of the commission purporting to contain a true statement of accounts between the commission or the state and any person, or a copy of a rule, order, audit, bond, contract, or other instrument relating to a transaction between the commission and a person, when certified by the administrator or chairman of the commission to be a true copy of the original on file with the commission and authenticated under the seal of the commission, is admissible as prima facie evidence of the existence and validity of the original document and entitled to the same credibility as the original document. If a suit is brought on a bond or other written instrument, and the person alleged to have executed the instrument denies by a sworn pleading to have executed the instrument, the court shall require the production and proof of the instrument.

(b) A member of the commission or the administrator may execute a certificate under the seal of the commission setting forth the terms of an order, rule, bond, or other instrument referred to in this section. In the case of an order or rule, the certificate may state that the order or rule was adopted, promulgated, and published and filed with the commission and was in force at any date or during any period of time. In the case of a bond or other instrument, the certificate may state that it was executed and filed with the commission and was in force at any date or during any period of time. The certificate is prima facie evidence of the facts stated in it and is admissible as evidence in any action, civil or criminal, involving the facts contained in the certificate without further proof of those facts.

[Acts 1977, 65th Leg., p. 402, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.46. Security for Costs

No security for costs may be required of a representative of the commission in a matter in which the representative protests the issuance of a license or permit in a hearing conducted by the county judge. [Acts 1977, 65th Leg., p. 402, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.47. Records of Violations

Records of all violations of this code by permittees and licensees, records introduced and made public at hearings, and decisions resulting from the hearings relating to the violations shall be kept on file at the office of the commission in the city of Austin. The records are open to the public. [Acts 1977, 65th Leg., p. 402, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.48. Private Records

(a) "Private records," as used in this section, means all records of a permittee, licensee, or other person other than the name, proposed location, and type of permit or license sought in an application for an original or renewal permit or license, or in a periodic report relating to the importation, distribution, or sale of alcoholic beverages required by the commission to be regularly filed by a permittee or licensee.

(b) The private records of a permittee, licensee, or other person that are required or obtained by the commission or its agents, in connection with an investigation or otherwise, are privileged unless introduced in evidence in a hearing before the commission or before a court in this state or the United States. [Acts 1977, 65th Leg., p. 402, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 5.49. Printed Copies of Code

The commission from time to time may have as many copies of this code printed in pamphlet form for distribution as it finds necessary. [Acts 1977, 65th Leg., p. 402, ch. 194, § 1, eff. Sept. 1, 1977.]

TITLE 3. LICENSES AND PERMITS

SUBTITLE A. PERMITS

CHAPTER 11. PROVISIONS GENERALLY APPLICABLE TO PERMITS

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- 11.70. Liability of Surety.
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SUBCHAPTER A. GENERAL PROVISIONS

§ 11.01. Permit Required

(a) No person who has not first obtained a permit of the type required for the privilege exercised may, in a wet area, do any of the following:

- (1) manufacture, distill, brew, sell, possess for the purpose of sale, import into this state, export from this state, transport, distribute, warehouse, or store liquor;
- (2) solicit or take orders for liquor; or
- (3) for the purpose of sale, bottle, rectify, blend, treat, fortify, mix, or process liquor.

(b) A person may manufacture, distill, brew, sell, import, export, transport, distribute, warehouse, store, possess, possess for the purpose of sale, bottle, rectify, blend, treat, fortify, mix, or process liquor, or possess equipment or material designed for or capable of use for manufacturing liquor, if the right or privilege of doing so is granted by this code.

(c) A right or privilege granted by this section as an exception to prohibitions contained elsewhere in this code may be exercised only in the manner provided. An act done by a person which is not permitted by this code is unlawful.

[Acts 1977, 65th Leg., p. 404, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.02. Separate Permit Required

A separate permit shall be obtained and a separate fee paid for each outlet of liquor in the state. [Acts 1977, 65th Leg., p. 404, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.03. Nature of Permit

A permit issued under this code is a purely personal privilege and is subject to revocation as provided in this code. It is not property, is not subject to execution, does not pass by descent or distribution, and except as otherwise provided in this code, ceases on the death of the holder.

[Acts 1977, 65th Leg., p. 404, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.04. Must Display Permit

All permits shall be displayed in a conspicuous place at all times on the licensed premises.

[Acts 1977, 65th Leg., p. 404, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.05. Unauthorized Use of Permit

No permittee may consent to or allow the use or display of his permit by a person other than the person to whom the permit was issued.

[Acts 1977, 65th Leg., p. 404, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.06. Privileges Limited to Licensed Premises

No person may use a permit or exercise any privileges granted by the permit except at the place, address, premises, or location for which the permit is issued, except as otherwise provided by this code.

[Acts 1977, 65th Leg., p. 405, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.07. Duplicate or Corrected Permit

If a permit is lost, destroyed, or needs to be changed, the commission may issue a duplicate or corrected permit.

[Acts 1977, 65th Leg., p. 405, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.08. Change of Location

If a permittee desires to change the location of his place of business, he may file an application for a change of location with the commission. The application shall be on a form prescribed by the commission. The commission or administrator may deny the application on any ground for which an original application may be denied. The application is subject to protest and hearing in the same manner as an original application for a permit.

[Acts 1977, 65th Leg., p. 405, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.09. Expiration of Permit

A permit issued under this code expires one year after the date it is issued except as otherwise provided by this code.

[Acts 1977, 65th Leg., p. 405, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.10. Succession on Death, Bankruptcy, Etc.

On the death of the permittee or of a person having an interest in the permit, or on bankruptcy, receivership, or partnership dissolution, the receiver or successor in interest may apply to the county judge of the county where the licensed premises are located for certification that he is the receiver or successor in interest. On certification, unless good cause for refusal is shown, the commission or administrator shall grant permission, by letter or otherwise, for the receiver or successor in interest to operate the business during the unexpired portion of the permit. The permit may not be renewed, but the receiver or successor in interest may apply for an original permit or license. A receiver or successor in interest operating for the unexpired portion of the permit is subject to the provisions of this code relating to suspension or cancellation of a permit.

[Acts 1977, 65th Leg., p. 405, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 11.11 to 11.30 reserved for expansion]

SUBCHAPTER B. APPLICATION FOR AND
ISSUANCE OF PERMITS

§ 11.31. Application for Permit

All permits shall be applied for and obtained from the commission. This section does not apply to wine and beer retailer's permits, except those for railway cars or excursion boats, or to wine and beer retailer's off-premise permits.

[Acts 1977, 65th Leg., p. 405, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.32. Renewal Application

Renewal applications shall be made under oath and shall contain all information required by the commission or administrator showing that the applicant is qualified to hold the permit. The application shall be accompanied by the required bond and state fee. The commission or administrator may issue a renewal permit if it is found that the applicant is qualified.

[Acts 1977, 65th Leg., p. 405, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.33. Application Forms

All permit application forms shall be provided by the commission.

[Acts 1977, 65th Leg., p. 406, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.34. Consolidated Application

(a) An applicant for a wholesaler's, class B wholesaler's, rectifier's, brewer's, distiller's, class A winery, or class B winery permit may consolidate in a single application his application for that permit and his application for:

- (1) private storage;
- (2) storage in a public bonded warehouse;

- (3) a private carrier's permit; and
- (4) any other permit he is qualified to receive.

(b) An applicant who files a consolidated application must pay the fee prescribed in this code for each permit included in the application.

[Acts 1977, 65th Leg., p. 406, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.35. Payment of Fee

Each permit application must be accompanied by a cashier's check or money order for the amount of the state fee, payable to the order of the state treasurer.

[Acts 1977, 65th Leg., p. 406, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.36. Refund of Fee

The commission may not refund a permit fee except when the permittee is prevented from continuing in business because of a local option election or when an application for a permit is rejected by the commission or administrator. As much of the proceeds from permit fees as is necessary may be appropriated for that purpose.

[Acts 1977, 65th Leg., p. 406, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.37. Certification of Wet or Dry Status

(a) The county clerk of the county in which an application for a permit is made shall certify whether the location or address given in the application is in a wet area and whether the sale of alcoholic beverages for which the permit is sought is prohibited by any valid order of the commissioners court.

(b) The city secretary or clerk of the city in which an application for a permit is made shall certify whether the location or address given in the application is in a wet area and whether the sale of alcoholic beverages for which the permit is sought is prohibited by charter or ordinance.

[Acts 1977, 65th Leg., p. 406, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.38. Local Fee Authorized

(a) The governing body of a city or town may levy and collect a fee not to exceed one-half the state fee for each permit issued for premises located within the city or town. The commissioners court of a county may levy and collect a fee equal to one-half of the state fee for each permit issued for premises located within the county. Those authorities may not levy or collect any other fee or tax from the permittee except general ad valorem taxes, the hotel occupancy tax levied under Chapter 63, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 1269j-4.1, Vernon's Texas Civil Statutes), and the local sales and use tax levied under the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes).

(b) The commission or administrator may cancel a permit if it finds that the permittee has not paid a fee levied under this section. A permittee who sells

an alcoholic beverage without first having paid a fee levied under this section commits a misdemeanor punishable by a fine of not less than \$10 nor more than \$200.

(c) Nothing in this code shall be construed as a grant to any political subdivision of the authority to regulate permittees except by collecting the fees authorized in this section and exercising those powers granted to political subdivisions by other provisions of this code.

(d) The following are exempt from the fee authorized in this section:

(1) agent's, airline beverage, industrial, carrier's, private carrier's, private club registration, local cartage, storage, temporary wine and beer retailer's, and class B winery permits;

(2) a wine and beer retailer's permit issued for a dining, buffet, or club car; and

(3) a mixed beverage permit during the three-year period following the issuance of the permit.

[Acts 1977, 65th Leg., p. 406, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.39. Applicant to Publish Notice

(a) Every applicant for a pharmacist's medicinal, brewer's, distiller's, mixed beverage, winery (except class B winery), wholesaler's, class B wholesaler's, wine bottler's, or package store permit shall give notice of the application by publication at his own expense in two consecutive issues of a newspaper of general circulation published in the city or town in which his place of business is located. If no newspaper is published in the city or town, the notice shall be published in a newspaper of general circulation published in the county where the applicant's business is located. If no newspaper is published in the county, the notice shall be published in a qualified newspaper published in the closest neighboring county and circulated in the county of the applicant's residence.

(b) The notice shall be printed in 10-point boldface type and shall include:

(1) the type of permit to be applied for;

(2) the exact location of the place of business for which the permit is sought;

(3) the names of each owner of the business and, if the business is operated under an assumed name, the trade name together with the names of all owners; and

(4) if the applicant is a corporation, the names and titles of all officers.

(c) An applicant for a renewal permit is not required to publish notice.

(d) This section does not apply to an applicant for a daily temporary mixed beverage permit or a caterer's permit.

[Acts 1977, 65th Leg., p. 407, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.40. Notice to County Judge

The commission shall give notice of all permit applications to the county judge of the county in which the applicant's place of business is located, unless the county judge waives the required notice in writing. Notice is not required in the case of an application for a wine and beer retailer's, wine and beer retailer's off-premise, temporary wine and beer retailer's, carrier's, private carrier's, airline beverage, industrial, agent's, manufacturer's, agent's, bonded warehouse, or storage permit.

[Acts 1977, 65th Leg., p. 407, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.41. Recommendation of Local Officials

(a) When a person applies for a permit, the commission or administrator shall give due consideration to the recommendations of the mayor, chief of police, city marshal, or city attorney of the city or town in which the premises sought to be licensed are located and of the county judge, sheriff, or county or district attorney of the county in which the premises sought to be licensed are located. If a protest against the issuance of a permit is made to the commission by any of these officers and it is found on a hearing or finding of facts that the issuance of the permit would be in conflict with the provisions of this code, the commission or administrator shall enter an order setting forth the reasons for refusal. A copy of the order shall be immediately mailed or delivered to the applicant.

(b) In the granting or withholding of a permit to sell alcoholic beverages at retail, the commission or administrator may give consideration to a recommendation made in writing by the commissioners court of the county in which the applicant proposes to conduct his business or by a representative of the commission.

[Acts 1977, 65th Leg., p. 408, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.42. Statement of Stock Ownership

The commission at any time may require an officer of a corporation holding a permit to file a sworn statement showing the actual owners of the stock of the corporation, the amount of stock owned by each, the officers of the corporation, and any information concerning the qualifications of the officers or stockholders.

[Acts 1977, 65th Leg., p. 408, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.43. Discretion to Grant or Refuse Permit

The commission and administrator have discretionary authority to grant or refuse to issue an original or renewal permit under the provisions of this subchapter or any other applicable provision of this code.

[Acts 1977, 65th Leg., p. 408, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.44. Premises Ineligible for Permit or License

If an order of suspension against a permit or license is pending or unexpired, or if the commission has initiated action to cancel or suspend a permit or license, no permit or license may be issued for or transferred to the same licensed premises.

[Acts 1977, 65th Leg., p. 408, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.45. "Applicant" Defined

The word "applicant," as used in Sections 11.46 through 11.48 of this code, also includes, as of the date of the application, each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock. This section shall not be construed as prohibiting anything permitted by Section 22.06, 24.05, or 102.05 of this code.

[Acts 1977, 65th Leg., p. 408, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.46. General Grounds for Refusal

The commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that any of the following circumstances exists:

(1) the applicant has been convicted in a court of competent jurisdiction of the violation of any provision of this code during the two years immediately preceding the filing of his application;

(2) three years have not elapsed since the termination, by pardon or otherwise, of a sentence imposed on the applicant for the conviction of a felony;

(3) within the six-month period immediately preceding his application the applicant violated or caused to be violated a provision of this code or a rule or regulation of the commission which involves moral turpitude, as distinguished from a technical violation of this code or of the rule;

(4) the applicant failed to answer or falsely or incorrectly answered a question in an original or renewal application;

(5) the applicant is indebted to the state for any taxes, fees, or payment of penalty imposed by this code or by rule of the commission;

(6) the applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad;

(7) the applicant is less than 18 years of age;

(8) the place or manner in which the applicant may conduct his business warrants the refusal of a permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency;

(9) the applicant is in the habit of using alcoholic beverages to excess or is physically or mentally incapacitated;

(10) the applicant will sell liquor unlawfully in a dry area or in a manner contrary to law or will knowingly permit an agent, servant, or employee to do so;

(11) the applicant is not a United States citizen or has not been a citizen of Texas for a period of three years immediately preceding the filing of his application, unless he was issued a permit or renewal permit on or before September 1, 1948, and has at some time been a United States citizen;

(12) the applicant does not have an adequate building available at the address for which the permit is sought;

(13) the applicant is residentially domiciled with a person whose permit or license has been cancelled for cause within the 12 months immediately preceding the date of his present application;

(14) the applicant has failed or refused to furnish a true copy of his application to the commission's district office in the district in which the premises for which the permit is sought are located; or

(15) during the six months immediately preceding the filing of the application the premises for which the permit is sought have been operated, used, or frequented for a purpose or in a manner that is lewd, immoral, or offensive to public decency.

[Acts 1977, 65th Leg., p. 408, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.47. Refusal of Permit: Interest in Beer Establishment

The commission or administrator may refuse to issue an original or renewal permit with or without a hearing if it has reasonable grounds to believe and finds that the applicant or a person with whom he is residentially domiciled has a financial interest in a permit or license authorizing the sale of beer at retail, except as is authorized by Section 22.06, 24.05, or 102.05 of this code. This section does not apply to an applicant for a permit which authorizes the sale of mixed beverages.

[Acts 1977, 65th Leg., p. 409, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.48. Refusal of Package Store or Mixed Beverage Permit

(a) The commission or administrator may refuse to issue an original or renewal mixed beverage permit with or without a hearing if it has reasonable grounds to believe and finds that the applicant, directly or indirectly, or through a subsidiary, affiliate, agent, or employee, or through an officer, director, or firm member, owns an interest of any kind in the premises, business, or permit of a package store.

(b) The commission or administrator may refuse to issue an original or renewal package store permit with or without a hearing if it has reasonable grounds to believe and finds that the applicant, directly or indirectly, through a subsidiary, affiliate, agent, or employee, or through an officer, director, or firm member, owns an interest of any kind in the premises, business, or permit of a mixed beverage establishment.

(c) This section does not apply to anything permitted by Section 102.05 of this code.

[Acts 1977, 65th Leg., p. 409, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.49. Premises Defined; Designation of Licensed Premises

(a) In this code, "premises" means the grounds and all buildings, vehicles, and appurtenances pertaining to the grounds, including any adjacent premises if they are directly or indirectly under the control of the same person.

(b) Subject to the approval of the commission or the administrator, and except as provided in Subsection (c) of this section, an applicant for a permit or license may designate a portion of the grounds, buildings, vehicles, and appurtenances to be excluded from the licensed premises.

(c) An applicant for an original or renewal package store permit may not take advantage of the right conferred by Subsection (b) of this section except as permitted in Section 11.50 or 109.53 of this code.

[Acts 1977, 65th Leg., p. 410, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.50. Licensing a Portion of a Building as Premises

(a) This section applies to a package store permit which was issued on or before April 1, 1971, and which was in good standing, not under suspension, and in actual operation and doing business on that date, unless temporarily prevented from operation by a natural disaster. This section does not apply to a permit if a change in the size or location of the licensed premises has occurred subsequent to April 1, 1971, or if after that date a change in ownership has occurred, by majority stock transfer or otherwise, except by devise or descent where the holder of the permit died on or after April 1, 1971.

(b) Notwithstanding any other provision of this code, the holder of a package store permit to which this section applies may continue to operate a package store on premises comprising a portion of a building if not later than November 28, 1971, he clearly defined the licensed premises by isolating it from the remainder of the building by the erection of a wall or screen so that the licensed premise is accessible from the remainder of the building only through a door or archway, eight feet or less in width, in the wall or screen. The door or archway

must be kept closed during the hours in which it is not legal to sell liquor.

(c) If the right to continue operation under this exception terminates for any reason, the right shall not revive.

[Acts 1977, 65th Leg., p. 410, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 11.51 to 11.60 reserved for expansion]

SUBCHAPTER C. CANCELLATION AND SUSPENSION OF PERMITS

§ 11.61. Cancellation or Suspension of Permit

(a) As used in this section, the word "permittee" also includes each member of a partnership or association and, with respect to a corporation, each officer and the owner or owners of a majority of the corporate stock. This section shall not be construed as prohibiting anything permitted under Section 22.06, 24.05, or 102.05 of this code.

(b) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal permit if it is found, after notice and hearing, that any of the following is true:

(1) the permittee has been finally convicted of a violation of this code;

(2) the permittee violated a provision of this code or a rule of the commission;

(3) the permittee was finally convicted of a felony while holding an original or renewal permit;

(4) the permittee made a false or misleading statement in connection with his original or renewal application, either in the formal application itself or in any other written instrument relating to the application submitted to the commission, its officers, or employees;

(5) the permittee is indebted to the state for taxes, fees, or payment of penalties imposed by this code or by a rule of the commission;

(6) the permittee is not of good moral character or his reputation for being a peaceable and law-abiding citizen in the community where he resides is bad;

(7) the place or manner in which the permittee conducts his business warrants the cancellation or suspension of the permit based on the general welfare, health, peace, morals, and safety of the people and on the public sense of decency;

(8) the permittee is not maintaining an acceptable bond;

(9) the permittee maintains a noisy, lewd, disorderly, or unsanitary establishment or has supplied impure or otherwise deleterious beverages;

(10) the permittee is insolvent or mentally or physically unable to carry on the management of his establishment;

(11) the permittee is in the habit of using alcoholic beverages to excess;

(12) the permittee knowingly misrepresented to a customer or the public any liquor sold by him;

(13) the permittee was intoxicated on the licensed premises;

(14) the permittee sold or delivered an alcoholic beverage to an intoxicated person or allowed an intoxicated person to remain on the premises;

(15) the permittee possessed on the licensed premises an alcoholic beverage that he was not authorized by his permit to purchase and sell;

(16) a package store or wine only package store permittee transported or shipped liquor, or caused it to be transported or shipped, into a dry state or a dry area within this state;

(17) the permittee is residually domiciled with a person who has a financial interest in an establishment engaged in the business of selling beer at retail, other than a mixed beverage establishment, except as authorized by Section 22.06, 24.05, or 102.05 of this code;

(18) the permittee is residually domiciled with a person whose permit or license was cancelled for cause within the 12-month period preceding his own application;

(19) the permittee is not a citizen of the United States or has not been a citizen of Texas for a period of three years immediately preceding the filing of his application, unless he was issued an original or renewal permit on or before September 1, 1948, and has been a United States citizen at some time; or

(20) the permittee permitted a person to open a container of alcoholic beverage or possess an open container of alcoholic beverage on the licensed premises unless a mixed beverage permit has been issued for the premises.

[Acts 1977, 65th Leg., p. 410, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.62. Hearing for Cancellation or Suspension of Permit

The commission or administrator may, on the motion of either, set a date for a hearing to determine if a permit should be cancelled or suspended. The commission or administrator shall set a hearing on the petition of the mayor, chief of police, city marshal, or city attorney of the city or town in which the licensed premises are located or of the county judge, sheriff, or county or district attorney of the county in which the licensed premises are located. The petition must be supported by the sworn state-

ment of at least one credible person. The commission or administrator shall give the permittee notice of the hearing and of his right to appear and show cause why the permit should not be cancelled. [Acts 1977, 65th Leg., p. 412, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.63. Notice of Hearing

At least 10 days' notice shall be given when a hearing is provided by this code. A notice of hearing for the refusal, cancellation, or suspension of a license or permit may be served personally by a representative of the commission or sent by registered or certified mail addressed to the licensee or permittee. [Acts 1977, 65th Leg., p. 412, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.64. Alternatives to Suspension, Cancellation

(a) When the commission or administrator is authorized to suspend a permit or license under this code, the commission or administrator shall give the permittee or licensee the opportunity to pay a civil penalty rather than have the permit or license suspended. The commission or administrator shall determine the amount of the penalty and in doing so shall consider the economic impact a suspension would have on the permittee or licensee. The amount of the civil penalty may not be less than \$150 for each day the permit or license was to have been suspended. If the licensee or permittee does not pay the penalty before the sixth day after the commission or administrator notifies him of the amount, he loses the opportunity to pay it and the commission or administrator shall impose the suspension.

(b) In the case of a violation of this code by a permittee or a retail dealer's off-premise licensee, the commission or administrator may relax any provision of the code relating to the suspension or cancellation of the permit or license and assess a sanction the commission or administrator finds just under the circumstances, and the commission or administrator may reinstate the license or permit at any time during the period of suspension on payment by the permittee or licensee of a fee of not less than \$75 nor more than \$500, if the commission or administrator finds that any of the circumstances described in Subsection (c) of this section exists.

(c) The following circumstances justify the application of Subsection (b) of this section:

- (1) that the violation could not reasonably have been prevented by the permittee or licensee by the exercise of due diligence;
- (2) that the permittee or licensee was entrapped;
- (3) that an agent, servant, or employee of the permittee or licensee violated this code without the knowledge of the permittee or licensee;

(4) that the permittee or licensee did not knowingly violate this code; or

(5) that the violation was a technical one.

(d) Fees and civil penalties received by the commission under this section shall be deposited in the confiscated liquor fund.

[Acts 1977, 65th Leg., p. 413, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 1180, ch. 453, § 1, eff. Sept. 1, 1977.]

§ 11.65. Notice of Cancellation or Suspension

A notice of cancellation or suspension of a license or permit shall be given to the licensee or permittee personally or by registered or certified mail. Cancellation or suspension takes effect when the notice is given or delivered. [Acts 1977, 65th Leg., p. 412, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.66. Suspension or Cancellation Against Retailer

Except for a violation of the credit or cash law, a penalty of suspension or cancellation of the license or permit of a retailer shall be assessed against the permit or license for the premises where the offense was committed. [Acts 1977, 65th Leg., p. 413, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.67. Appeal From Cancellation, Suspension, or Refusal of License or Permit

(a) An appeal from an order of the commission or administrator refusing, cancelling, or suspending a permit or license may be taken to the district court of the county in which the applicant, licensee, or permittee resides or in which the owner of involved real or personal property resides.

(b) The appeal shall be under the substantial evidence rule and against the commission alone as defendant. The rules applicable to ordinary civil suits apply, with the following exceptions, which shall be construed literally:

- (1) the appeal shall be perfected and filed within 30 days after the date the order, decision, or ruling of the commission or administrator becomes final and appealable;
- (2) the case shall have precedence over all other causes of a different nature;
- (3) the case shall be tried before a judge within 10 days from the date it is filed;
- (4) neither party is entitled to a jury; and
- (5) the order, decision, or ruling of the commission or administrator may be suspended or modified by the court pending a trial on the merits, but the final judgment of the district court may not be modified or suspended pending appeal.

[Acts 1977, 65th Leg., p. 413, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.68. Activities Prohibited During Suspension

No permittee may sell, offer for sale, distribute, or deliver any alcoholic beverage while his permit is suspended.

[Acts 1977, 65th Leg., p. 413, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.69. Disposal of Beverages in Bulk

The commission may provide by rule the manner and time in which a person whose license or permit is suspended or cancelled or a receiver or successor in interest of a deceased, insolvent, or bankrupt permittee or licensee may dispose of in bulk the alcoholic beverages on hand at the termination of the use of the permit or license.

[Acts 1977, 65th Leg., p. 413, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.70. Liability of Surety

(a) If a permittee or a person having an interest in a permit is finally convicted of the violation of a provision of this code or of a rule or regulation of the commission, or if a permit is cancelled by the commission and no appeal is pending, the commission may institute action in its own name, for the benefit of the state, on the bond supporting the permit. If the cancellation or conviction is proved, the court shall render judgment in favor of the commission for all fines, costs, and 15 percent of the face value of the bond.

(b) If a permittee fails to seasonably remit any money due the state, the surety on his bond is liable for the amount of money due the state plus a penalty of 15 percent of the face value of the bond.

(c) A suit for the collection of any of the amounts specified in this section shall be brought in a court of competent jurisdiction in Travis County.

(d) Nothing in this code shall be construed as imposing on a surety a greater liability than the total amount of the bond less any portion of the bond which has been extinguished by a prior recovery.

[Acts 1977, 65th Leg., p. 413, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 11.71. Surety May Terminate Liability

A surety under the bond of a permittee may terminate its liability by giving 30 days' written notice of termination, served personally or by registered mail on the principal and the commission. The surety is discharged from all liability under the bond for any act or omission of the principal occurring after the expiration of 30 days from the date the notice is served. If the principal fails to duly file a new bond in the same amount and with the same conditions as the original bond before the expiration of the 30-day period, his permit shall terminate when the 30-day period expires.

[Acts 1977, 65th Leg., p. 414, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 12. BREWER'S PERMIT**Section**

12.01. Authorized Activities.

12.02. Fee.

12.03. Ale or Malt Liquor for Export.

12.04. Continuance of Operation After Local Option Election.

§ 12.01. Authorized Activities

The holder of a brewer's permit may:

(1) manufacture, bottle, package, and label malt liquor;

(2) import ale and malt liquor acquired from a holder of a nonresident brewer's permit; and

(3) sell the ale and malt liquor only to wholesale permit holders in this state or to qualified persons outside the state.

[Acts 1977, 65th Leg., p. 414, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 12.02. Fee

The annual state fee for a brewer's permit is \$1,000.

[Acts 1977, 65th Leg., p. 414, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 12.03. Ale or Malt Liquor for Export

Regardless of any other provision of this code, a holder of a brewer's permit may manufacture and package malt beverages, or import them from outside the state, for shipment out of the state, even though the alcohol content, containers, packages, or labels make the beverages illegal to sell within the state. The permittee may export the beverages out of the state or deliver them at his premises for shipment out of the state without being liable for any state tax on beer, ale, or malt liquor sold for resale in the state.

[Acts 1977, 65th Leg., p. 414, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 12.04. Continuance of Operation After Local Option Election

The right of a brewer's permittee to continue operation after a prohibitory local option election is covered by Section 251.75 of this code.

[Acts 1977, 65th Leg., p. 414, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 13. NONRESIDENT BREWER'S PERMIT**Section**

13.01. Permit Required.

13.02. Fee.

13.03. Nonresident Seller's Permit Required.

§ 13.01. Permit Required

A nonresident brewer's permit is required for any brewer located outside the state before his ale or malt liquor may be imported into Texas or offered for sale in Texas.

[Acts 1977, 65th Leg., p. 415, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 13.02. Fee

The annual state fee for a nonresident brewer's permit is \$1,000.

[Acts 1977, 65th Leg., p. 415, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 13.03. Nonresident Seller's Permit Required

The holder of a nonresident brewer's permit is also required to hold a nonresident seller's permit.

[Acts 1977, 65th Leg., p. 415, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 14. DISTILLER'S PERMIT

Section

14.01. Authorized Activities.

14.02. Fee.

14.03. Continuance of Operation After Local Option Election.

§ 14.01. Authorized Activities

(a) The holder of a distiller's permit may:

(1) manufacture and rectify distilled spirits, except alcohol, and bottle, package, and label them;

(2) sell the distilled spirits in this state to holders of wholesaler's permits and to qualified persons outside the state; and

(3) import distilled spirits, to be used only for manufacturing purposes, from holders of nonresident seller's permits.

(b) The privileges granted to a distiller are confined strictly to distilled spirits manufactured and rectified under his permit.

[Acts 1977, 65th Leg., p. 415, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 14.02. Fee

The annual state fee for a distiller's permit is \$1,000.

[Acts 1977, 65th Leg., p. 415, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 14.03. Continuance of Operation After Local Option Election

The right of a distiller's permittee to continue in operation after a prohibitory local option election is covered by Section 251.76 of this code.

[Acts 1977, 65th Leg., p. 415, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 15. RECTIFIER'S PERMIT

Section

15.01. Authorized Activities.

15.02. Fee.

§ 15.01. Authorized Activities

The holder of a rectifier's permit may:

(1) rectify, purify, and refine distilled spirits and wines other than vermouth by any process other than distillation;

(2) mix wines, distilled spirits, or other liquors;

(3) bottle, label, and package his finished products;

(4) sell his finished products to wholesale permit holders in this state or to qualified persons outside the state; and

(5) import distilled spirits only from holders of nonresident seller's permits for rectification purposes but not for resale.

[Acts 1977, 65th Leg., p. 415, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 15.02. Fee

The annual state fee for a rectifier's permit is \$1,000.

[Acts 1977, 65th Leg., p. 416, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 16. CLASS A WINERY PERMIT

Section

16.01. Authorized Activities.

16.02. Fee.

16.03. Importation for Blending.

16.04. Federal Permit Required.

§ 16.01. Authorized Activities

The holder of a class A winery permit may:

(1) manufacture, bottle, label, and package wine containing not more than 24 percent alcohol by volume;

(2) manufacture and import grape brandy for fortifying purposes only and to be used only on his licensed premises;

(3) sell wine in this state to permit holders authorized to sell wine to the ultimate consumer in unbroken packages for off-premises consumption;

(4) sell the wine outside this state to qualified persons; and

(5) blend wines.

[Acts 1977, 65th Leg., p. 416, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 16.02. Fee

The annual state fee for a class A winery permit is \$50.

[Acts 1977, 65th Leg., p. 416, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 16.03. Importation for Blending

The holder of a class A winery permit may, for blending purposes only, import wines or grape brandy. The wine or grape brandy may be purchased only from the holders of nonresident seller's permits. The state tax on wines imported for blending purposes does not accrue until the wine has been used for blending purposes and the resultant product placed in containers for sale.

[Acts 1977, 65th Leg., p. 416, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 16.04. Federal Permit Required

A class A winery permit may be granted only on presentation of a winemaker's and blender's basic permit of the federal alcohol tax unit.

[Acts 1977, 65th Leg., p. 416, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 17. CLASS B WINERY PERMIT

Section

17.01. Authorized Activities.

17.02. Fee.

17.03. Federal Permit Required.

§ 17.01. Authorized Activities

The holder of a class B winery permit may:

(1) manufacture, bottle, label, and package, wine containing not more than 24 percent alcohol by volume from grapes, fruits, and berries grown only on his own premises;

(2) manufacture and import grape brandy only from the holders of nonresident seller's permits for use only on his licensed premises for fortifying purposes;

(3) sell the wine in this state to permit holders authorized to sell wine and to the ultimate consumer in unbroken packages for off-premises consumption; and

(4) sell the wine outside this state to authorized persons.

[Acts 1977, 65th Leg., p. 416, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 17.02. Fee

The annual state fee for a class B winery permit is \$10.

[Acts 1977, 65th Leg., p. 417, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 17.03. Federal Permit Required

A class B winery permit may be granted only on presentation of a winemaker's and blender's basic permit issued by the federal alcohol tax unit.

[Acts 1977, 65th Leg., p. 417, ch. 194, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1040, ch. 384, § 1.

Acts 1977, 65th Leg., p. 1040, ch. 384, § 1, purports to add subsec. (4a) to Penal Code (1925) art. 666-15, without reference to repeal of said article by Acts 1977, 65th Leg., p. 557, ch. 194, § 2. As so added, subsec. (4a) reads:

"(4a) Notwithstanding anything to the contrary in this Act, a person engaged in the process of growing grapes on a farm or ranch located in a dry area may produce, bottle, label, and package wine on the farm or ranch where the grapes are grown if the person holds a Farm

Winery Permit. A person desiring to obtain a Farm Winery Permit shall furnish an affidavit to the Commission stating that he or she is an owner or manager of land on which grapes are being grown, that he or she desires to operate a winery on the premises where the grapes are being grown, that a substantial portion of the grapes grown on the premises on which the owner or operator desires to construct a winery would be used for wine production, and that his or her land or a portion of it on which he or she desires to operate a winery is in a dry area. Within thirty (30) days after the Commission receives an affidavit filed by a person desiring to obtain a Farm Winery Permit and a nonrefundable application fee of Twenty Dollars (\$20), the Commission shall issue the permit unless it has reasonable cause to doubt the validity of any statement in the affidavit. A Farm Winery Permit shall be valid for one (1) year from the date of issuance and shall be renewable yearly upon payment of an annual fee of Twenty Dollars (\$20). The Commission may, after notice and hearing, cancel a Farm Winery Permit if the holder is no longer in compliance with the requisites of the affidavit necessary to obtain the permit. The holder of a Farm Winery Permit may not sell wine in a dry area but may sell wine under the same limitations as those imposed on the holder of a Class A Winery Permit. In all other respects the holder of a Farm Winery Permit is subject to the provisions of this Act."

CHAPTER 18. WINE BOTTLER'S PERMIT

Section

18.01. Authorized Activities.

18.02. Fee.

18.03. Permanent Record.

§ 18.01. Authorized Activities

The holder of a wine bottler's permit may:

(1) purchase and import wine only from the holders of nonresident seller's permits or their agents who are holders of manufacturer's agent's permits;

(2) purchase wine in this state from holders of wholesaler's, class A winery, class B winery, or wine bottler's permits;

(3) bottle, rebottle, label, package, and sell wine to permit holders in this state authorized to purchase and sell wine; and

(4) sell wine to qualified persons outside the state.

[Acts 1977, 65th Leg., p. 417, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 18.02. Fee

The annual state fee for a wine bottler's permit is \$150.

[Acts 1977, 65th Leg., p. 417, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 18.03. Permanent Record

A holder of a wine bottler's permit shall keep a permanent record of each purchase and sale of wine. The record shall include the name of the person from whom the wine is purchased or to whom it is sold, the number of gallons purchased or sold, and the percentage of alcohol of the wine by volume.

[Acts 1977, 65th Leg., p. 417, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 19. WHOLESALER'S PERMIT

Section

- 19.01. Authorized Activities.
- 19.02. Fee.
- 19.03. Promotional Activities.
- 19.04. Miniature Containers.

§ 19.01. Authorized Activities

The holder of a wholesaler's permit may:

(1) purchase and import liquor from distillers, brewers, wineries, wine bottlers, rectifiers, and manufacturers who are holders of nonresident seller's permits or from their agents who hold manufacturer's agents permits;

(2) purchase liquor from other wholesalers in the state;

(3) sell liquor in the original containers in which it is received to retailers and wholesalers in this state authorized to sell the liquor; and

(4) sell liquor to qualified persons outside the state.

[Acts 1977, 65th Leg., p. 417, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 19.02. Fee

The annual state fee for a wholesaler's permit is \$1,250.

[Acts 1977, 65th Leg., p. 418, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 19.03. Promotional Activities

The holder of a wholesaler's permit or his agent may enter the licensed premises of a mixed beverage permittee or private club registration permittee to determine the brands offered for sale and suggest or promote the sale of other brands, to the extent authorized by Section 102.07 of this code. The holder or his agent may not accept a direct order from a mixed beverage permittee except for wine or malt liquor.

[Acts 1977, 65th Leg., p. 418, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 19.04. Miniature Containers

In addition to other authorized containers, a wholesaler's permittee may import, sell, offer for sale, and possess for the purpose of resale distilled spirits, wine, and vinous liquors in containers of not less than one ounce nor more than two ounces. Liquor in containers of that size may be sold to:

(1) package store permittees for resale to air-line beverage permittees, as provided in Section 34.05 of this code; and

(2) local distributor's permittees.

[Acts 1977, 65th Leg., p. 418, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 20. GENERAL CLASS B WHOLESALER'S PERMIT

Section

- 20.01. Authorized Activities.
- 20.02. Fee.

§ 20.01. Authorized Activities

The holder of a general class B wholesaler's permit may:

(1) purchase and import malt and vinous liquors from brewers, wineries, rectifiers, and wine manufacturers and wine bottlers who are the holders of nonresident seller's permits or their agents who are holders of manufacturer's agent permits;

(2) purchase malt and vinous liquors from holders of brewer's permits or other wholesalers in the state;

(3) sell the malt and vinous liquors in the original containers in which they are received to retailers and wholesalers authorized to sell them in this state, including holders of local distributor's permits, mixed beverage permits, and daily temporary mixed beverage permits; and

(4) sell the malt and vinous liquors to qualified persons outside the state.

[Acts 1977, 65th Leg., p. 418, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 20.02. Fee

The annual state fee for a general class B wholesaler's permit is \$200.

[Acts 1977, 65th Leg., p. 418, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 21. LOCAL CLASS B WHOLESALER'S PERMIT

Section

- 21.01. Authorized Activities.
- 21.02. Fee.

§ 21.01. Authorized Activities

The holder of a local class B wholesaler's permit may:

(1) purchase and import malt and vinous liquors from brewers, wineries, rectifiers, and wine manufacturers and bottlers who are holders of nonresident seller's permits and from their agents who are holders of manufacturer's agent permits;

(2) purchase malt and vinous liquors from holders of brewer's permits and from other wholesalers in the state; and

(3) sell the malt and vinous liquors, in the original containers in which he receives them, to general and local class B wholesaler's permittees and, in his county of residence, to local distributor's permittees and retailers, including mixed beverage permittees and daily temporary mixed beverage permittees.

[Acts 1977, 65th Leg., p. 419, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 21.02. Fee

The annual state fee for a local class B wholesaler's permit is \$50.

[Acts 1977, 65th Leg., p. 419, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 22. PACKAGE STORE PERMIT

Section

- 22.01. Authorized Activities.
- 22.02. Fee.
- 22.03. Deliveries to Customers.
- 22.04. Limitation on Package Store Interests.
- 22.05. Consolidation of Permits.
- 22.06. Prohibited Interests.
- 22.07. Violation When License Also Held.
- 22.08. Transfer of Beverages.
- 22.09. Limit on Single Transaction.
- 22.10. Opening Containers Prohibited.
- 22.11. Consumption on Premises Prohibited.
- 22.12. Breach of Peace.

§ 22.01. Authorized Activities

The holder of a package store permit may:

(1) purchase liquor in this state from the holder of a class A winery, class B winery, wholesaler's, class B wholesaler's, or wine bottler's permit;

(2) sell liquor in unbroken original containers on or from his licensed premises at retail to consumers for off-premises consumption only and not for the purpose of resale, except that if the permittee is a hotel, the permittee may deliver unbroken packages of liquor to bona fide guests of the hotel in their rooms for consumption in their rooms;

(3) sell malt and vinous liquors in original containers of not less than six ounces; and

(4) sell liquor to holders of airline beverage permits as provided in Section 34.05 of this code.
[Acts 1977, 65th Leg., p. 419, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 22.02. Fee

(a) The annual state fee for a package store permit in a city or town is based on the population of the city or town according to the last preceding federal census as follows:

Population	Fee
25,000 or less	\$125
25,001 to 75,000	175
75,001 or more	250

(b) The annual fee for a package store permit outside a city or town is \$125, except as provided in Subsection (c) of this section.

(c) The annual fee for a package store permit within two miles of the corporate limits of a city or town is the same as the fee required in the city or town.

[Acts 1977, 65th Leg., p. 420, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 22.03. Deliveries to Customers

(a) The holder of a package store permit or wine only package store permit issued for a location within a city or town or within two miles of the corporate limits of a city or town, who also holds a local cartage permit, may make deliveries of and collections for alcoholic beverages off the premises in areas where the sale of the beverages is legal. The permittee must travel by the most direct route and may make deliveries and collections only within the city or town or within two miles of its corporate limits, and only in response to bona fide orders placed by the customer, either in person at the premises, in writing, by mail, or by telegraph or telephone. This section shall not be construed as preventing a holder of a package store permit or wine only package store permit from delivering alcoholic beverages to the holder of a carrier's permit for transportation to persons authorized to purchase the beverages.

(b) The holder of a package store permit who also holds a local cartage permit may transport alcoholic beverages to a commercial airline in a regional airport located all or partly in an adjoining county if the airport is governed by a board, commission, or authority, some of whose members reside in the county where the package store is located.

[Acts 1977, 65th Leg., p. 420, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 22.04. Limitation on Package Store Interests

(a) No person may hold or have an interest, directly or indirectly, in more than five package stores or in their business or permit.

(b) For the purpose of this section:

(1) a person has an interest in any permit in which his spouse has an interest; and

(2) as to a corporate permittee, the stockholders, managers, officers, agents, servants, and employees of the corporation have an interest in the permit, business, and package stores of the corporation.

(c) The limitations prescribed in this section do not apply to an original or renewal package store permit issued before May 1, 1949, and in effect on that date. The commission or administrator shall renew each permit of that type on proper application if the applicant is otherwise qualified. If a person who holds or has an interest in more than five package store permits under the authority of this subsection has one of the permits cancelled, voluntarily or for cause, he may not obtain an additional permit in lieu of the cancelled permit. No person who has more than five package store permits may place any of the permits in suspense with the commission.

(d) This section does not apply to the stockholders, managers, officers, agents, servants, or employees of a corporation operating hotels, with respect to package stores operated by the corporation in hotels. [Acts 1977, 65th Leg., p. 420, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 22.05. Consolidation of Permits

If one person or two or more persons related within the first degree of consanguinity have a majority of the ownership in two or more legal entities holding package store permits, they may consolidate the package store businesses into a single legal entity. That single legal entity may then be issued permits for all the package stores, notwithstanding any other provision of this code. After the consolidation, none of the permits may be transferred to another county.

[Acts 1977, 65th Leg., p. 421, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 22.06. Prohibited Interests

(a) Except as provided in Section 102.05 of this code and in Subsection (b) of this section, no person who holds a package store permit or owns an interest in a package store may have a direct or indirect interest in any of the following:

(1) a manufacturer's, retail dealer's on-premise, retail dealer's off-premise, or general, branch, or local distributor's license;

(2) a wine and beer retailer's or mixed beverage permit; or

(3) the business of any of the permits or licenses listed in Subdivisions (1) and (2) of this subsection.

(b) A package store permit and a retail dealer's off-premise license may be issued to the same person if they are for the same address and for the same trade name.

[Acts 1977, 65th Leg., p. 421, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 22.07. Violation When License Also Held

If a person holding a package store permit who also holds a retail dealer's off-premise license for the same location violates a provision of this code or a rule or regulation of the commission, the violation is a ground for the suspension or cancellation of both the package store permit and the retail dealer's off-premise license for the premises where the violation was committed.

[Acts 1977, 65th Leg., p. 421, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 22.08. Transfer of Beverages

The owner of more than one package store who is also the holder of a local cartage permit may transfer alcoholic beverages between any of his licensed premises in the same county between the hours of 7 a. m. and 9 p. m. on any day when the sale of those beverages is legal, subject to rules prescribed by the commission.

[Acts 1977, 65th Leg., p. 421, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 22.09. Limit on Single Transaction

A package store permittee may not sell more than five gallons of vinous liquor in a single transaction.

[Acts 1977, 65th Leg., p. 421, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 22.10. Opening Containers Prohibited

No person may break or open a container containing liquor or beer or possess an opened container of liquor or beer on the premises of a package store.

[Acts 1977, 65th Leg., p. 421, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 22.11. Consumption on Premises Prohibited

No person may sell, barter, exchange, deliver, or give away any drink or drinks of alcoholic beverages from a container that has been opened or broken on the premises of a package store.

[Acts 1977, 65th Leg., p. 422, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 22.12. Breach of Peace

The commission or administrator may suspend or cancel a package store permit after giving the permittee notice and the opportunity to show compliance with all requirements of law for the retention of the permit if it finds that a breach of the peace has occurred on the licensed premises or on premises under the control of the permittee and that the breach of the peace was not beyond the control of the permittee and resulted from his improper supervision of persons permitted to be on the licensed premises or on premises under his control.

[Acts 1977, 65th Leg., p. 422, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 23. LOCAL DISTRIBUTOR'S PERMIT

Section

- 23.01. Authorized Activities.
 23.02. Fee.
 23.03. Eligibility for Permit.
 23.04. May Transfer Beverages.
 23.05. Size of Containers.
 23.06. Size of Delivery.

§ 23.01. Authorized Activities

(a) The holder of a local distributor's permit may:

(1) purchase alcoholic beverages from wholesalers authorized to sell them for resale, but may purchase only those brands available for general distribution to all local distributor's permittees;

(2) sell and distribute the alcoholic beverages to mixed beverage and private club registration permittees; and

(3) rent or sell to mixed beverage and private club registration permittees any equipment, fixtures, or supplies used in the selling or dispensing of distilled spirits.

(b) A local distributor's permittee may purchase liquor only from a wholesaler's, general class B wholesaler's, or local class B wholesaler's permittee and may purchase only the types of liquor the particular wholesaler is authorized by his permit to sell. [Acts 1977, 65th Leg., p. 422, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 1181, ch. 453, § 2, eff. Sept. 1, 1977.]

§ 23.02. Fee

The annual state fee for a local distributor's permit is \$50. The fee is in addition to and subject to the same conditions as the fee paid for the holder's package store permit.

[Acts 1977, 65th Leg., p. 422, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 23.03. Eligibility for Permit

The commission or the administrator may issue a local distributor's permit only to a holder of a package store permit.

[Acts 1977, 65th Leg., p. 422, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 23.04. May Transfer Beverages

If the holder of a local distributor's permit also holds a local cartage permit, he may transfer alcoholic beverages:

(1) to any place where the sale of alcoholic beverages is legal in the city or county where his premises are located; and

(2) to a regional airport located all or partly in an adjoining county if the airport is governed by a board, commission, or authority, some of whose members reside in the county where the local distributor's premises are located.

[Acts 1977, 65th Leg., p. 422, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 1181, ch. 453, § 3, eff. Sept. 1, 1977.]

§ 23.05. Size of Containers

(a) A holder of a local distributor's permit may not sell distilled spirits to the holder of a mixed beverage or private club permit in individual containers containing less than one fluid ounce.

(b) A holder of a local distributor's permit may sell to holders of mixed beverage permits distilled spirits, wine, and vinous liquor in containers containing not less than one ounce nor more than two ounces or in any other container authorized by this code.

[Acts 1977, 65th Leg., p. 423, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 23.06. Size of Delivery

A holder of a local distributor's permit may not deliver less than two and four-tenths gallons of distilled spirits in a single delivery.

[Acts 1977, 65th Leg., p. 423, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 24. WINE ONLY PACKAGE STORE PERMIT

Section

- 24.01. Authorized Activities.
 24.02. Fee.
 24.03. Deliveries and Collections.
 24.04. Designation of Place of Storage.
 24.05. Prohibited Interests.
 24.06. Violation When License Also Held.
 24.07. When License Also Held: Hours of Sale, Etc.
 24.08. Limit on Single Transaction.
 24.09. Opening Containers Prohibited.
 24.10. Beverage From Opened Container.
 24.11. Breach of Peace.

§ 24.01. Authorized Activities

The holder of a wine only package store permit may:

(1) purchase ale, wine, and vinous liquors in this state from the holder of a class A winery, class B winery, wine bottler's, wholesaler's or class B wholesaler's permit; and

(2) sell those beverages to consumers at retail on or from the licensed premises in unbroken original containers of not less than six ounces for off-premises consumption only and not for the purpose of resale.

[Acts 1977, 65th Leg., p. 423, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 24.02. Fee

(a) The annual state fee for a wine only package store permit in a city or town is based on the population of the city or town according to the last preceding federal census as follows:

Population	Fee
2,000 or less	\$ 5.00
2,001 to 5,000	7.50
5,001 to 10,000	10.00
10,001 or more	12.50

(b) The annual state fee for a wine only package store permit outside a city or town is \$5, except as provided in Subsection (c) of this section.

(c) The annual state fee for a wine only package store permit within two miles of the corporate limits of an incorporated city or town is the same as the fee required in the incorporated city or town.

[Acts 1977, 65th Leg., p. 423, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 24.03. Deliveries and Collections

The holder of a wine only package store permit may make deliveries to and collections from customers as provided in Section 22.03 of this code.

[Acts 1977, 65th Leg., p. 424, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 24.04. Designation of Place of Storage

The owner of more than one wine only package store who is also the holder of a local cartage permit may designate one of his places of business as a place of storage. He may transfer alcoholic beverages to and from his place of storage and his other stores in the same county, subject to rules prescribed by the commission.

[Acts 1977, 65th Leg., p. 424, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 24.05. Prohibited Interests

(a) No person who holds a wine only package store permit or owns an interest in a wine only package store may have a direct or indirect interest in any of the following:

(1) a manufacturer's, retail dealer's on-premise, or general, branch, or local distributor's license;

(2) a wine and beer retailer's permit; or

(3) the business of any of the permits or licenses listed in Subdivisions (1) and (2) of this section.

(b) A person may hold both a wine only package store permit and a retail dealer's off-premise license.

[Acts 1977, 65th Leg., p. 424, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 24.06. Violation When License Also Held

If a person holding a wine only package store permit who also holds a retail dealer's off-premise license for the same location violates a provision of this code or a rule or regulation of the commission, the violation is a ground for the suspension or cancellation of both the wine only package store permit and the retail dealer's off-premise license for the premises where the violation was committed.

[Acts 1977, 65th Leg., p. 424, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 24.07. When License Also Held: Hours of Sale, Etc.

A holder of a wine only package store permit who also holds a retail dealer's off-premise license for the same location may remain open and sell ale, wine, vinous liquors, and beer, for off-premises consumption only, on any day and during the same hours that the holder of a wine and beer retailer's permit may sell ale, beer, and wine, except that he may not sell wine or vinous liquor containing more than 14 percent alcohol by volume on a Sunday or after 10 p. m. on any day.

[Acts 1977, 65th Leg., p. 424, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 24.08. Limit on Single Transaction

A wine only package store permittee may not sell more than five gallons of ale, wine, and vinous liquors in a single transaction.

[Acts 1977, 65th Leg., p. 424, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 24.09. Opening Containers Prohibited

No person may break or open a container of liquor or beer or possess an opened container of liquor or beer on the premises of a wine only package store.

[Acts 1977, 65th Leg., p. 424, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 24.10. Beverage From Opened Container

No person may sell, barter, exchange, deliver, or give away a drink of alcoholic beverage from a container that has for any reason been opened or broken on the premises of a wine only package store.

[Acts 1977, 65th Leg., p. 425, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 24.11. Breach of Peace

The commission or administrator may suspend or cancel a wine only package store permit after giving the permittee notice and the opportunity to show compliance with all requirements of law for the retention of the permit if it finds that a breach of the peace has occurred on the licensed premises or on premises under the control of the permittee and that the breach of the peace was not beyond the control of the permittee and resulted from his improper supervision of persons permitted to be on the licensed premises or on premises under his control.

[Acts 1977, 65th Leg., p. 425, ch. 194, § 1, eff. Sept. 1, 1977.]

**CHAPTER 25. WINE AND BEER
RETAILER'S PERMIT**

Section	
25.01.	Authorized Activities.
25.02.	Fee.
25.03.	Railway Cars and Excursion Boats: Permits, Fees.
25.04.	Issuance, Cancellation, and Suspension of Permit.
25.05.	Hearings on Permit Application: Notice and Attendance.
25.06.	Denial of Original Application.
25.07.	Fingerprints.

25.08. Permit: Contents; Photograph.

25.09. Possession of Certain Beverages Prohibited.

25.10. Application of Other Code Provisions.

§ 25.01. Authorized Activities

The holder of a wine and beer retailer's permit may sell for consumption on or off the premises where sold, but not for resale, wine, beer, and malt liquors containing alcohol in excess of one-half of one percent by volume and not more than 14 percent by volume.

[Acts 1977, 65th Leg., p. 425, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 25.02. Fee

Except as provided in Section 25.03 of this code, the annual state fee for a wine and beer retailer's permit is \$30.

[Acts 1977, 65th Leg., p. 425, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 25.03. Railway Cars and Excursion Boats: Permits, Fees

(a) A wine and beer retailer's permit may be issued for railway dining, buffet, or club cars on the payment of an annual state fee of \$5 for each car.

(b) A wine and beer retailer's permit may be issued for a regularly scheduled excursion boat which is licensed by the United States Coast Guard to carry passengers on the navigable waters of the state and which has a tonnage of not less than 35 tons, a length of not less than 55 feet, and a passenger capacity of not less than 45 passengers. The annual state fee for the permit is \$35.

(c) Application for a permit for a railway car or an excursion boat and payment of the required fee shall be made directly to the commission.

(d) A permit for a railway car or an excursion boat is inoperative in a dry area.

[Acts 1977, 65th Leg., p. 425, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 25.04. Issuance, Cancellation, and Suspension of Permit

(a) A wine and beer retailer's permit is issued by the commission or administrator. The qualification of applicants and the application for and issuance of the permit are governed by the same provisions which apply to the application for and issuance of a retail dealer's on-premise license.

(b) The provisions of this code applicable to the cancellation and suspension of a retail dealer's on-premise license also apply to the cancellation and suspension of a wine and beer retailer's permit.

[Acts 1977, 65th Leg., p. 426, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 25.05. Hearings on Permit Application: Notice and Attendance

(a) On receipt of an original application for a wine and beer retailer's permit, the county judge shall give notice of all hearings before him concerning the

application to the commission, the sheriff, and the chief of police of the incorporated city in which, or nearest which, the premises for which the permit is sought are located.

(b) The individual natural person applying for the permit or, if the applicant is not an individual natural person, the individual partner, officer, trustee, or receiver who will be primarily responsible for the management of the premises shall attend any hearing involving the application.

[Acts 1977, 65th Leg., p. 426, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 25.06. Denial of Original Application

(a) The county judge shall deny an original application for a wine and beer retailer's permit if he finds that the applicant, or the applicant's spouse, during the three years immediately preceding the application, was finally convicted of a felony or one of the following offenses:

- (1) prostitution;
- (2) a vagrancy offense involving moral turpitude;
- (3) bookmaking;
- (4) gambling or gaming;
- (5) an offense involving controlled substances as defined in the Texas Controlled Substances Act or other dangerous drugs;
- (6) a violation of this code resulting in the cancellation of a license or permit, or a fine of not less than \$500;
- (7) more than three violations of this code relating to minors;
- (8) bootlegging; or
- (9) an offense involving firearms or a deadly weapon.

(b) The county judge shall also deny an original application for a permit if he finds that three years have not elapsed since the termination of a sentence, parole, or probation served by the applicant or the applicant's spouse because of a felony conviction or conviction of any of the offenses described in Subsection (a) of this section.

(c) The commission shall refuse to issue a renewal of a wine or beer retailer's permit if it finds:

- (1) that the applicant, or the applicant's spouse, has been convicted of a felony or one of the offenses listed in Subsection (a) of this section at any time during the three years immediately preceding the filing of the application for renewal; or
- (2) that three years have not elapsed since the termination of a sentence, parole, or probation served by the applicant, or the applicant's spouse, of a felony conviction or conviction of any of the offenses described in Subsection (a) of this section.

(d) In this section the word "applicant" includes the individual natural person holding or applying for the permit or, if the holder or applicant is not an individual natural person, the individual partner, officer, trustee, or receiver who is primarily responsible for the management of the premises.

[Acts 1977, 65th Leg., p. 426, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 25.07. Fingerprints

(a) An applicant for an original wine and beer retailer's permit shall submit to the county judge of the county in which the applicant desires to engage in business a complete set of fingerprints of the individual natural person applying for the permit or, if the applicant is not an individual natural person, a complete set of fingerprints of the individual partner, officer, trustee, or receiver who is to be primarily responsible for the management of the premises.

(b) The county judge shall, no later than the next calendar day after receiving the prints, forward them by mail to the Texas Department of Public Safety. The department shall classify the prints and check them against their fingerprint files and shall certify their findings concerning the criminal record of the applicant, or the lack of record, to the county judge. No permit may be issued until the certification is made to the county judge.

(c) The sheriff of any county, or any district office of the commission, shall take the fingerprints of an applicant for a permit without charge on forms approved by and furnished by the Texas Department of Public Safety and shall immediately deliver them to the county judge of the county where the applicant desires to engage in business.

[Acts 1977, 65th Leg., p. 427, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 25.08. Permit: Contents; Photograph

Each wine and beer retailer's permit shall contain the name and photograph of the individual natural person holding the permit or, if the holder is not an individual natural person, the name and photograph of the individual partner, officer, trustee, or receiver who is primarily responsible for the management of the premises. The photograph may not be more than two years old and shall be furnished by the permittee. The commission may prescribe the size and nature of the photograph, the manner of furnishing it, and the method of affixing it to the permit.

[Acts 1977, 65th Leg., p. 427, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 25.09. Possession of Certain Beverages Prohibited

No wine and beer retailer's permittee, nor officer of the permittee, may possess distilled spirits or liquor containing alcohol in excess of 14 percent by volume on the licensed premises.

[Acts 1977, 65th Leg., p. 427, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 25.10. Application of Other Code Provisions

Sections 61.78, 61.81, 61.82, and 61.84 of this code also apply to a wine and beer retailer's permit. The restrictions in this code relating to beer as to the application of local restrictions, sales to minors and intoxicated persons, age of employees, and the use of blinds or barriers apply to the sale of alcoholic beverages by a wine and beer retailer's permittee.

[Acts 1977, 65th Leg., p. 427, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 26. WINE AND BEER RETAILER'S OFF-PREMISE PERMIT

Section

26.01. Authorized Activities.

26.02. Fee.

26.03. Issuance, Cancellation, and Suspension of Permit.

26.04. Application of Other Code Provisions.

§ 26.01. Authorized Activities

The holder of a wine and beer retailer's off-premise permit may sell for off-premises consumption only, but not for resale, wine, beer, and malt liquors containing alcohol in excess of one-half of one percent by volume but not more than 14 percent by volume.

[Acts 1977, 65th Leg., p. 428, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 26.02. Fee

The annual state fee for a wine and beer retailer's off-premise permit is \$15.

[Acts 1977, 65th Leg., p. 428, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 26.03. Issuance, Cancellation, and Suspension of Permit

(a) A wine and beer retailer's off-premise permit is issued by the commission or administrator. The qualifications of applicants and the application for and issuance of the permit are governed by the same provisions which apply to the application for and issuance of a retail dealer's off-premise license.

(b) The provisions of this code applicable to the cancellation and suspension of a retail dealer's off-premise license also apply to the cancellation and suspension of a wine and beer retailer's off-premise permit.

[Acts 1977, 65th Leg., p. 428, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 26.04. Application of Other Code Provisions

Sections 61.78, 61.81, 61.82, and 61.84 of this code also apply to a wine and beer retailer's off-premise permit. The restrictions in this code relating to beer as to the application of local restrictions, sales to minors and intoxicated persons, and age of employees apply to the sale of alcoholic beverages by a wine and beer retailer's off-premise permittee.

[Acts 1977, 65th Leg., p. 428, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 27. TEMPORARY WINE AND BEER RETAILER'S PERMIT

Section

- 27.01. Authorized Activities.
- 27.02. Fee.
- 27.03. Duration of Permit.
- 27.04. Required Basic Permit.
- 27.05. Issuance and Use of Permit; Rules and Regulations.
- 27.06. Cancellation or Suspension of Basic Permit.

§ 27.01. Authorized Activities

The holder of a temporary wine and beer retailer's permit may sell for consumption on or off the premises where sold, but not for resale, wine, beer, and malt liquors containing alcohol in excess of one-half of one percent by volume but not more than 14 percent by volume. The permit does not authorize the sale of those beverages outside the county for which it is issued.

[Acts 1977, 65th Leg., p. 428, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 27.02. Fee

The state fee for a temporary wine and beer retailer's permit is \$5. No refund shall be allowed for the surrender or nonuse of the permit.

[Acts 1977, 65th Leg., p. 429, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 27.03. Duration of Permit

A temporary wine and beer retailer's permit may be issued for a period of not more than four days.

[Acts 1977, 65th Leg., p. 429, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 27.04. Required Basic Permit

A temporary wine and beer retailer's permit may be issued only to a holder of a wine and beer retailer's permit or mixed beverage permit.

[Acts 1977, 65th Leg., p. 429, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 27.05. Issuance and Use of Permit; Rules and Regulations

(a) Temporary wine and beer retailer's permits are issued by the administrator, the commission, or an authorized representative of the commission. The commission shall adopt rules and regulations governing the issuance and use of temporary wine and beer retailer's permits.

(b) The permits shall be issued only for the sale of authorized alcoholic beverages at picnics, celebrations, or similar events.

(c) The administrator or commission may refuse to issue a permit if there is reason to believe the issuance of the permit would be detrimental to the public.

[Acts 1977, 65th Leg., p. 429, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 27.06. Cancellation or Suspension of Basic Permit

The basic permit under which a temporary wine and beer retailer's permit was issued may be cancelled or suspended for a violation on the premises covered by the temporary permit that would result in the cancellation or suspension of the basic permit if committed on the premises covered by the basic permit.

[Acts 1977, 65th Leg., p. 429, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 28. MIXED BEVERAGE PERMIT

Section

- 28.01. Authorized Activities.
- 28.02. Fee.
- 28.03. Information Required of Applicants.
- 28.04. Change in Corporate Control.
- 28.05. Renewal of Permit by Descendant or Surviving Spouse.
- 28.06. Possession of Alcoholic Beverage Not Covered by Invoice.
- 28.07. Purchase and Transportation of Alcoholic Beverages.
- 28.08. Refilling Containers Prohibited.
- 28.09. Invalidation of Stamp.
- 28.10. Consumption Restricted to Premises.
- 28.11. Breach of Peace.
- 28.12. Sale of Malt Beverages to Permittee.

§ 28.01. Authorized Activities

(a) The holder of a mixed beverage permit may sell, offer for sale, and possess mixed beverages, including distilled spirits, for consumption on the licensed premises:

(1) from sealed containers containing not less than one fluid ounce nor more than two fluid ounces or of any legal size; and

(2) from unsealed containers.

(b) The holder of a mixed beverage permit for an establishment in a hotel may deliver mixed beverages, including wine and beer, to individual rooms of the hotel without regard to whether the hotel rooms are part of the licensed premises.

(c) The holder of a mixed beverage permit may also:

(1) purchase wine, beer, ale, and malt liquor containing alcohol of not more than 21 percent by volume in containers of any legal size from any permittee or licensee authorized to sell those beverages for resale; and

(2) sell the wine, beer, ale, and malt liquor for consumption on the licensed premises.

[Acts 1977, 65th Leg., p. 429, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 1182, ch. 453, § 4, eff. Sept. 1, 1977.]

§ 28.02. Fee

The annual state fee for a mixed beverage permit is \$2,000 for an original permit, \$1,500 for the first annual renewal, \$1,000 for the second annual renewal, and \$500 for each subsequent annual renewal.

[Acts 1977, 65th Leg., p. 430, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 28.03. Information Required of Applicants

In addition to the information required of applicants for permits under this code, the applicant for a mixed beverage permit must file with his original and renewal application a sworn statement in a form prescribed by the commission or administrator containing the following information:

- (1) the name and residential address of the lessor of the premises;
- (2) the name and address of the lessee of the premises;
- (3) the amount of monthly rental on the premises and the date of expiration of the lease;
- (4) whether the lease or rental agreement includes furniture and fixtures;
- (5) whether the business is to be operated under a franchise and, if so, the name and address of the franchisor;
- (6) the name and address of the accountant of the business;
- (7) a list of all bank accounts, including account numbers, used in connection with the business; and
- (8) any information required by the commission or administrator relevant to the determination of all persons having a financial interest of any kind in the granting of the mixed beverage permit.

[Acts 1977, 65th Leg., p. 430, ch. 194, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1713, ch. 681, § 1.

Acts 1977, 65th Leg., p. 1713, ch. 681, § 1, purports to add art. 666-11b to Penal Code (1925), without reference to repeal of the Liquor Control Act by Acts 1977, 65th Leg., p. 557, ch. 194, § 2. As so added, art. 666-11b reads:

“(a) The Commission or Administrator shall refuse to issue an original or renewal permit authorizing the retail sale of alcoholic beverages unless the applicant for the permit files with his application a certificate issued by the Comptroller of Public Accounts stating that the applicant holds, or has applied for and satisfies all legal requirements for the issuance of, a sales tax permit, if required, for the place of business for which the alcoholic beverage permit is sought.

“(b) The Commission or Administrator may suspend for not more than sixty (60) days or cancel a permit under this Act if the Commission or Administrator finds, after notice and hearing, that the permittee:

“(1) no longer holds a sales tax permit, if required, for the place of business covered by the alcoholic beverage permit; or

“(2) is shown on the records of the Comptroller or Public Accounts as being subject to a final determination of taxes due and payable under the Limited Sales, Excise and Use Tax Act (Chapter 20, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended), or is shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon’s Texas Civil Statutes).”

§ 28.04. Change in Corporate Control

(a) A mixed beverage permit held by a corporation may not be renewed if the commission or administrator finds that legal or beneficial ownership of over 50 percent of the stock of the corporation has changed since the time the original permit was issued.

(b) The commission or administrator may adopt reasonable rules and regulations in accordance with the provisions of this section.

(c) A corporation which is barred from renewing a permit because of this section may file an application for an original permit and may be issued an original permit if otherwise qualified.

(d) This section does not apply to a change in corporate control:

(1) brought about by the death of a shareholder if his surviving spouse or descendants are his successors in interest; or

(2) brought about when legal or beneficial ownership of over 50 percent of the stock of the corporation has been transferred to a person who possesses the qualifications required of other applicants for permits and is an officer of the corporation or has been an officer of the corporation since the original permit was issued.

[Acts 1977, 65th Leg., p. 430, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 28.05. Renewal of Permit by Descendant or Surviving Spouse

If the surviving spouse or surviving descendant of a holder of a mixed beverage permit qualifies as the successor in interest to the permit as provided in Section 11.10 of this code, the descendant or surviving spouse may continue to renew the permit by paying a renewal fee equal to the fee the permittee would be required to pay had he lived.

[Acts 1977, 65th Leg., p. 431, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 28.06. Possession of Alcoholic Beverage Not Covered by Invoice

(a) No holder of a mixed beverage permit, nor any officer, agent, or employee of a holder, may possess or permit to be possessed on the premises for which the permit is issued any alcoholic beverage which is

not covered by an invoice from the supplier from whom the alcoholic beverage was purchased.

(b) A person who violates Subsection (a) of this section commits a misdemeanor punishable by a fine of not more than \$1,000 or by confinement in the county jail for no more than 30 days or by both.

(c) No holder of a mixed beverage permit, nor any officer, agent, or employee of a holder, may knowingly possess or permit to be possessed on the licensed premises any alcoholic beverage which is not covered by an invoice from the supplier from whom the alcoholic beverage was purchased.

(d) A person who violates Subsection (c) of this section commits a misdemeanor punishable by a fine of not less than \$500 nor more than \$1,000 and by confinement in the county jail for not less than 30 days nor more than two years. The commission or administrator shall cancel the permit of any permittee found by the commission or administrator, after notice and hearing, to have violated or to have been convicted of violating Subsection (c) of this section. [Acts 1977, 65th Leg., p. 431, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 28.07. Purchase and Transportation of Alcoholic Beverages

(a) All distilled spirits sold by a holder of a mixed beverage permit must be purchased in this state from a holder of a local distributor's permit.

(b) If a holder of a mixed beverage permit is in an area where there are no local distributors, he may purchase alcoholic beverages in any area where local distributors are located and may transport them to his premises provided that he is also a holder of a beverage cartage permit. The transporter may acquire the alcoholic beverages only on the written order of the holder of the mixed beverage permit. The alcoholic beverages must be accompanied by a written statement furnished and signed by the local distributor showing the name and address of the consignee and consignor, the origin and destination of the shipment, and any other information required by the commission or administrator. The person in charge of the alcoholic beverages while they are being transported shall exhibit the written statement to any representative of the commission or any peace officer on demand, and the statement shall be accepted by the representative or officer as prima facie evidence of the lawful right to transport the alcoholic beverages.

(c) If a mixed beverage permittee holds a beverage cartage permit and his premises are located in a regional airport governed by a board, commission, or authority composed of members from two or more counties, and there is no local distributor at the airport, the mixed beverage permittee may purchase alcoholic beverages from any local distributor in a trade area served by the airport and transport them to his licensed premises. The transportation of the

beverages must be in accordance with Subsection (b) of this section.

[Acts 1977, 65th Leg., p. 431, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 1182, ch. 453, § 5, eff. Sept. 1, 1977.]

§ 28.08. Refilling Containers Prohibited

No holder of a mixed beverage permit may refill with any substance a container which contained distilled spirits on which the tax prescribed in Section 201.03 of this code has been paid.

[Acts 1977, 65th Leg., p. 432, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 28.09. Invalidation of Stamp

(a) A holder of a mixed beverage permit or any person employed by the holder who empties a bottle containing distilled spirits on which the tax prescribed in Section 201.03 of this code has been paid, shall immediately after emptying the bottle invalidate the identification stamp on the bottle in the manner prescribed by rule or regulation of the commission or administrator.

(b) Each holder of a mixed beverage permit shall provide at all service counters where distilled spirits are poured from bottles the necessary facilities for the invalidation of identification stamps on bottles so that persons emptying distilled spirits bottles may immediately invalidate the identification stamps on them.

(c) If an empty distilled spirits bottle has locked on it an automatic measuring and dispensing device of a type approved by the commission or administrator, which prevents the refilling of the bottle without unlocking the device and removing it from the bottle, the identification stamp is not required to be invalidated until immediately after the device has been unlocked and removed from the bottle.

(d) A holder of a mixed beverage permit or any of his officers, agents, or employees who is found in possession of an empty distilled spirits bottle which contained distilled spirits on which the tax prescribed in Section 201.03 of this code has been paid and on which the identification stamp has not been invalidated in accordance with this section commits a separate offense for each bottle so possessed. [Acts 1977, 65th Leg., p. 432, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 28.10. Consumption Restricted to Premises

(a) Except as permitted by Subsection (b) of this section and by Subsection (b) of Section 28.01, a mixed beverage permittee may not sell an alcoholic beverage to another mixed beverage permittee or to any other person except for consumption on the seller's licensed premises.

(b) A mixed beverage permittee may not permit any person to take any alcoholic beverage purchased on the licensed premises from the premises where sold, except that a person who orders wine with food

and has a portion of the open container remaining may remove the open container of wine from the premises.

[Acts 1977, 65th Leg., p. 432, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 28.11. Breach of Peace

The commission or administrator may suspend or cancel a mixed beverage permit after giving the permittee notice and the opportunity to show compliance with all requirements of law for the retention of the permit if it finds that a breach of the peace has occurred on the licensed premises or on premises under the control of the permittee and that the breach of the peace was not beyond the control of the permittee and resulted from his improper supervision of persons permitted to be on the licensed premises or on premises under his control.

[Acts 1977, 65th Leg., p. 432, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 28.12. Sale of Malt Beverages to Permittee

The sale of malt beverages to a mixed beverage permittee by a local distributor's permittee or by a licensee authorized to sell them for resale is subject to the provisions of Section 61.73 of this code.

[Acts 1977, 65th Leg., p. 433, ch. 194, § 1, eff. Sept. 1, 1977.]

**CHAPTER 29. MIXED BEVERAGE
LATE HOURS PERMIT**

Section

- 29.01. Authorized Activities.
- 29.02. Fee.
- 29.03. Application of Provisions Regulating Mixed Beverage Permits.

§ 29.01. Authorized Activities

The holder of a mixed beverage late hours permit may sell mixed beverages on Sunday between the hours of 1:00 a. m. and 2 a. m. and on any other day between the hours of 12 midnight and 2 a. m. if the premises covered by the permit are in an area where the sale of mixed beverages during those hours is authorized by this code.

[Acts 1977, 65th Leg., p. 433, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 29.02. Fee

The annual state fee for a mixed beverage late hours permit is \$100.

[Acts 1977, 65th Leg., p. 433, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 29.03. Application of Provisions Regulating Mixed Beverage Permits

All provisions of this code which apply to a mixed beverage permit also apply to a mixed beverage late hours permit.

[Acts 1977, 65th Leg., p. 433, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 30. DAILY TEMPORARY MIXED BEVERAGE PERMIT

Section

- 30.01. Authorized Activities.
- 30.02. Fee.
- 30.03. Issuance of Permit.
- 30.04. Purchase of Distilled Spirits.
- 30.05. Application of Provisions Regulating Mixed Beverage Permits.
- 30.06. Adoption of Rules.

§ 30.01. Authorized Activities

The holder of a daily temporary mixed beverage permit may sell mixed beverages for consumption on the premises for which the permit is issued.

[Acts 1977, 65th Leg., p. 433, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 30.02. Fee

The state fee for a daily temporary mixed beverage permit is \$25 per day.

[Acts 1977, 65th Leg., p. 433, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 30.03. Issuance of Permit

(a) The commission may, in its discretion, issue on a temporary basis a daily temporary mixed beverage permit. Only a political party or political association supporting a candidate for public office or a proposed amendment to the Texas Constitution or other ballot measure, an organization formed for a specific charitable or civic purpose, a fraternal organization in existence for over five years with a regular membership, or a religious organization is eligible for this permit.

(b) The provisions of this code which apply to the application for and issuance of other permits do not apply to the application and issuance of a daily temporary mixed beverage permit.

[Acts 1977, 65th Leg., p. 433, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 30.04. Purchase of Distilled Spirits

Distilled spirits sold under a daily temporary mixed beverage permit must be purchased from the holder of a local distributor's permit.

[Acts 1977, 65th Leg., p. 434, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 30.05. Application of Provisions Regulating Mixed Beverage Permits

All provisions of this code applicable to a mixed beverage permit also apply to a daily temporary mixed beverage permit unless there is a special provision to the contrary.

[Acts 1977, 65th Leg., p. 434, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 30.06. Adoption of Rules

The commission may adopt rules which it determines to be necessary to implement and administer the provisions of this chapter, including limitations on the number of times during any calendar year a qualified organization may be issued a permit.

[Acts 1977, 65th Leg., p. 434, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 31. CATERER'S PERMIT

Section

- 31.01. Authorized Activities.
- 31.02. Fee.
- 31.03. Issuance of Permit.
- 31.04. Application of Provisions Regulating Mixed Beverage Permits.

§ 31.01. Authorized Activities

The holder of a caterer's permit may sell mixed beverages on a temporary basis at a place other than the premises for which the holder's mixed beverage permit is issued, but only in an area where the sale of mixed beverages has been authorized by a local option election.

[Acts 1977, 65th Leg., p. 434, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 31.02. Fee

The annual state fee for a caterer's permit is \$250.
[Acts 1977, 65th Leg., p. 434, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 31.03. Issuance of Permit

(a) A caterer's permit may be issued only to the holder of a mixed beverage permit.

(b) The commission shall adopt rules and regulations governing the application for and the issuance and use of caterer's permits.

(c) The provisions of this code which apply to the application for and issuance of other permits do not apply to the application for and issuance of a caterer's permit.

[Acts 1977, 65th Leg., p. 434, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 31.04. Application of Provisions Regulating Mixed Beverage Permits

(a) A caterer's permit is auxiliary to the primary mixed beverage permit held by the permittee.

(b) The restrictions and regulations which apply to the sale of mixed beverages on the licensed premises also apply to the sale under the authority of a caterer's permit, and any act that is prohibited on the licensed premises is also prohibited when the permittee is operating other than on the licensed premises under a caterer's permit.

(c) Any act which if done on the licensed premises would be a ground for cancellation or suspension of the mixed beverage permit is a ground for cancellation of both the mixed beverage permit and the caterer's permit if done when the permittee is operating away from the licensed premises under the authority of the caterer's permit.

(d) All receipts from the sale of mixed beverages under the authority of the caterer's permit shall be treated for tax purposes as if they were made under the authority of the primary permit.

(e) If the primary permit ceases to be valid for any reason, the caterer's permit ceases to be valid.

(f) All provisions of this code applicable to the primary permit and not inconsistent with this chapter apply to a caterer's permit.

[Acts 1977, 65th Leg., p. 434, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 32. PRIVATE CLUB REGISTRATION PERMIT

Section

- 32.01. Authorized Activities.
- 32.02. Fee.
- 32.03. Qualifications for Permit.
- 32.04. Applications for Permits; Renewals.
- 32.05. Locker System.
- 32.06. Pool System.
- 32.07. Display of Permit.
- 32.08. Purchase and Transportation of Alcoholic Beverages.
- 32.09. Temporary Members.
- 32.10. Guests.
- 32.11. Fraternal and Veterans Organizations.
- 32.12. Inspection of Premises.
- 32.13. Inspection of Books and Records.
- 32.14. Unregistered Clubs; Prohibited Activities.
- 32.15. Removal of Beverages From Premises.
- 32.16. Unauthorized Membership.
- 32.17. Cancellation or Suspension of Permit; Grounds.
- 32.18. Appeals From Orders of Commission or Administrator.
- 32.19. Aiding or Abetting Violation.

§ 32.01. Authorized Activities

A private club registration permit authorizes alcoholic beverages belonging to members of the club to be:

(1) stored, possessed, and mixed on the club premises; and

(2) served for on-premises consumption only to members of the club and their families and guests, by the drink or in sealed, unsealed, or broken containers of any legal size.

[Acts 1977, 65th Leg., p. 435, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.02. Fee

(a) Each private club registration permittee shall pay an annual state fee for each separate place of business.

(b) The permit fee shall be based on the highest number of members in good standing during the year for which the permit fee is to be paid according to the following rates:

0 to 250—\$ 500	651 to 750—\$1,500
251 to 350—\$ 700	751 to 850—\$1,700
351 to 450—\$ 900	851 to 950—\$1,900
451 to 550—\$1,100	951 to 1,000—\$2,000
551 to 650—\$1,300	Over 1,000 —\$2 per member

(c) All fees collected pursuant to this section shall be deposited in the general revenue fund.

(d) No later than 90 days before the expiration of the year for which the permit fee is paid, the permit holder may submit an amended application with as

much additional fee as is required under the amended return.

[Acts 1977, 65th Leg., p. 435, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.03. Qualifications for Permit

(a) A private club registration permit may only be issued to a club which meets the requirements of this section.

(b) The club must be an association of persons, whether unincorporated or incorporated under the laws of this state, for the promotion of some common object.

(c) Members of the club must be passed on and elected by a committee or board made up of members of the club, and no employee of the club shall be eligible to serve on the membership committee or board.

(d) No application for membership may be approved until the application has been filed with the chairman of the membership committee or board and approved by the chairman.

(e) At least 50 members of the club must reside in the county in which the premises of the club are located, or at least 100 members must reside in an area comprised of the county in which the premises of the club is located and an adjacent county or counties.

(f) The club must own, lease, or rent a building, or space in a building of such extent and character as in the judgment of the commission is suitable and adequate for the club's members and their guests.

(g) The club must provide regular food service adequate for its members and their guests.

(h) The club's total annual membership fees, dues, or other income, excluding proceeds from the disposition of alcoholic beverages but including service charges, must be sufficient to defray the annual rental of its leased or rented premises or, if the premises are owned by the club, sufficient to meet the taxes, insurance, and repairs and the interest on any mortgage on the premises.

(i) The club's affairs and management must be conducted by a board of directors, executive committee, or similar body chosen by the members at their annual meeting.

(j) No member or any officer, agent, or employee of the club may be paid or receive any money as salary or other compensation, directly or indirectly, from the disposition of alcoholic beverages to members of the club and their guests, other than charges for the service of the beverages.

[Acts 1977, 65th Leg., p. 436, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.04. Applications for Permits; Renewals

(a) A private club which meets the requirements set forth in Section 32.03 of this code may apply for a private club registration permit on forms fur-

nished by the commission and containing all information necessary to insure compliance with the provisions of this code.

(b) Each applicant shall furnish a true copy of his application to the commission's district office in the district in which the premises sought to be covered by the permit are located prior to the filing of the original application with the commission at Austin.

(c) Applications for a renewal permit shall be filed with the commission within 30 days prior to the expiration of the current permit.

[Acts 1977, 65th Leg., p. 437, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.05. Locker System

The locker system of storage is a system whereby the club rents a locker to a member in which he may store alcoholic beverages for consumption by himself and his guests. All alcoholic beverages stored at a club under the locker system must be purchased and owned by the member individually.

[Acts 1977, 65th Leg., p. 437, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.06. Pool System

(a) The pool system of storage is a system in which all members of a pool participate equally in the purchase of all alcoholic beverages and in which the replacement of all alcoholic beverages is paid for by money assessed equally from each member and collected in advance.

(b) The pool system of storage may only be used:

(1) in a county in which the sale of any alcoholic beverages has been legalized, either in the entire county or in a portion of the county; or

(2) in a county having a population of not less than 1,000,000 nor more than 1,500,000, according to the last preceding federal census, by a club operating on the premises of a professional sports stadium used wholly or partly for professional sporting events with a seating capacity of 40,000 or more, or on the premises of a multiple-unit residential dwelling or dwelling complex having 750 or more units.

[Acts 1977, 65th Leg., p. 437, ch. 194, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1945, ch. 772, §§ 1, 2.

Section 1 of Acts 1977, 65th Leg., p. 1945, ch. 772, purports to amend subsec. 1, par. (c) of Penal Code (1925) art. 666-15e [now, this section], without reference to repeal of said article by Acts 1977, 65th Leg., p. 557, ch. 194, § 2. As so amended, par. (c) reads:

"(c) 'Pool System' shall mean that system of liquor storage where all members of the pool participate equally in the original purchase of all alcoholic beverages. Such pool system shall

be legal in any area. Under the pool system, the replacement of all alcoholic beverages shall be paid for either with money assessed and collected in advance from each member equally or by the establishment of an alcoholic beverages replacement account in which a designated percentage of each charge for the service of alcoholic beverages, as determined by the club's governing body, is deposited. If the latter system of replacement is used:

"(1) each service check shall have printed on it the percentage of the service charge that is to be deposited in the alcoholic beverages replacement account;

"(2) no money other than the designated percentage portion of service charges may be deposited in the replacement account;

"(3) the replacement of alcoholic beverages may be paid for only from money in the replacement account;

"(4) the club's governing body may transfer from the replacement account to the club's general operating account any portion of the replacement account that the governing body determines is in excess of the amount that will be needed to purchase replacement alcoholic beverages, but it may make only one transfer in a calendar month; and

"(5) the club shall maintain a monthly record of the total amount of alcoholic beverage service charges collected, the amount deposited in the replacement account, the amount used to purchase alcoholic beverages, and the amount transferred to the club's general operating account."

Section 2 of Acts 1977, 65th Leg., p. 1946, ch. 772, purports to repeal subsec. 1, pars. (c-1) and (c-2) of Penal Code (1925) art. 666-15e, which read:

"(c-1) Notwithstanding any other provision of this Act, the pool system shall be legal for any private club operating on the premises of a professional sports stadium which is used wholly or partly for professional sporting events and which has a seating capacity of 40,000 or more, and on the premises of a multiple-unit residential dwelling or dwelling complex having 750 or more units in a county having a population of not less than 1,000,000 nor more than 1,500,000 according to the last preceding federal census.

"(c-2) Notwithstanding any other provision of this Section 15(e), the pool system shall be legal for any private club operating in any county where the sale of any alcoholic beverage has been legalized, either throughout the entire county or any portion of such county."

§ 32.07. Display of Permit

A private club registration permit shall be displayed in a conspicuous place at all times on the licensed premises.

[Acts 1977, 65th Leg., p. 437, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.08. Purchase and Transportation of Alcoholic Beverages

(a) All distilled spirits sold by a club holding a private club registration permit must be purchased in this state from a holder of a local distributor's permit.

(b) If the club holding the permit is in an area where there are no local distributors, alcoholic beverages may be purchased in any area where local distributors are located and may be transported to the club premises if the club also holds a beverage cartage permit. The transporter may acquire the alcoholic beverages only on the written order of an officer or manager of the club holding the permit. The alcoholic beverages must be accompanied by a written statement furnished and signed by the local distributor showing the name and address of the consignee and consignor, the origin and destination of the shipment, and any other information required by the commission or administrator. The person in charge of the alcoholic beverages while they are being transported shall exhibit the written statement to any representative of the commission or any peace officer on demand, and the statement shall be accepted by the representative or officer as prima facie evidence of the lawful right to transport the alcoholic beverages.

(c) If a private club registration permittee holds a beverage cartage permit and his premises are located in a regional airport governed by a board, commission, or authority composed of members from two or more counties, and there is no local distributor at the airport, the private club registration permittee may purchase alcoholic beverages from any local distributor in a trade area served by the airport and transport them to his licensed premises. The transportation of the beverages must be in accordance with Subsection (b) of this section.

[Acts 1977, 65th Leg., p. 437, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 1182, ch. 453, § 6, eff. Sept. 1, 1977.]

§ 32.09. Temporary Members

(a) The manager or other person in charge of the club premises may allow a person to enter the club if he possesses a valid temporary membership card which has no erasures or changes and which has the temporary dates in a prominent position on the card. A temporary member may enjoy the club's services and privileges for a period of not more than three days per invitation. A temporary member does not possess guest privileges.

(b) At the time of his admission the temporary member shall pay the club a fee of \$2, which shall represent the fee payable by the permittee to the state. All fees and payments from temporary members shall be collected in cash or through credit cards approved by the commission or administrator.

(c) Temporary memberships shall be governed by rules promulgated by the commission consistent with the provisions of this section.

[Acts 1977, 65th Leg., p. 438, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.10. Guests

(a) Guests shall be limited to those who accompany a member onto the premises or for whom a member has made prior arrangements with the management of the club.

(b) Except as provided in Subsection (c) of this section no guest shall be permitted to pay, by cash or otherwise, for any service of alcoholic beverages. Any charge for a service rendered to a guest by the club must be filled by the club in its regular billing cycle to the member sponsoring the guest.

(c) The manager of a hotel who is a member of a private club located within the hotel building may issue a guest card to a patron of the hotel who is staying in the hotel overnight or longer. The guest may not be allowed to pay, by cash or otherwise, at the time of service in the private club. The charge for service shall be billed to the hotel manager's account in the hotel and shall be collected by the hotel manager along with other hotel charges, including the charge for using the hotel room, when the patron leaves the hotel. The hotel records shall be available for inspection at the request of the commission. If the club operates under the locker system a guest shall be served from the locker rented to the manager of the hotel.

(d) The commission shall promulgate rules necessary to implement the provisions of this section. [Acts 1977, 65th Leg., p. 438, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.11. Fraternal and Veterans Organizations

(a) In this section:

(1) "Fraternal organization" means:

(A) any chapter, aerie, parlor, lodge, or other local unit of an American national fraternal organization or Texas state fraternal organization that, as the owner, lessee, or occupant, has operated an establishment for fraternal purposes for at least one year. If an American national fraternal organization, it must actively operate in not fewer than 31 states and have at least 300 local units in those 31 states, and must have been in active, continuous existence for at least 20 years. If a Texas state fraternal organization, it must actively operate in at

least two counties of the state and have at least 10 local units in those two counties, and must have been in active, continuous existence for at least five years; or

(B) a hall association or building association of a local unit described in Paragraph (A), all the capital stock of which is owned by the local unit or the members of the local unit, and which operates the clubroom facilities of the local unit.

(2) "Veterans organization" means an organization composed of members or former members of the armed forces of the United States which is organized for patriotic and public service purposes, including the American Legion, Veterans of Foreign Wars, Disabled American Veterans, Jewish War Veterans, American GI Forum, Catholic War Veterans, or any veterans organization chartered by the United States Congress.

(b) The permit fee imposed by Section 32.02 of this code and the provisions of Sections 32.03 and 32.10 of this code requiring regular food service and prohibiting guests from paying in cash do not apply to a fraternal or veterans organization. Those organizations are also exempt from Sections 32.05 and 32.06 of this code, and the members of the organization may use any club funds owned by them jointly, including revenue from the service of alcoholic beverages, to replenish their joint stock of alcoholic beverages.

(c) The requirement that the fraternal or veterans organization hold a private club registration permit is satisfied by the issuance of a certificate by the commission that states that the organization meets the requirements of this section.

(d) All other provisions of this code apply to fraternal and veterans organizations.

[Acts 1977, 65th Leg., p. 439, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.12. Inspection of Premises

The acceptance of a private club registration permit constitutes an express agreement and consent on the part of the private club that any authorized representative of the commission or any peace officer has the right and privilege to freely enter the club premises at any time to conduct an investigation or to inspect the premises for the purpose of performing a duty imposed by this code.

[Acts 1977, 65th Leg., p. 439, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.13. Inspection of Books and Records

All books and records pertaining to the operation of any permittee club, including a current listing, correct to the last day of the preceding month, of all members of the club who have liquor stored on the club premises under either the locker or pool system, shall be made available to the commission or its authorized representatives on request.

[Acts 1977, 65th Leg., p. 439, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.14. Unregistered Clubs; Prohibited Activities

(a) No permittee, licensee, or any other person shall deliver, transport, or carry an alcoholic beverage to, into, or on the premises of any establishment, location, room, or place purporting to be a club, or holding itself out to the public or any person as a club or private club, unless the club holds a private club registration permit.

(b) No person may store, possess, mix, or serve by the drink or in broken or unsealed containers an alcoholic beverage on the premises of any establishment, location, room, or place purporting to be a club or private club unless the club holds a private club registration permit.

(c) An alcoholic beverage stored or possessed on the premises of any establishment, location, room, or place purporting to be a club, or holding itself out to the public or any person as a club or private club, is declared to be an illicit beverage and subject to seizure without a warrant unless a private club registration permit has been issued for the premises, location, room, or place.

[Acts 1977, 65th Leg., p. 440, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.15. Removal of Beverages From Premises

A private club, irrespective of location or system of storage of alcoholic beverages, may not permit any person to remove any alcoholic beverages from the club premises.

[Acts 1977, 65th Leg., p. 440, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.16. Unauthorized Membership

No private club registration permittee may allow its average membership to exceed that authorized by its permit.

[Acts 1977, 65th Leg., p. 440, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.17. Cancellation or Suspension of Permit; Grounds

(a) The commission or administrator may cancel or suspend for a period of time not exceeding 60 days, after notice and hearing, an original or renewal private club registration permit on finding that the permittee club has:

(1) sold, offered for sale, purchased, or held title to any liquor so as to constitute an open saloon;

(2) refused to allow an authorized agent or representative of the commission or a peace officer to come on the club premises for the purposes of inspecting alcoholic beverages stored on the premises or investigating compliance with the provisions of this code;

(3) refused to furnish the commission or its agent or representative when requested any information pertaining to the storage, possession,

servicing, or consumption of alcoholic beverages on club premises;

(4) permitted or allowed any alcoholic beverages stored on club premises to be served or consumed at any place other than on the club premises;

(5) failed to maintain an adequate building at the address for which the private club registration permit was issued;

(6) caused, permitted, or allowed any member of a club in a dry area to store any liquor on club premises except under the locker system;

(7) caused, permitted, or allowed any person to consume or be served any alcoholic beverage on the club premises:

(A) at any time on Sunday between the hours of 1:15 a. m. and 12 noon or on any other day at any time between the hours of 12:15 a. m. and 7 a. m., if the club does not have a private club late hours permit; or

(B) at any time on Sunday between the hours of 2 a. m. and 12 noon or on any other day at any time between the hours of 2 a. m. and 7 a. m., if the club has a private club late hours permit; or

(8) violated or assisted, aided or abetted the violation of any provision of this code.

(b) As used in Subsection (a)(1) of this section, the term "open saloon" means any place where an alcoholic beverage manufactured in whole or in part by distillation, or liquor composed or compounded in part of distilled spirits, is sold or offered for sale for beverage purposes by the drink or in broken or unsealed containers, or a place where any of the liquors are sold or offered for sale for on-premises consumption.

[Acts 1977, 65th Leg., p. 440, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.18. Appeals From Orders of Commission or Administrator

An appeal from an order of the commission or administrator refusing, cancelling, or suspending a private club registration permit shall be taken to the district court of the county in which the private club is located. The proceeding on appeal shall be under the substantial evidence rule. The rules applicable to ordinary civil suits apply, with the following exceptions, which shall be construed literally:

(1) all appeals shall be perfected and filed within 30 days after the order, decision, or ruling of the commission or administrator becomes final and appealable;

(2) the proceedings shall have precedence over all other causes of a different nature;

(3) all causes shall be tried before the judge within 10 days from the filing, and neither party shall be entitled to a jury; and

(4) the order, decision, or ruling of the commission or administrator may be suspended or modified by the district court pending a trial on the merits, but the final judgment of the district court shall not be modified or suspended pending appeal.

[Acts 1977, 65th Leg., p. 441, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 32.19. Aiding or Abetting Violation

A person who commits, assists, aids, or abets a violation of this chapter commits an offense.

[Acts 1977, 65th Leg., p. 441, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 33. PRIVATE CLUB LATE HOURS PERMIT

- Section
- 33.01. Authorized Activities.
- 33.02. Fee.
- 33.03. Application of Code Provisions.

§ 33.01. Authorized Activities

The holder of a private club late hours permit may allow persons to consume or be served alcoholic beverages on club premises on Sunday between the hours of 1:00 a. m. and 2 a. m. and on any other day between the hours of 12 midnight and 2 a. m. if the licensed premises are in an area where consumption or service of alcoholic beverages in a public place during those hours is authorized by this code.

[Acts 1977, 65th Leg., p. 441, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 33.02. Fee

The annual state fee for a private club late hours permit is \$500.

[Acts 1977, 65th Leg., p. 441, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 33.03. Application of Code Provisions

All provisions of this code which apply to a private club registration permit also apply to a private club late hours permit.

[Acts 1977, 65th Leg., p. 442, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 34. AIRLINE BEVERAGE PERMIT

- Section
- 34.01. Authorized Activities.
- 34.02. Fee.
- 34.03. Eligibility for Permit.
- 34.04. Taxes.
- 34.05. Sale of Liquor to Permittee.
- 34.06. Inapplicable Provision.

§ 34.01. Authorized Activities

The holder of an airline beverage permit may:

- (1) sell or serve alcoholic beverages in or from any size container on a commercial passenger

airplane operated in compliance with a valid license, permit, or certificate issued under the authority of the United States or of this state, even though the plane, in the course of its flight, may cross an area in which the sale of alcoholic beverages is prohibited; and

- (2) store alcoholic beverages in sealed containers of any size at any airport regularly served by the permittee, in accordance with rules and regulations promulgated by the commission.

[Acts 1977, 65th Leg., p. 442, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 34.02. Fee

The annual fee for an airline beverage permit is \$1,000.

[Acts 1977, 65th Leg., p. 442, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 34.03. Eligibility for Permit

The commission or administrator may issue an airline beverage permit to any corporation operating a commercial airline in or through the state. Application and payment of the fee shall be made directly to the commission.

[Acts 1977, 65th Leg., p. 442, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 34.04. Taxes

(a) The taxes imposed by this code shall be paid on all alcoholic beverages on a commercial passenger aircraft departing from an airport in this state, in accordance with rules and regulations prescribed by the commission.

(b) The preparation and service of alcoholic beverages by the holder of an airline beverage permit is exempt from the tax imposed by the Limited Sales, Excise and Use Tax Act. An airline beverage service fee of five cents is imposed on each individual serving of an alcoholic beverage served by the permittee inside the state. The fee accrues at the time the container containing an alcoholic beverage is delivered to the passenger. The permittee may absorb the cost of the fee or may collect it from the passenger. The permittee shall remit the fees to the commission each month under a reporting system prescribed by the commission.

[Acts 1977, 65th Leg., p. 442, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 34.05. Sale of Liquor to Permittee

(a) Only the holder of a package store permit may sell liquor to the holder of an airline beverage permit. For the purposes of this code, a sale of liquor to a holder of an airline beverage permit shall be considered as a sale at retail to a consumer.

(b) The holder of a package store permit may sell liquor in any size container authorized by Section 101.46 of this code to holders of an airline beverage permit, and may purchase liquor in any size container for resale from the holders of a wholesaler's

permit. A holder of a wholesaler's permit may import, sell, offer for sale, or possess for resale to package store permittees to resell to holders of airline beverage permittees liquor in any authorized size containers.

[Acts 1977, 65th Leg., p. 442, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 34.06. Inapplicable Provision

Section 109.53 of this code does not apply to an airline beverage permit.

[Acts 1977, 65th Leg., p. 443, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 35. AGENT'S PERMIT

Section

- 35.01. Authorized Activities.
- 35.02. Fee.
- 35.03. Evidence of Agency or Employment Required.
- 35.04. Certain Employees Exempt.
- 35.05. Samples.
- 35.06. Ineligibility for Manufacturer's Agent's Permit.
- 35.07. Unauthorized Representation.

§ 35.01. Authorized Activities

The holder of an agent's permit may:

- (1) represent permittees other than retailers within this state who are authorized to sell liquor to retail dealers in the state; and
- (2) solicit and take orders for the sale of liquor from authorized permittees.

[Acts 1977, 65th Leg., p. 443, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 35.02. Fee

The annual state fee for an agent's permit is \$5.

[Acts 1977, 65th Leg., p. 443, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 35.03. Evidence of Agency or Employment Required

An agent's permit may not be issued to a person until he shows to the satisfaction of the commission that he has been employed by or authorized to act as the agent of the holder of a permit as described by Section 35.01 of this code.

[Acts 1977, 65th Leg., p. 443, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 35.04. Certain Employees Exempt

An agent's permit is not required for an employee of a permit holder who sells liquor but remains on the licensed premises when making the sale.

[Acts 1977, 65th Leg., p. 443, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 35.05. Samples

The holder of an agent's permit may not transport or carry liquor as samples, but may carry or display empty sample containers.

[Acts 1977, 65th Leg., p. 443, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 35.06. Ineligibility for Manufacturer's Agent's Permit

A person holding an agent's permit may not be issued a manufacturer's agent's permit.

[Acts 1977, 65th Leg., p. 443, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 35.07. Unauthorized Representation

A holder of an agent's permit in soliciting or taking orders for the sale of liquor may not represent himself to be an agent of any person other than the person designated in his permit application.

[Acts 1977, 65th Leg., p. 444, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 36. MANUFACTURER'S AGENT'S PERMIT

Section

- 36.01. Authorized Activities.
- 36.02. Fee.
- 36.03. Authorization by Principal Required.
- 36.04. Ineligibility for Agent's Permit.
- 36.05. Samples.
- 36.06. Solicitation From Holder of Mixed Beverage or Private Club Permit.
- 36.07. Unauthorized Representation.
- 36.08. Restriction as to Source of Supply.

§ 36.01. Authorized Activities

The holder of a manufacturer's agent's permit may:

- (1) represent only the holders of nonresident seller's permits; and
- (2) solicit and take orders for the sale of liquor from permittees authorized to import liquor for the purpose of resale.

[Acts 1977, 65th Leg., p. 444, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 36.02. Fee

The annual state fee for a manufacturer's agent's permit is \$5.

[Acts 1977, 65th Leg., p. 444, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 36.03. Authorization by Principal Required

A manufacturer's agent's permit may not be issued to a person until he shows to the satisfaction of the commission that he has been authorized to act as agent of the principal he proposes to represent.

[Acts 1977, 65th Leg., p. 444, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 36.04. Ineligibility for Agent's Permit

A holder of a manufacturer's agent's permit may not be issued an agent's permit.

[Acts 1977, 65th Leg., p. 444, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 36.05. Samples

The holder of a manufacturer's agent's permit may not transport or carry liquor as samples, but may carry or display empty sample containers.

[Acts 1977, 65th Leg., p. 444, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 36.06. Solicitation From Holder of Mixed Beverage or Private Club Permit

A holder of a manufacturer's agent's permit may not solicit business directly or indirectly from a holder of a mixed beverage permit or a private club registration permit unless he is accompanied by the holder of a wholesaler's permit or the wholesaler's agent.

[Acts 1977, 65th Leg., p. 444, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 36.07. Unauthorized Representation

A holder of a manufacturer's agent's permit in soliciting or taking orders for the sale of liquor may not represent himself as an agent of a person other than the person designated in his permit application.

[Acts 1977, 65th Leg., p. 444, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 36.08. Restriction as to Source of Supply

A manufacturer's agent's permittee may not represent a person with respect to an alcoholic beverage unless the person represented is the primary American source of supply of the beverage as defined in Section 37.10 of this code.

[Acts 1977, 65th Leg., p. 445, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 37. NONRESIDENT SELLER'S PERMIT

Section

- 37.01. Authorized Activities.
- 37.02. Fee.
- 37.03. Permit Required.
- 37.04. Interest in Brewer's Permit.
- 37.05. Appointment of Agent for Service of Notice.
- 37.06. Designation of Agents.
- 37.07. Prohibited Activities.
- 37.08. Cancellation or Suspension: Notice to Importers.
- 37.09. Restriction on Importation.
- 37.10. Restriction as to Source of Supply.
- 37.11. Submission of Samples and Labels.
- 37.12. Inspection of Records, Documents, Etc.
- 37.13. Solicitation From Holder of Mixed Beverage or Private Club Permit.
- 37.14. Monthly Reports.

§ 37.01. Authorized Activities

The holder of a nonresident seller's permit may:

(1) solicit and take orders for liquor from permittees authorized to import liquor into this state;

(2) ship liquor into this state, or cause it to be shipped into this state, in consummation of sales made to permittees authorized to import liquor into the state.

[Acts 1977, 65th Leg., p. 445, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 37.02. Fee

The annual state fee for a nonresident seller's permit is \$100.

[Acts 1977, 65th Leg., p. 445, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 37.03. Permit Required

A nonresident seller's permit is required of any distillery, winery, importer, broker, or person who sells liquor to permittees authorized to import liquor into this state, regardless of whether the sale is consummated inside or outside the state.

[Acts 1977, 65th Leg., p. 445, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 37.04. Interest in Brewer's Permit

A person who holds a nonresident seller's permit may have an interest in the business, assets, corporate stock, or permit of a person who holds a brewer's permit.

[Acts 1977, 65th Leg., p. 445, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 37.05. Appointment of Agent for Service of Notice

(a) No person may be issued a nonresident seller's permit until he shows that he has filed a certificate with the secretary of state certifying that he has appointed a resident of this state as his agent for the purposes of this section. The certificate shall contain the name, street address, and business of the agent.

(b) A notice of a hearing for the refusal, cancellation, or suspension of a permit may be served on any of the following:

- (1) the agent designated in the certificate on file with the secretary of state;
- (2) any person authorized to sell liquor in this state as agent of the permittee; or
- (3) the permittee or, if the permittee is a corporation, any officer of the corporation.

(c) If a permittee fails to maintain a designated agent, notice of a hearing may be served on the secretary of state. In that case, the secretary of state shall forward the notice to the permittee by registered mail, return receipt requested, and the receipt shall be prima facie evidence of service on the permittee.

(d) Provisions of this code generally applicable to hearings for the refusal, cancellation, or suspension of a permit also to apply to proceedings relating to the refusal, cancellation, or suspension of a nonresident seller's permit.

[Acts 1977, 65th Leg., p. 445, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 37.06. Designation of Agents

Every holder of a nonresident seller's permit shall designate, in the manner required by the commission and on forms prescribed by it, those persons authorized as agents to represent the permittee in this state. The failure to do so is a violation of this code.

[Acts 1977, 65th Leg., p. 446, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 37.07. Prohibited Activities

No holder of a nonresident seller's permit, nor any officer, director, agent, or employee of the holder, nor any affiliate of the holder, regardless of whether the affiliation is corporate or by management, direction, or control, may do any of the following:

(1) hold or have an interest in the permit, business, assets, or corporate stock of a person authorized to import liquor into this state for the purpose of resale unless the interest was acquired on or before January 1, 1941, or unless the permittee is a Texas corporation holding a manufacturer's license and a brewer's permit issued before April 1, 1971;

(2) fail to make or file a report with the commission as required by a rule of the commission;

(3) sell liquor for resale inside this state that fails to meet the standards of quality, purity, and identity prescribed by the commission;

(4) advertise any liquor contrary to the laws of this state or to the rules of the commission, or sell liquor for resale in this state in violation of advertising or labeling rules of the commission;

(5) sell liquor for resale inside this state or cause it to be brought into the state in a size of container prohibited by this code or by rule of the commission;

(6) solicit or take orders for liquor from a person not authorized to import liquor into this state for the purpose of resale;

(7) induce, persuade, or influence, or attempt to induce, persuade, or influence, a person to violate this code or a rule of the commission, or conspire with a person to violate this code or a rule of the commission; or

(8) exercise a privilege granted by a nonresident seller's permit while an order or suspension against the permit is in effect.

[Acts 1977, 65th Leg., p. 446, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 37.08. Cancellation or Suspension: Notice to Importers

When a nonresident seller's permit is cancelled or suspended, the commission shall immediately notify in writing all permittees authorized to import liquor into the state.

[Acts 1977, 65th Leg., p. 447, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 37.09. Restriction on Importation

No person who holds a permit authorizing the importation of liquor, nor his agent or employee, may purchase or order liquor for importation from any person other than a nonresident seller's permittee. An importer may not purchase or order liquor from a nonresident seller's permittee whose permit is under suspension after the importer has received notice of the suspension.

[Acts 1977, 65th Leg., p. 447, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 37.10. Restriction as to Source of Supply

(a) No holder of a nonresident seller's permit may solicit, accept, or fill an order for distilled spirits or wine from a holder of any type of wholesaler's permit unless the nonresident seller is the primary American source of supply for the brand of distilled spirits or wine that is ordered.

(b) In this section, "primary American source of supply" means the distiller, the producer, the owner of the commodity at the time it becomes a marketable product, the bottler, or the exclusive agent of any of those. To be the "primary American source of supply" the nonresident seller must be the first source, that is, the manufacturer or the source closest to the manufacturer, in the channel of commerce from whom the product can be secured by American wholesalers.

[Acts 1977, 65th Leg., p. 447, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 37.11. Submission of Samples and Labels

(a) Before a nonresident seller's permittee may ship distilled spirits into this state, he shall furnish the commission samples of each brand, properly labeled and in the containers in which they are to be sold. He shall submit with the samples applications for label approval for each brand.

(b) The commission or its authorized agents shall test the contents and examine the label and container of the samples and determine whether they meet all requirements of state law and of the rules of the commission. If the label, container, and contents are found to be in compliance, the commission shall issue the permittee a certificate to that effect.

(c) As to distilled spirits imported directly from the distiller, bottler, or the exclusive agent of either, or distilled spirits distilled or bottled by the nonresident seller or by a distiller or bottler for whom the nonresident seller is the exclusive agent, if the samples are approved under Subsection (b) of this section, the permittee is not required to submit additional samples unless there is a change in the label, contents, or style or size of the container, or unless he is directed to do so by the commission.

(d) As to all other distilled spirits, samples must be furnished to the commission for each brand and size in each proposed shipment into the state, together with a sworn statement of the quantity and sizes to be shipped, the permittee to whom the spirits are to be shipped, and the person or firm from whom they are to be shipped. The permittee may not ship the distilled spirits until he has in his possession a certificate of approval from the commission.

(e) Until January 1, 1980, the submission of samples and applications for label and container approval shall not be required for any distilled spirit imported direct from the distiller, bottler, or the exclusive agent of the distiller or bottler, or for any distilled spirit distilled or bottled by the holder of a

nonresident seller's permit or by a distiller or bottler for whom he is the exclusive agent if a certificate of approval has previously been granted and the only change in container size is to the metric system container most nearly equivalent to a previously approved United States standard gallon system container, and the only change in label is the substitution of the metric measure for the formerly used statement of quantity content. This subsection expires January 1, 1980.

[Acts 1977, 65th Leg., p. 447, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 1182, ch. 453, § 7, eff. Sept. 1, 1977.]

Section 15 of the amendatory act provided:

"(a) Except as provided in Subsection (b) of this section, this Act takes effect on September 1, 1977.

"(b) Senate Bill No. 731, Acts of the 65th Legislature, Regular Session, 1977, takes effect immediately."

§ 37.12. Inspection of Records, Documents, Etc.

(a) In this section, "officer" means a representative of the commission, the attorney general, or an assistant or representative of the attorney general.

(b) If an officer wishes to examine the books, accounts, records, minutes, letters, memoranda, documents, checks, telegrams, constitution and bylaws, or other records of a nonresident seller's permittee, he shall make a written request to the permittee or his duly authorized manager or representative or, if the permittee is a corporation, to any officer of the corporation. An officer may examine the records as often as he considers necessary.

(c) When a request for an examination is made, the person to whom it is directed shall immediately allow the officer to conduct the examination, and the person shall answer under oath any question asked by the officer relating to the records.

(d) The officer may investigate the organization, conduct, and management of any nonresident seller's permittee and may make copies of any records which in the officer's judgment may show or tend to show that the permittee has violated state law or the terms of his permit.

(e) An officer may not make public any information obtained under this section except to a law enforcement officer of this state or in connection with an administrative or judicial proceeding in which the state or commission is a party concerning the cancellation or suspension of a nonresident seller's permit, the collection of taxes due under state law, or the violation of state law.

(f) The commission shall cancel or suspend a nonresident seller's permit in accordance with this code if a permittee or his authorized representative fails or refuses to permit an examination authorized by this section or to permit the making of copies of any document as provided by this section, without regard to whether the document is inside or outside the state, or if the permittee or his authorized representative fails or refuses to answer a question of an

officer incident to an examination or investigation in progress.

[Acts 1977, 65th Leg., p. 448, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 37.13. Solicitation From Holder of Mixed Beverage or Private Club Permit

A holder of a nonresident seller's permit may not solicit business directly or indirectly from a holder of a mixed beverage permit or a private club registration permit unless he is accompanied by the holder of a wholesaler's permit or the wholesaler's agent.

[Acts 1977, 65th Leg., p. 448, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 37.14. Monthly Reports

The commission shall promulgate rules requiring holders of nonresident seller's permits to file monthly reports of liquor sold to persons within this state. The reports shall be supported by copies of invoices. The commission shall prescribe and furnish forms for this purpose.

[Acts 1977, 65th Leg., p. 448, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 38. INDUSTRIAL PERMIT

Section

- 38.01. Authorized Activities.
- 38.02. Exemptions.
- 38.03. Prohibited Acts.
- 38.04. Fee.
- 38.05. Other Code Provisions Inapplicable.
- 38.06. Activities Tax Free.

§ 38.01. Authorized Activities

The holder of an industrial permit may import, transport, and use alcohol or denatured alcohol for the manufacture and sale of any of the following products:

- (1) denatured alcohol;
- (2) patent, proprietary, medicinal, pharmaceutical, antiseptic, and toilet preparations;
- (3) flavoring extracts, syrups, condiments, and food products; and
- (4) scientific, chemical, mechanical, and industrial products, or products used for scientific, chemical, mechanical, industrial, or medicinal purposes.

[Acts 1977, 65th Leg., p. 449, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 38.02. Exemptions

The following persons or entities are exempt from the requirement of obtaining an industrial permit:

- (1) a pharmacist for the filling of prescriptions issued by a physician in the legitimate practice of medicine;
- (2) a state institution;
- (3) a bona fide or chartered school, college, or university when using alcohol for a scientific or laboratory use; and

(4) a hospital, sanatorium, or other bona fide institution for the treatment of the sick.

[Acts 1977, 65th Leg., p. 449, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 38.03. Prohibited Acts

(a) No person may purchase, transport, or use alcohol for any purpose enumerated in this chapter without an industrial permit, unless the person is exempt under Section 38.02 of this code from the requirement of obtaining a permit.

(b) No person may sell, possess, or divert any of the products enumerated in Subdivisions (1) through (4) of Section 38.01 of this code for beverage purposes or under circumstances from which he might reasonably deduce that the intention of the purchaser is to use those products for beverage purposes. [Acts 1977, 65th Leg., p. 449, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 38.04. Fee

The annual state fee for an industrial permit is \$10.

[Acts 1977, 65th Leg., p. 449, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 38.05. Other Code Provisions Inapplicable

No provisions of this code other than this chapter apply to alcohol intended for industrial, medicinal, mechanical, or scientific purposes.

[Acts 1977, 65th Leg., p. 449, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 38.06. Activities Tax Free

The taxes imposed by this code do not apply to activities authorized in Section 38.01 of this code.

[Acts 1977, 65th Leg., p. 449, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 39. MEDICINAL PERMIT

SUBCHAPTER A. GENERAL PROVISIONS

Section

- 39.01. Authorized Activities.
39.02. Qualifications for Permit.
39.03. Rules.
39.04. Fee.
39.05. Certificate to Accompany Application.

SUBCHAPTER B. PROHIBITED ACTIVITIES

- 39.21. Prescriptions.
39.22. Records, Reports, and Information.
39.23. Standards.
39.24. Sale for Medicinal Purposes Only.
39.25. Consumption on Premises Prohibited.
39.26. Amount Sold to One Person.
39.27. Number of Prescriptions Limited.
39.28. Limitation on Amount Possessed.
39.29. From Whom Purchased.
39.30. Compensation of Physicians Prohibited.
39.31. Sales to Minors.
39.32. Sale to Intoxicated Person.

SUBCHAPTER C. SUSPENSION OR CANCELLATION OF PERMIT

Section

- 39.41. Change of Location.
39.42. Breach of Peace.

SUBCHAPTER A. GENERAL PROVISIONS

§ 39.01. Authorized Activities

The holder of a medicinal permit may buy or dispense liquor at his pharmacy for medicinal purposes only.

[Acts 1977, 65th Leg., p. 450, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.02. Qualifications for Permit

To be qualified to receive a medicinal permit:

(1) a person must be the owner of a pharmacy properly qualified as a pharmacy under state law;

(2) the applicant's pharmacy must be a bona fide pharmacy continuously operated for not less than two years;

(3) the applicant's pharmacy must have been continuously located for not less than two years in the particular justice precinct or incorporated city or town in which it is located at the time the permit is sought;

(4) the applicant's pharmacy must have been registered with the state board of pharmacy for two years immediately preceding the date of application for the permit;

(5) the applicant's pharmacy must have employed at all times a registered pharmacist during the two years immediately preceding the date of application for the permit; and

(6) the applicant's pharmacy must not have operated under a permit which was cancelled during the past two years.

[Acts 1977, 65th Leg., p. 450, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.03. Rules

The board, by rule, may require the keeping of whatever records it considers necessary to properly enforce the provisions of this code.

[Acts 1977, 65th Leg., p. 451, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.04. Fee

The annual state fee for a medicinal permit is \$10 if the permittee's pharmacy is located in a dry area and is the same as the annual state fee for a package store permit if the permittee's pharmacy is located in a wet area.

[Acts 1977, 65th Leg., p. 451, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.05. Certificate to Accompany Application

Each applicant for a medicinal permit shall present with his application a certificate issued by the state board of pharmacy showing the registra-

tion record of his pharmacy with that board during the preceding two years.

[Acts 1977, 65th Leg., p. 451, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 39.06 to 39.20 reserved for expansion]

SUBCHAPTER B. PROHIBITED ACTIVITIES

§ 39.21. Prescriptions

(a) No holder of a medicinal permit or any of his agents or employees may sell or dispense liquor except upon a prescription properly issued by the holder of a physician's permit.

(b) No holder of a medicinal permit or any of his agents or employees may sell or dispense liquor on a prescription which does not meet the specifications required by this code.

(c) No holder of a medicinal permit or any of his agents or employees may sell or dispense liquor more than once on any prescription.

(d) No holder of a medicinal permit or any of his agents or employees may sell or dispense liquor on a prescription dated more than three days prior to the date when the prescription is presented for filling.

(e) No holder of a medicinal permit or any of his agents or employees may sell or dispense liquor on a prescription knowing that the prescription was written without a physical examination of the patient by the doctor prescribing the liquor.

(f) No holder of a medicinal permit or any of his agents or employees may sell or dispense liquor to any person knowing that the prescription was issued to a patient under a name other than his true name.

(g) No holder of a medicinal permit or any of his agents or employees may sell or dispense liquor on a prescription bearing any false statement or information.

(h) No holder of a medicinal permit or any of his agents or employees may sell or dispense any liquor without having first obtained physical possession of and carefully examining the prescription on which the sale is made.

(i) No holder of a medicinal permit or any of his agents or employees may prepare a prescription for liquor.

(j) No holder of a medicinal permit or any of his agents or employees may fail to attach to each container of liquor sold a label in the English language bearing the full name and address of the pharmacy making the sale, the name and address of the prescribing physician, the full name and address of the patient to whom the sale is made, the directions for use, the signature of the pharmacist filling the prescription, and the number of the prescription.

[Acts 1977, 65th Leg., p. 451, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.22. Records, Reports, and Information

(a) No holder of a medicinal permit or any of his agents or employees may fail to preserve and keep for two years any prescription on which liquor has been sold. The permittee shall make these prescriptions available at all times for inspection by a representative of the commission, peace officer, or county or district attorney.

(b) No holder of a medicinal permit or any of his agents or employees may fail to make and keep for two years any other record required by the commission, or may fail to produce that record on demand of a representative of the commission, peace officer, or county or district attorney.

(c) No holder of a medicinal permit or any of his agents or employees may fail to make a report required by the commission within the time required, or make or cause to be made a report so required which is false in any particular.

(d) No holder of a medicinal permit or any of his agents or employees may fail or refuse to divulge any information concerning the purchase, storage, or disposal of liquor to a representative of the commission, peace officer, or county or district attorney.

(e) No holder of a medicinal permit or any of his agents or employees may fail to produce on demand a prescription for each container of liquor disposed of or unaccounted for.

[Acts 1977, 65th Leg., p. 452, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.23. Standards

No holder of a medicinal permit or any of his agents or employees may sell or dispense any liquor not meeting the standards established by the United States Pharmacopoeia or the National Formulary.

[Acts 1977, 65th Leg., p. 452, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.24. Sale for Medicinal Purposes Only

No holder of a medicinal permit or any of his agents or employees may sell or dispense any liquor for other than medicinal purposes.

[Acts 1977, 65th Leg., p. 452, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.25. Consumption on Premises Prohibited

No holder of a medicinal permit or any of his agents or employees may permit any liquor to be consumed on the pharmacy premises.

[Acts 1977, 65th Leg., p. 452, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.26. Amount Sold to One Person

No holder of a medicinal permit or any of his agents or employees may sell or dispense more than one pint of liquor to a person in one day.

[Acts 1977, 65th Leg., p. 452, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.27. Number of Prescriptions Limited

No holder of a medicinal permit or any of his agents or employees may in any one week sell or dispense liquor on prescriptions exceeding the number of prescriptions filled during that week for other medicines, excluding narcotics. For the purposes of this section a week begins Sunday at midnight. [Acts 1977, 65th Leg., p. 452, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.28. Limitation on Amount Possessed

No holder of a medicinal permit or any of his agents or employees may have in his physical possession more than 10 gallons of liquor at one time. [Acts 1977, 65th Leg., p. 453, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.29. From Whom Purchased

No holder of a medicinal permit or any of his agents or employees may purchase or acquire stocks of liquor from any person who is not the holder of a wholesaler's permit in this state. [Acts 1977, 65th Leg., p. 453, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.30. Compensation of Physicians Prohibited

No holder of a medicinal permit or any of his agents or employees may compensate or guarantee any income to a physician in this state for writing a prescription for liquor. [Acts 1977, 65th Leg., p. 453, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.31. Sales to Minors

No holder of a medicinal permit or any of his agents or employees may sell or dispense any liquor to a person under 18 years of age unless that minor presents with his prescription the written consent of his parent or guardian. The person making the sale shall file the written consent with the prescription. [Acts 1977, 65th Leg., p. 453, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 39.32. Sale to Intoxicated Person

No holder of a medicinal permit or any of his agents or employees may sell or dispense any liquor to a person showing evidence of intoxication. [Acts 1977, 65th Leg., p. 453, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 39.33 to 39.40 reserved for expansion]

SUBCHAPTER C. SUSPENSION OR
CANCELLATION OF PERMIT

§ 39.41. Change of Location

The commission or administrator shall cancel the medicinal permit of a pharmacy owner if the pharmacy for which the permit was issued moves from the place where it was located when the permit was issued into an incorporated city or town, into a different incorporated city or town, or into a different justice precinct. [Acts 1977, 65th Leg., p. 453, ch. 194, § 1, eff. Sept. 1, 1977.]

1 West's Tex.Stats. & Codes '77 Supp.—3

§ 39.42. Breach of Peace

The commission or administrator may suspend or cancel a medicinal permit after giving the permittee notice and the opportunity to show compliance with all requirements of law for the retention of the permit if it finds that a breach of the peace has occurred on the pharmacy premises or on premises under the control of the permittee and that the breach of the peace was not beyond the control of the permittee and resulted from his improper supervision of persons permitted to be on the pharmacy premises or on premises under his control. [Acts 1977, 65th Leg., p. 453, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 40. PHYSICIAN'S PERMIT

Section	
40.01.	Authorized Activities.
40.02.	Fee.
40.03.	Eligibility for Permit.
40.04.	Prescription Forms.
40.05.	Prohibited Activities.

§ 40.01. Authorized Activities

The holder of a physician's permit may write prescriptions for liquor for medical purposes in accordance with the restrictions set forth in this chapter. [Acts 1977, 65th Leg., p. 453, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 40.02. Fee

The annual state fee for a physician's permit is \$1. [Acts 1977, 65th Leg., p. 454, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 40.03. Eligibility for Permit

(a) A physician licensed by the State Board of Medical Examiners to administer internal medicine to human beings may obtain a physician's permit. Each applicant for a permit must present with the application a certificate issued by the State Board of Medical Examiners showing his qualification to hold a permit.

(b) No person who has been convicted of a violation of this code or who has had a permit authorized by this code cancelled within two years preceding the date of filing an application for a permit may be issued a physician's permit. [Acts 1977, 65th Leg., p. 454, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 40.04. Prescription Forms

(a) The commission shall adopt rules determining the form of and manner of furnishing prescription forms. No person may prescribe liquor on any form not obtained from the commission or in a manner not meeting the requirements specified in this chapter.

(b) A prescription, when issued, must contain the following information:

- (1) the date of issuance;
- (2) the name and address of the issuing physician;

(3) the name, address, sex, and age of the patient and the diagnosis of the disease or ailment of the patient;

(4) the amount and type of liquor prescribed;

(5) the directions for use by the patient; and

(6) the signature of the issuing physician.

(c) The commission may adopt regulations regarding the printing and issuance of prescription blanks, the keeping of records of prescriptions issued, the making of reports, and the disposal of unused, mutilated, or defaced blanks which it deems necessary to require physicians to strictly conform to the provisions of this chapter.

[Acts 1977, 65th Leg., p. 454, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 40.05. Prohibited Activities

No physician may:

(1) prescribe liquor for any purpose unless he holds a physician's permit;

(2) prescribe liquor for other than medicinal purposes;

(3) issue prescriptions for liquor to any person without first making a physical examination of the patient to determine the disease or ailment afflicting him;

(4) issue a prescription which does not contain all the information required by this chapter written in the English language;

(5) accept any sort of compensation or guarantee as to income or material benefit from a holder of a medicinal permit for writing a prescription;

(6) prescribe more than one pint of liquor for a person in any one day;

(7) prescribe liquor for any person showing evidence of intoxication;

(8) prescribe liquor for any person under any name other than the true name of the person for whom the liquor is intended;

(9) prescribe liquor for any person under the age of 18 years unless he has the written consent of the person's parent or guardian;

(10) issue more than 100 prescriptions for liquor in any period of 90 days, beginning from the date designated by the physician in any order for prescription forms placed with the commission;

(11) fail or refuse to make and keep for a period of two years any record of prescriptions issued for liquor as required by the commission;

(12) fail to make reports required by the commission; or

(13) fail to divulge information or produce records of the issuance of prescriptions when requested to do so by a representative of the

commission or by any peace officer or any county or district attorney.

[Acts 1977, 65th Leg., p. 454, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 41. CARRIER PERMIT

Section

41.01. Authorized Activities.

41.02. Fee.

41.03. Eligibility for Permit.

41.04. Required Information.

§ 41.01. Authorized Activities

(a) The holder of a carrier permit may transport liquor into and out of this state and between points within the state.

(b) The holder may transport liquor from one wet area to another wet area across a dry area if that course of transportation is necessary or convenient.

[Acts 1977, 65th Leg., p. 455, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 41.02. Fee

The annual state fee for a carrier permit is \$5.

[Acts 1977, 65th Leg., p. 455, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 41.03. Eligibility for Permit

A carrier permit may be issued to:

(1) a water carrier;

(2) an airline;

(3) a railway; or

(4) a common carrier operating under a certificate of convenience and necessity issued by the Railroad Commission of Texas or under a certificate issued by the Interstate Commerce Commission.

[Acts 1977, 65th Leg., p. 455, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 41.04. Required Information

The holder of a carrier permit shall furnish information required by the commission concerning the transportation of liquor.

[Acts 1977, 65th Leg., p. 455, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 42. PRIVATE CARRIER PERMIT

Section

42.01. Authorized Activities.

42.02. Fee.

42.03. Application of Motor Carrier Laws.

42.04. Vehicles Used for Transporting Liquor.

42.05. Transportation of Ale and Malt Liquor: Rules.

§ 42.01. Authorized Activities

(a) The holder of a private carrier permit who is also a holder of a brewer's, distiller's, class A winery, class B winery, rectifier's, wholesaler's, class B

wholesaler's, or wine bottler's permit may transport liquor from the place of purchase to his place of business and from the place of sale or distribution to the purchaser in vehicles owned or leased in good faith by the holder if the transportation is for a lawful purpose.

(b) The holder of a private carrier permit may transport liquor from one wet area to another wet area across a dry area if that course of transportation is necessary or convenient.

[Acts 1977, 65th Leg., p. 456, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 42.02. Fee

The annual state fee for a private carrier permit is \$5.

[Acts 1977, 65th Leg., p. 456, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 42.03. Application of Motor Carrier Laws

A person desiring to transport liquor for hire must first secure a certificate or permit from the Railroad Commission in accordance with the applicable motor carrier laws, and he shall comply with the provisions of the motor carrier laws when engaging in the business of transporting liquor for hire.

[Acts 1977, 65th Leg., p. 456, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 42.04. Vehicles Used for Transporting Liquor

(a) Each application for a private carrier permit must contain a full description of the motor vehicles used by the applicant for transporting liquor as well as all other information required by the commission.

(b) Each vehicle used for the transportation of liquor within the state shall have printed or painted on it the designation required by the commission.

(c) A permittee may not transport liquor in any vehicle which is not fully described in his application for a permit.

[Acts 1977, 65th Leg., p. 456, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 42.05. Transportation of Ale and Malt Liquor: Rules

The commission may issue rules prescribing the manner in which ale and malt liquor may be transported in the state by private carrier's permittees who also hold class B wholesaler's permits.

[Acts 1977, 65th Leg., p. 456, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 43. LOCAL CARTAGE PERMIT

Section	
43.01.	Authorized Activities.
43.02.	Fee.
43.03.	Permit Required.
43.04.	Eligibility for Permit.
43.05.	Vehicles Used by Permittee.
43.06.	Certain Transportation Prohibited.
43.07.	Violation of Code, Rule.

§ 43.01. Authorized Activities

(a) A warehouse or transfer company that holds a local cartage permit may transport liquor for hire

inside the corporate limits of any city or town in the state.

(b) A package store, wine only package store, or local distributor's permittee who also holds a local cartage permit may transfer alcoholic beverages in accordance with Sections 22.08, 23.04, and 24.04 of this code.

[Acts 1977, 65th Leg., p. 457, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 43.02. Fee

The annual state fee for a local cartage permit is \$5.

[Acts 1977, 65th Leg., p. 457, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 43.03. Permit Required

No person may transport liquor for hire inside a city or town unless he holds a local cartage permit. No person may transport liquor in violation of the motor carrier laws of this state.

[Acts 1977, 65th Leg., p. 457, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 43.04. Eligibility for Permit

The commission may issue a local cartage permit to a warehouse or transfer company or to a holder of a package store, wine only package store, or local distributor's permit.

[Acts 1977, 65th Leg., p. 457, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 43.05. Vehicles Used by Permittee

(a) No local cartage permittee may transport liquor unless:

(1) a description of each vehicle used in the transportation, as required by the commission, has been submitted to the commission; and

(2) each vehicle has been plainly marked or lettered to indicate that it is being used for the transportation of liquor by a local cartage permittee.

(b) The transportation of liquor by a permittee in a vehicle not described and marked in accordance with this section is a violation of this code and is a ground for the cancellation of the permit.

[Acts 1977, 65th Leg., p. 457, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 43.06. Certain Transportation Prohibited

No holder of a local cartage permit may for hire transport liquor between incorporated cities or towns in this state.

[Acts 1977, 65th Leg., p. 457, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 43.07. Violation of Code, Rule

If a holder of a local cartage permit who also holds a package store permit or wine only package store permit violates any provision of this code or any rule or regulation of the commission, the violation is a ground for the suspension or cancellation of any or all permits or licenses held by that person for the premises where the offense was committed.

[Acts 1977, 65th Leg., p. 457, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 44. BEVERAGE CARTAGE PERMIT

Section

- 44.01. Authorized Activities.
- 44.02. Fee.
- 44.03. Eligibility for Permit.

§ 44.01. Authorized Activities

A beverage cartage permit authorizes the holder of a mixed beverage or private club registration permit to transfer alcoholic beverages from the place of purchase to the licensed premises as provided in this code.

[Acts 1977, 65th Leg., p. 458, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 44.02. Fee

The annual state fee for a beverage cartage permit is \$10.

[Acts 1977, 65th Leg., p. 458, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 44.03. Eligibility for Permit

The commission may issue a beverage cartage permit to the holder of a mixed beverage or private club registration permit.

[Acts 1977, 65th Leg., p. 458, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 45. STORAGE PERMIT

Section

- 45.01. Authorized Activities.
- 45.02. Fee.
- 45.03. Eligibility for Permit; Restrictions; Exceptions.

§ 45.01. Authorized Activities

The holder of a storage permit may store liquor in a public bonded warehouse for which a permit has been issued or in a private warehouse owned and operated by the holder.

[Acts 1977, 65th Leg., p. 458, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 45.02. Fee

There is no fee for a storage permit.

[Acts 1977, 65th Leg., p. 458, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 45.03. Eligibility for Permit; Restrictions; Exceptions

(a) A storage permit may be issued to a holder of a brewer's, distiller's, winery, rectifier's, wholesaler's, class B wholesaler's, or wine bottler's permit.

(b) A permit must be obtained for each place of storage.

(c) A storage permit may not be issued for a location outside the county in which the permittee's business is located.

(d) No storage permit may be issued for a location in a dry area.

(e) A permit is not required for the storage of stock in trade on the licensed premises.

[Acts 1977, 65th Leg., p. 458, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 46. BONDED WAREHOUSE PERMIT

Section

- 46.01. Authorized Activities.
- 46.02. Fee.
- 46.03. Qualifications for Permit.
- 46.04. Storage Information.

§ 46.01. Authorized Activities

The holder of a bonded warehouse permit may store liquor for any permittee who holds a permit authorizing its storage in a public bonded warehouse.

[Acts 1977, 65th Leg., p. 459, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 46.02. Fee.

The annual state fee for a bonded warehouse permit is \$100.

[Acts 1977, 65th Leg., p. 459, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 46.03. Qualifications for Permit

A bonded warehouse permit may be issued to any public bonded warehouse not located in a dry area which derives at least 50 percent of its gross revenue in a bona fide manner during each three-month period from the storage of goods or merchandise other than liquor.

[Acts 1977, 65th Leg., p. 459, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 46.04. Storage Information

The holder of a bonded warehouse permit shall furnish such information concerning the liquor stored and withdrawn as may be required by the commission.

[Acts 1977, 65th Leg., p. 459, ch. 194, § 1, eff. Sept. 1, 1977.]

SUBTITLE B. LICENSES

CHAPTER 61. PROVISIONS GENERALLY APPLICABLE TO LICENSES

SUBCHAPTER A. GENERAL PROVISIONS

Section

- 61.01. License Required.
- 61.02. Nature of License; Succession on Death, Bankruptcy, Etc.
- 61.03. Duration and Expiration of License.
- 61.04. License Not Assignable.
- 61.05. Name of Business.
- 61.06. Privileges Limited to Licensed Premises; Deliveries.
- 61.07. Agent for Service.
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SUBCHAPTER B. APPLICATION AND ISSUANCE OF LICENSES

- 61.31. Application for License.
- 61.32. Hearing by County Judge.
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Section

- 61.34. Appeal from Denial.
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- 61.36. Local Fee Authorized.
- 61.37. Certification of Wet or Dry Status.
- 61.38. Notice of Application.
- 61.39. May Contest Application.
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- 61.41. Second License at Same Location; Effect on Existing License.
- 61.42. Mandatory Grounds for Refusal: Distributor or Retailer.
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- 61.46. Manufacturer's License: Grounds for Refusal.
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- 61.48. Renewal Application.
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- 61.50. Renewal of Retail Dealer's License: Grounds for Refusal.
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SUBCHAPTER C. CANCELLATION AND SUSPENSION OF LICENSES

- 61.71. Grounds for Cancellation or Suspension: Retail Dealer.
- 61.72. Suspension or Cancellation: Retailer: Premises.
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- 61.79. Notice of Hearing: Refusal, Cancellation, or Suspension of License.
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- 61.81. Appeal from Cancellation, Suspension, or Refusal of License.
- 61.82. May Not Restrain Suspension Order.
- 61.83. Cancellation or Suspension: When Effective.
- 61.84. Activities Prohibited During Cancellation or Suspension.
- 61.85. Disposal of Stock on Termination of License.

SUBCHAPTER A. GENERAL PROVISIONS

§ 61.01. License Required

No person may manufacture or brew beer for the purpose of sale, import it into this state, distribute or sell it, or possess it for the purpose of sale without having first obtained an appropriate license or permit as provided in this code. Each licensee shall display his license at all times in a conspicuous place at the licensed place of business.
[Acts 1977, 65th Leg., p. 460, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.02. Nature of License; Succession on Death, Bankruptcy, Etc.

(a) A license issued under this code is a purely personal privilege and is subject to revocation as provided in this code. It is not property, is not subject to execution, does not pass by descent or distribution, and ceases on the death of the holder.

(b) On the death of the licensee or of a person having an interest in the license, or on bankruptcy, receivership, or partnership dissolution, the receiver or successor in interest may apply to the county

judge of the county where the licensed premises are located for certification that he is the receiver or successor in interest. On certification, unless good cause for refusal is shown, the commission or administrator shall grant permission, by letter or otherwise, for the receiver or successor in interest to operate the business during the unexpired portion of the license. The license may not be renewed, but the receiver or successor in interest may apply for an original license. A receiver or successor in interest operating for the unexpired portion of the license is subject to the provisions of this code relating to the suspension or cancellation of a license.

[Acts 1977, 65th Leg., p. 460, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.03. Duration and Expiration of License

No license may be issued for a term longer than one year. Any license except a branch, importer's, importer's carrier's, or temporary license expires one year after the date on which it is issued.

[Acts 1977, 65th Leg., p. 461, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.04. License Not Assignable

No holder of a license may assign his license to another person.

[Acts 1977, 65th Leg., p. 461, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.05. Name of Business

No person may conduct a business engaged in the manufacture, distribution, importation, or sale of beer as owner or part owner except under the name to which the license covering his place of business is issued.

[Acts 1977, 65th Leg., p. 461, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.06. Privileges Limited to Licensed Premises; Deliveries

No person licensed to sell beer, except a manufacturer or distributor, may use or display a license or exercise a privilege granted by the license except at the licensed premises. Deliveries of beer and collections may be made off the licensed premises in areas where the sale of beer is legal inside the county where the license is issued, but only in response to orders placed by the customer in person at the licensed premises or by mail or telephone to the licensed premises.

[Acts 1977, 65th Leg., p. 461, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.07. Agent for Service

Each manufacturer, distributor, or person shipping or delivering beer into this state shall file a certificate with the secretary of state designating the name, street address, and business of his agent on whom process may be served. If a certificate is not filed, service may be had on the secretary of state in any cause of action arising out of a violation of this code, and the secretary of state shall send any

citation served on him by registered mail, return receipt requested, to the person for whom the citation is intended. The receipt is prima facie evidence of service on the person.

[Acts 1977, 65th Leg., p. 461, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.08. Statement of Stock Ownership

The commission at any time may require an officer of a corporation holding a license to file a sworn statement showing the actual owners of the stock of the corporation, the amount of stock owned by each, the officers of the corporation, and any information concerning the qualifications of the officers or stockholders.

[Acts 1977, 65th Leg., p. 461, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.09. Change of Location

If a licensee desires to change his place of business, he may do so by applying to the county judge on a form prescribed by the commission and obtaining his consent. The application may be subject to protest and hearing in the same way as an application for an original license. The county judge may deny the application for any cause for which an original license application may be denied. No additional license fee for the unexpired term of the license shall be required in the case of an application for a change of location.

[Acts 1977, 65th Leg., p. 462, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.10. Replacement of License

If a license is mutilated or destroyed, the commission or administrator may issue another license as a replacement in a manner acceptable to the commission or administrator.

[Acts 1977, 65th Leg., p. 462, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.11. Warning Sign Required

(a) Each holder of a license shall display in a prominent place on his premises a sign, at least 6 inches high and 14 inches wide, stating: FELONY. STATE LAW PRESCRIBES A MAXIMUM PENALTY OF TEN YEARS' IMPRISONMENT AND A FINE NOT TO EXCEED \$5,000 FOR CARRYING WEAPONS WHERE ALCOHOLIC BEVERAGES ARE SOLD, SERVED, OR CONSUMED.

(b) A licensee who violates this section commits a misdemeanor punishable by a fine of not more than \$25.

[Acts 1977, 65th Leg., p. 462, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.12. Restriction on Consumption

No licensee except a holder of a license authorizing on-premises consumption of beer may permit beer to be consumed on the premises where it is sold.

[Acts 1977, 65th Leg., p. 462, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 61.13 to 61.30 reserved for expansion]

SUBCHAPTER B. APPLICATION AND
ISSUANCE OF LICENSES

§ 61.31. Application for License

(a) A person may file an application for a license to manufacture, distribute, or sell beer in termtime or vacation with the county judge of the county in which he desires to conduct business. He shall file the application in duplicate.

(b) The county judge shall set the application for a hearing to be held not less than 5 nor more than 10 days after the application is filed.

(c) Each applicant for an original license, other than a branch or temporary license, shall pay a hearing fee of \$5 to the county clerk at the time of the hearing. The county clerk shall deposit the fee in the county treasury. The applicant is liable for no other fee except the annual license fee prescribed by this code.

(d) No person may sell beer during the pendency of his original license application. No official may advise a person to the contrary.

[Acts 1977, 65th Leg., p. 462, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.32. Hearing by County Judge

(a) On hearing an application, if the county judge finds that all facts stated in the application are true and no legal ground to refuse a license exists, he shall enter an order certifying those findings and give the applicant a copy of the order. If the county judge finds otherwise, he shall enter an order accordingly.

(b) If the county judge enters an order favorable to the applicant, the applicant shall present a copy of the order to the assessor and collector of taxes of the county and pay that officer the appropriate license fee. The assessor and collector of taxes then shall report to the commission on a form prescribed by the commission, certifying that the application was approved and that all required fees have been paid and furnishing any other information the commission requires. The assessor and collector of taxes shall attach a copy of the original application to the report.

(c) In the case of an application to sell beer at retail, the county judge shall give due consideration to any recommendations made by representatives of the commission, the sheriff or county or district attorney of the county where the license is sought, or the mayor or chief of police of the incorporated city where the applicant seeks to conduct business.

[Acts 1977, 65th Leg., p. 462, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.33. Action by Commission or Administrator

(a) On receiving a report from the assessor and collector of taxes under Section 61.32(b) of this code, the commission or administrator shall issue the appropriate license if the commission or administrator

finds that the applicant is entitled to a license. The license shall show the class of business the applicant is authorized to conduct, the amount of fees paid, the address of the place of business, the date the license is issued and the date it expires, and any other information the commission considers proper.

(b) The commission or administrator may refuse to issue a license after receiving the report of the assessor and collector of taxes if the commission or administrator possesses information from which it is determined that any statement in the license application is false or misleading or that there is other legal reason why a license should not be issued. If the commission or administrator refuses to issue a license, it or he shall enter an order accordingly and the applicant is entitled to a refund of any license fee he paid the assessor and collector of taxes in connection with the application.

[Acts 1977, 65th Leg., p. 463, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.34. Appeal From Denial

(a) If the county judge, commission, or administrator denies an application, the applicant may appeal within 30 days from the date the order becomes final and appealable to the district court of the county where the application was made. The appeal is governed by Section 11.67 of this code, and the court may hear the appeal in termtime or vacation.

(b) If the judgment of the district court is in favor of the applicant, regardless of whether an appeal is taken, a copy of the judgment shall be presented to the assessor and collector of taxes of the county where the application was made. The assessor and collector of taxes shall accept the fees required by this code and proceed as provided under Section 61.32 of this code as if the county judge had approved the application.

(c) If a license is issued on the basis of a district court judgment and that judgment is reversed on appeal, the mandate of the appellate court automatically invalidates the license and the applicant is entitled to a proportionate refund of fees for the unexpired portion of the license. As much of the proceeds from license fees collected under this subtitle as is necessary may be appropriated for the payment of those refunds.

(d) A person appealing from an order under this section shall give bond for all costs incident to the appeal and shall be required to pay those costs if the judgment on appeal is unfavorable to the applicant, but not otherwise. No bond is required on appeals filed on behalf of the state.

[Acts 1977, 65th Leg., p. 463, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.35. License Fees

(a) A separate license fee is required for each place of business that manufactures, imports, or sells beer.

(b) All license fees, except those for temporary licenses, shall be deposited as provided in Section 205.02 of this code. The assessor and collector of taxes shall make statements of the amounts collected by him under this code to the commission at the times and in the manner required by the commission or administrator.

(c) No licensee may obtain a refund on the surrender or nonuse of a license except as provided by this code.

(d) If a licensee engaged in selling beer is prevented from continuing in business by a local option election, he is entitled to a refund of a proportionate amount of the license fees he has paid covering the unexpired term of his license. As much of the proceeds derived under the provisions of this subtitle as is necessary may be appropriated for that purpose.

[Acts 1977, 65th Leg., p. 464, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.36. Local Fee Authorized

(a) The governing body of an incorporated city or town may levy and collect a fee not to exceed one-half of the state fee for each license, except a temporary or agent's beer license, issued for premises located within the city or town. The commissioners court of a county may levy and collect a fee equal to one-half the state fee for each license, except a temporary or agent's beer license, issued for premises located within the county. Those authorities may not levy or collect any other fee or tax from the licensee except general ad valorem taxes, the hotel occupancy tax levied under Chapter 63, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 1269j-4.1, Vernon's Texas Civil Statutes), and the local sales and use tax levied under the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes).

(b) The commission or administrator may cancel a license if it finds the permittee has not paid a fee levied by a city under this section. A licensee who sells an alcoholic beverage without first having paid a fee levied under this section commits a misdemeanor punishable by a fine of not less than \$10 nor more than \$200.

(c) Nothing in this code shall be construed as a grant to any political subdivision of the authority to regulate licensees except by collecting the fees authorized in this section and exercising those powers granted to political subdivisions by other provisions of this code.

[Acts 1977, 65th Leg., p. 464, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.37. Certification of Wet or Dry Status

(a) The county clerk of the county in which an application for a license is made shall certify whether the location or address given in the application is in a wet area and whether the sale of alcoholic beverages for which the license is sought is prohibited by any valid order of the commissioners court.

(b) The city secretary or clerk of the city in which an application for a license is made shall certify whether the location or address given in the application is in a wet area and whether the sale of alcoholic beverages for which the license is sought is prohibited by charter or ordinance.

[Acts 1977, 65th Leg., p. 464, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.38. Notice of Application

(a) When an application for a license to manufacture or distribute beer is filed, the county clerk shall post at the courthouse door a written notice containing the substance of the application and the date set for hearing.

(b) When an original application to sell beer at retail at a location previously licensed is filed, the county clerk shall post at the courthouse door a written notice containing the substance of the application and the date set for hearing.

(c) When an original application to sell beer at retail at a location not previously licensed is filed, the county clerk shall publish notice for two consecutive issues in a newspaper of general circulation published in the city or town in which the applicant's place of business is to be located. If no newspaper of general circulation is published in that city or town, the notice shall be published in a newspaper of general circulation in the county where the applicant's business is to be located. If no newspaper of general circulation is published in that county, the notice shall be published in a newspaper which is published in the closest neighboring county and is circulated in the county where the license is sought. The notice shall be in 10-point boldface type and shall set forth the type of license applied for; the exact location of the business; the name of the owner or owners; the trade name, if operating under an assumed name; and in the case of a corporate applicant, the names and titles of all officers of the corporation. At the time the application is filed, the applicant shall deposit with the clerk the cost of publishing notice, which the clerk shall use to pay for the publication.

[Acts 1977, 65th Leg., p. 465, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.39. May Contest Application

Any person may contest the facts stated in an application for a license to distribute, manufacture, or sell beer at retail, or the applicant's right to secure a license, if he gives security for all costs which may be incurred in the contest if the case should be decided in favor of the applicant. No security for costs may be required of an officer of a county or incorporated city or town.

[Acts 1977, 65th Leg., p. 465, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.40. Premises Ineligible for License

Section 11.44 of this code, which describes certain premises that are ineligible for a license, applies to licenses issued under this subtitle.

[Acts 1977, 65th Leg., p. 465, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.41. Second License at Same Location; Effect on Existing License

No license may be issued for a premises, location, or place of business for which a license is in effect unless the holder of the existing license has shown to the satisfaction of the commission that he will no longer exercise any privilege granted by the existing license at that location. If the holder of the existing license desires to transfer the license to another location, he may apply for a transfer of location in accordance with this code. If the holder of the existing license has made a declaration required by the commission that he will no longer use the license, he may not manufacture or sell beer or possess it for the purpose of sale until the license has been reinstated. The holder may apply to the county judge for the reinstatement of his license in the same manner and according to the same procedure as in the case of an original license application. The county judge or the commission or administrator may deny reinstatement of the license for any cause for which an original license application may be denied.

[Acts 1977, 65th Leg., p. 465, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.42. Mandatory Grounds for Refusal: Distributor or Retailer

The county judge shall refuse to approve an application for a license as a distributor or retailer if he has reasonable grounds to believe and finds that:

- (1) the applicant is under 18 years of age;
- (2) the applicant is indebted to the state for any taxes, fees, or penalties imposed by this code or by rule of the commission;
- (3) the place or manner in which the applicant for a retail dealer's license may conduct his business warrants a refusal of a license based on the general welfare, health, peace, morals, safety, and sense of decency of the people;
- (4) the applicant is in the habit of using alcoholic beverages to excess or is mentally or physically incompetent;
- (5) the applicant is not a United States citizen or has not been a citizen of Texas for a period of three years immediately preceding the filing of his application, unless he was issued an original or renewal license on or before September 1, 1948;
- (6) the applicant was finally convicted of a felony during the two years immediately preceding the filing of his application;

(7) the applicant is not of good moral character or his reputation for being a peaceable, law-abiding citizen in the community where he resides is bad; or

(8) as to a corporation, that it is not incorporated under the laws of this state, or that less than 51 percent of the corporate stock is not owned at all times by persons who individually are qualified to obtain a license, except that this subdivision does not apply to a holder of any renewal of a distributor's license which was in effect on January 1, 1953, or to an applicant for a beer retailer's on-premise license for a railway car.

[Acts 1977, 65th Leg., p. 466, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.43. Discretionary Grounds for Refusal: Distributor or Retailer

The county judge may refuse to approve an application for a license as a distributor or retailer if he has reasonable grounds to believe and finds that:

(1) the applicant has been finally convicted in a court of competent jurisdiction for the violation of a provision of this code during the two years immediately preceding the filing of his application;

(2) two years has not elapsed since the termination, by pardon or otherwise, of a sentence imposed for conviction of a felony;

(3) the applicant has violated or caused to be violated a provision of this code or a rule or regulation of the commission, for which a suspension was not imposed, during the 12-month period immediately preceding the filing of his application;

(4) the applicant failed to answer or falsely or incorrectly answered a question in his original or renewal application;

(5) the applicant for a retail dealer's license does not have an adequate building available at the address for which the license is sought;

(6) the applicant or a person with whom he is residentially domiciled had an interest in a license or permit which was cancelled or revoked within the 12-month period immediately preceding the filing of his application;

(7) the applicant failed or refused to furnish a true copy of his application to the commission's district office in the district in which the premises sought to be licensed are located;

(8) the premises on which beer is to be sold for on-premises consumption does not have running water, if it is available, or does not have separate free toilets for males and females, properly identified, on the premises for which the license is sought;

(9) the applicant for a retail dealer's license will conduct his business in a manner contrary to law or in a place or manner conducive to a violation of the law; or

(10) the place, building, or premises for which the license is sought was used for selling alcoholic beverages in violation of the law at any time during the six months immediately preceding the filing of the application or was used, operated, or frequented during that time for a purpose or in a manner which was lewd, immoral, offensive to public decency, or contrary to this code.

[Acts 1977, 65th Leg., p. 466, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.44. Refusal of Distributor's or Retailer's License: Prohibited Interests

(a) The county judge may refuse to approve an application for a license as a distributor or retailer if he has reasonable grounds to believe and finds that:

(1) the applicant has a financial interest in an establishment authorized to sell distilled spirits, except as authorized in Section 22.06, 24.05, or 102.05 of this code;

(2) a person engaged in the business of selling distilled spirits has a financial interest in the business to be conducted under the license sought by the applicant, except as authorized in Section 22.06, 24.05, or 102.05 of this code; or

(3) the applicant is residentially domiciled with a person who has a financial interest in an establishment engaged in the business of selling distilled spirits, except as authorized in Section 22.06, 24.05, or 102.05 of this code.

(b) The county judge may refuse to approve an application for a retail dealer's license if he has reasonable grounds to believe and finds that:

(1) the applicant has a real interest in the business or premises of the holder of a manufacturer's or distributor's license; or

(2) the premises sought to be licensed are owned in whole or part by the holder of a manufacturer's or distributor's license.

[Acts 1977, 65th Leg., p. 467, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.45. Refusal of Retailer's or Distributor's License: Prohibited Interest in Premises

(a) The county judge may refuse to approve an application for a retail dealer's license if he has reasonable grounds to believe and finds that:

(1) the applicant owns or has an interest in the premises covered by a manufacturer's or distributor's license; or

(2) the holder of a manufacturer's or distributor's license owns or has an interest in the premises sought to be licensed.

(b) The county judge may refuse to approve an application for a distributor's license if he has reasonable grounds to believe and finds that:

(1) the applicant owns or has an interest in the premises covered by a retail dealer's license; or

(2) a holder of a retail dealer's license owns or has an interest in the premises sought to be licensed.

[Acts 1977, 65th Leg., p. 467, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.46. Manufacturer's License: Grounds for Refusal

(a) This section applies to any applicant for a manufacturer's license, including a domestic corporation or foreign corporation qualified to do business in Texas, administrator or executor, or other person. This section does not apply to a holder of a subsequent renewal of a manufacturer's license which was in effect on January 1, 1953.

(b) The county judge shall refuse to approve an application for a manufacturer's license if he has reasonable grounds to believe and finds that the applicant has failed to state under oath that it will engage in the business of brewing and packaging beer in this state within three years after the issuance of its original license in sufficient quantities as to make its operation that of a bona fide brewing manufacturer.

(c) In the case of a corporate applicant, the statement shall be sworn to and subscribed by one of the corporation's principal officers.

[Acts 1977, 65th Leg., p. 468, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.47. Retail License: Refusal by Commission or Administrator

If the county judge approves an application for a license as a retail dealer, the commission or administrator may refuse to issue a license for any reason which would have been a ground for the county judge to have refused to approve the application.

[Acts 1977, 65th Leg., p. 468, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.48. Renewal Application

An application to renew a license shall be filed in writing with the assessor and collector of taxes of the county in which the licensed premises are located no earlier than 30 days before the license expires but not after it expires. The application shall be signed by the applicant and shall contain complete information required by the commission showing that the applicant is not disqualified from holding a license. The application shall be accompanied by the appropriate license fee plus a filing fee of \$2. The assessor and collector of taxes shall deposit the \$2 filing fee in the county treasury and shall account for it as a fee of office. No applicant for a renewal may be required to pay any fee other than license fees and

the filing fee unless he is required by the commission or administrator to submit to a renewal hearing before the county judge.

[Acts 1977, 65th Leg., p. 468, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.49. Renewal Application Transmitted to Commission

When the renewal application has been filed in accordance with Section 61.48 of this code, the assessor and collector of taxes shall transmit to the commission the original copy of the application plus a certification that all required fees have been paid for the ensuing license period. On receiving the application and certification, the commission or administrator may in its discretion issue a renewal license or reject the application and require the applicant to file an application with the county judge and submit to a hearing as is required in the case of an original application. When an application for renewal is rejected, the applicant is entitled to a refund of any license fee that was paid to the assessor and collector of taxes at the time the renewal application was filed.

[Acts 1977, 65th Leg., p. 468, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.50. Renewal of Retail Dealer's License: Grounds for Refusal

The commission or administrator, without a hearing, may refuse to issue a renewal of a retail dealer's license and require the applicant to make an original application if it is found that circumstances exist which would warrant the refusal of an original application under any pertinent provision of this code.

[Acts 1977, 65th Leg., p. 468, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.51. Premises Defined; Designation of Licensed Premises

"Premises" is defined in Section 11.49 of this code. The designating of licensed premises by license applicants is also covered by that section.

[Acts 1977, 65th Leg., p. 469, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 61.52 to 61.70 reserved for expansion]

SUBCHAPTER C. CANCELLATION AND SUSPENSION OF LICENSES

§ 61.71. Grounds for Cancellation or Suspension: Retail Dealer

(a) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee:

(1) violated a provision of this code or a rule of the commission during the existence of the license sought to be cancelled or suspended or

during the immediately preceding license period;

(2) was finally convicted for violating a penal provision of this code;

(3) was finally convicted of a felony while holding an original or renewal license;

(4) made a false statement or a misrepresentation in his original application or a renewal application;

(5) knowingly sold, served, or delivered beer to a person under 18 years of age;

(6) sold, served, or delivered beer to a person showing evidence of intoxication;

(7) sold, served, or delivered beer at a time when its sale is prohibited;

(8) entered or offered to enter an agreement, condition, or system which would constitute the sale or possession of alcoholic beverages on consignment;

(9) possessed on the licensed premises, or on adjacent premises directly or indirectly under his control, an alcoholic beverage not authorized to be sold on the licensed premises, or permitted an agent, servant, or employee to do so, except as permitted by Section 22.06, 24.05, or 102.05 of this code;

(10) does not have at his licensed premises running water, if it is available, and separate toilets for both sexes which are properly identified;

(11) permitted a person on the licensed premises to engage in conduct which is lewd, immoral, or offensive to public decency;

(12) employed a person under 18 years of age to sell, handle, or dispense beer, or to assist in doing so, in an establishment where beer is sold for on-premises consumption;

(13) conspired with a person to violate Section 101.41–101.43, 101.68, 102.11–102.15, 104.04, 108.01, or 108.04–108.06 of this code, or a rule promulgated under Section 5.40 of this code, or accepted a benefit from an act prohibited by any of those sections or rules;

(14) refused to permit or interfered with an inspection of the licensed premises by an authorized representative of the commission or a peace officer;

(15) permitted the use or display of his license in the conduct of a business for the benefit of a person not authorized by law to have an interest in the license;

(16) maintained blinds or barriers at his place of business in violation of this code;

(17) conducted his business in a place or manner which warrants the cancellation or suspension of the license based on the general welfare,

health, peace, morals, safety, and sense of decency of the people;

(18) consumed an alcoholic beverage or permitted one to be consumed on the licensed premises at a time when the consumption of alcoholic beverages is prohibited by this code;

(19) purchased beer for the purpose of resale from a person other than the holder of a manufacturer's or distributor's license;

(20) acquired an alcoholic beverage for the purpose of resale from another retail dealer of alcoholic beverages;

(21) owned an interest of any kind in the business or premises of the holder of a distributor's license;

(22) purchased, sold, offered for sale, distributed, or delivered an alcoholic beverage, or consumed an alcoholic beverage or permitted one to be consumed on the licensed premises while his license was under suspension;

(23) purchased, possessed, stored, sold, or offered for sale beer in or from an original package bearing a brand or trade name of a manufacturer other than the brand or trade name shown on the container;

(24) habitually uses alcoholic beverages to excess, is mentally incompetent, or is physically unable to manage his establishment;

(25) imported beer into this state except as authorized by Section 107.07 of this code;

(26) occupied premises in which the holder of a manufacturer's or distributor's license had an interest of any kind;

(27) knowingly permitted a person who had an interest in a permit or license which was cancelled for cause to sell, handle, or assist in selling or handling alcoholic beverages on the licensed premises within one year after the cancellation;

(28) was financially interested in a place of business engaged in the selling of distilled spirits or permitted a person having an interest in that type of business to have a financial interest in the business authorized by his license, except as permitted by Section 22.06, 24.05, or 102.05 of this code;

(29) is residentially domiciled with or related to a person engaged in selling distilled spirits, except as permitted by Section 22.06, 24.05, or 102.05 of this code, so that there is a community of interests which the commission or administrator finds contrary to the purposes of this code; or

(30) is residentially domiciled with or related to a person whose license has been cancelled within the preceding 12 months so that there is

a community of interests which the commission or administrator finds contrary to the purposes of this code.

(b) Subdivisions (9), (28), (29), and (30) of Subsection (a) of this section do not apply to a licensee whose business is located in a hotel in which an establishment authorized to sell distilled spirits in unbroken packages is also located if the licensed premises of the businesses do not coincide or overlap.

(c) The grounds listed in Subsection (a) of this section, except the ground contained in Subdivision (2), also apply to each member of a partnership or association and, as to a corporation, to the president, manager, and owner of the majority of the corporate stock. This subsection shall not be construed as prohibiting anything permitted by Section 22.06, 24.05, or 102.05 of this code.

(d) The grounds set forth in Subdivisions (1), (4)-(14), (16), (18), (19), (21), (23), and (26), of Subsection (a) of this section, also apply to an agent, servant, or employee of the licensee.

[Acts 1977, 65th Leg., p. 469, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.72. Suspension or Cancellation: Retailer: Premises

Except for a violation of the credit or cash law, a penalty of suspension or cancellation of the license of a retail dealer shall be assessed against the license for the premises where the offense was committed.

[Acts 1977, 65th Leg., p. 471, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.73. Retail Dealer: Credit Purchase or Dishonored Check

(a) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee purchased beer or the containers or original packages in which it is contained or packaged except by cash payment to the seller on or before delivery. No holder of either type of license may use a maneuver, device, subterfuge, or shift by which credit is accepted, including payment or attempted payment by a postdated check or draft. Credit for the return of unbroken or undamaged containers or original packages previously paid for by the purchaser may be accepted as cash by the seller in an amount not more than the amount originally paid for them by the purchaser.

(b) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal retail dealer's on- or off-premise license if it is found, after notice and hearing, that the licensee gave a check, as maker or endorser, or a draft, as drawer or endorser, as full or partial payment for beer or the containers or packages in which it is contained or packaged, which is dishonored when presented for payment.

[Acts 1977, 65th Leg., p. 471, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.74. Grounds for Cancellation or Suspension: Distributor

(a) The commission or administrator may suspend for not more than 60 days or cancel an original or renewal general, local, or branch distributor's license if it is found, after notice and hearing, that the licensee:

(1) violated a provision of this code or a rule of the commission during the existence of the license sought to be cancelled or suspended or during the immediately preceding license period;

(2) was finally convicted for violating a penal provision of this code;

(3) was finally convicted of a felony while holding an original or renewal license;

(4) violated Section 101.41-101.43, 101.68, 102.11-102.15, 104.04, 108.01, or 108.04-108.06 of this code, or a rule or regulation promulgated under Section 5.40 of this code;

(5) failed to comply with a requirement of the commission relating to the keeping of records or making of reports;

(6) failed to pay any tax due the state on any beer he sold, stored, or transported;

(7) refused to permit or interfered with an inspection of his licensed premises, vehicles, books, or records by an authorized representative of the commission;

(8) consummated a sale of beer outside the county or counties in which he was authorized to sell beer by his license;

(9) purchased, sold, offered for sale, distributed, or delivered beer while his license was under suspension;

(10) permitted the use of his license in the operation of a business conducted for the benefit of a person not authorized by law to have an interest in the business;

(11) made a false or misleading representation or statement in his original application or a renewal application;

(12) habitually uses alcoholic beverages to excess, is mentally incompetent, or is physically unable to manage his establishment;

(13) misrepresented any beer sold by him to a retailer or to the public;

(14) employed a person under 18 years of age to sell, deliver, or distribute beer, or to assist in doing so;

(15) knowingly sold or delivered beer to a person under 18 years of age; or

(16) purchased, possessed, stored, sold, or offered for sale beer in an original package bearing a brand or trade name of a manufacturer other than the brand or trade name of the manufacturer shown on the container.

(b) Each ground specified in Subsection (a) of this section also applies to each member of a partnership or association and, as to a corporation, to the president, manager, and owner of the majority of the corporate stock. The grounds specified in Subdivisions (7)-(9) and (13)-(16) also apply to an agent, servant, or employee of the licensee.
[Acts 1977, 65th Leg., p. 471, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.75. Suspension of Manufacturer's License

If a manufacturer violates a provision of this code or a rule of the commission, the commission or administrator may order the manufacturer to cease and desist from the violation and may suspend its license, after notice and hearing, until the licensee obeys the order.
[Acts 1977, 65th Leg., p. 472, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.76. Suspension Instead of Cancellation

When a cause for the cancellation of a license is prescribed by this code, the commission or administrator has the discretionary authority to suspend the license for not more than 60 days rather than to cancel the license.
[Acts 1977, 65th Leg., p. 472, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.761. Alternatives to Suspension, Cancellation

Section 11.64 of this code relates to alternatives to the suspension or cancellation of a license.
[Added by Acts 1977, 65th Leg., p. 1183, ch. 453, § 8, eff. Sept. 1, 1977.]

§ 61.77. Certain Acts Also Violations of Code

Any act of omission or commission which is a ground for cancellation or suspension of a license under Section 61.71, 61.74, or 61.75 of this code is also a violation of this code, punishable as provided in Section 1.05 of this code, except that the penalty for making a false statement in an application for a license or in a statement, report, or other instrument to be filed with the commission, which is required to be sworn, is provided in Section 101.69 of this code.
[Acts 1977, 65th Leg., p. 472, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.78. Violator Not Excused by Cancellation or Suspension

The cancellation or suspension of a license does not excuse the violator from the penalties provided in this code.
[Acts 1977, 65th Leg., p. 472, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.79. Notice of Hearing: Refusal, Cancellation, or Suspension of License

Section 11.63 of this code relates to notice of a hearing for the refusal, cancellation, or suspension of a license.
[Acts 1977, 65th Leg., p. 473, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.80. Hearing for Cancellation or Suspension of License

The commission or administrator, on the motion of either, may set a date for a hearing to determine if a license should be cancelled or suspended. The commission or administrator shall set a hearing on the petition of the mayor or chief of police of the city or town in which the licensed premises are located or of the county judge, sheriff, or county attorney of the county in which the licensed premises are located. The commission or administrator shall notify the licensee of the hearing and of his right to appear and show cause why his license should not be cancelled or suspended.
[Acts 1977, 65th Leg., p. 473, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.81. Appeal From Cancellation, Suspension, or Refusal of License

Section 11.67 of this code applies to an appeal from a decision or order of the commission or administrator refusing, cancelling, or suspending a license.
[Acts 1977, 65th Leg., p. 473, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.82. May Not Restrain Suspension Order

No suit of any nature may be maintained in a court of this state to restrain the commission or administrator or any other officer from enforcing an order of suspension issued by the commission or administrator.
[Acts 1977, 65th Leg., p. 473, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.83. Cancellation or Suspension: When Effective

The manner in which the suspension or cancellation of a license takes effect is governed by Section 11.65 of this code.
[Acts 1977, 65th Leg., p. 473, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.84. Activities Prohibited During Cancellation or Suspension

(a) No person whose license is cancelled may sell or offer for sale beer for a period of one year immediately following the cancellation, unless the order of cancellation is superseded pending trial or unless he prevails in a final judgment rendered on an appeal prosecuted in accordance with this code.

(b) No person may sell or offer for sale an alcoholic beverage which he was authorized to sell under a license after the license has been suspended. If it is established to the satisfaction of the commission or administrator at a hearing that an alcoholic beverage was sold on or from a licensed premise during a period of suspension, the commission or administrator may cancel the license.
[Acts 1977, 65th Leg., p. 473, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 61.85. Disposal of Stock on Termination of License

(a) A person whose license is cancelled or forfeited may, within 30 days of the cancellation or forfeiture, make a bulk sale or disposal of any stock of beer on hand at the time of the cancellation or forfeiture.

(b) The authority of the commission to promulgate rules relating to the disposal of beverages in bulk on the suspension or cancellation of a license or on the death, insolvency, or bankruptcy of a licensee is covered by Section 11.69 of this code.

[Acts 1977, 65th Leg., p. 473, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 62. MANUFACTURER'S LICENSE

Section

- 62.01. Authorized Activities.
- 62.02. Fee.
- 62.03. Statement of Intention.
- 62.04. Renewal of License During Preliminary Stages of Operation.
- 62.05. Records.
- 62.06. Issuance of Brewer's Permit.
- 62.07. Importation of Beer: Containers, Use of Tank Cars.
- 62.08. Warehouses; Delivery Trucks.
- 62.09. Beer for Export.
- 62.10. Sale of Beer to Private Clubs.
- 62.11. Continuance of Operation After Local Option Election.

§ 62.01. Authorized Activities

The holder of a manufacturer's license may:

- (1) manufacture or brew beer and distribute and sell it to others;
- (2) dispense beer for consumption on the premises; and
- (3) bottle and can beer and pack it into containers for resale in this state, regardless of whether the beer is manufactured or brewed in this state or in another state and imported into Texas.

[Acts 1977, 65th Leg., p. 474, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 62.02. Fee

(a) Each person who establishes, operates, or maintains one or more licensed manufacturing establishments in this state under the same general management or ownership shall pay an annual state fee as follows:

- (1) the fee for the first establishment is \$500;
- (2) the fee for the second establishment is \$1,000;
- (3) the fee for the third, fourth, and fifth establishments is \$2,850 for each establishment; and
- (4) the fee for each establishment in excess of five is \$5,600.

(b) For the purposes of this section, two or more establishments are under the same general management or ownership if:

- (1) they bottle the same brand of beer or beer brewed by the same manufacturer; or
- (2) the persons (regardless of domicile) who establish, operate, or maintain the establishments are controlled or directed by one management or by an association of ultimate management.

[Acts 1977, 65th Leg., p. 474, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 62.03. Statement of Intention

(a) Each applicant for a manufacturer's license shall file with his application a sworn statement that he will be engaged in the business of brewing and packaging beer in Texas in quantities sufficient to make of his operation that of a bona fide brewing manufacturer within three years of the issuance of his original license. If the applicant is a corporation, the statement must be signed by one of its principal officers. The county judge shall not approve an application unless it is accompanied by the required sworn statement.

(b) This section does not apply to the holder of a manufacturer's license which was in effect on January 1, 1953.

[Acts 1977, 65th Leg., p. 474, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 62.04. Renewal of License During Preliminary Stages of Operation

(a) A renewal of a manufacturer's license may not be denied during the two-year period following the issuance of the original license on the ground that the licensee has not brewed and packaged beer in this state if the licensee is engaged in good faith in constructing a brewing plant on the licensed premises or is engaged in one of the following preparatory stages of construction:

- (1) preliminary engineering;
- (2) preparing drawings and specifications;
- (3) conducting engineering, architectural, or equipment studies; or
- (4) preparing for the taking of bids from contractors.

(b) During the three-year period following the issuance of a manufacturer's license, as long as the licensee is engaged in construction or in a preliminary stage of construction enumerated in Subsection (a) of this section, the commission shall issue each renewal license to take effect immediately on the expiration of the expiring license and shall not require the licensee to make an original application.

(c) After two years and 11 months has expired following the issuance of an original manufacturer's license, the commission shall not issue a renewal license if it finds that the licensee has not complied

with his sworn statement filed with his original application or that he has not begun construction of a plant or initiated any of the preliminary stages of construction enumerated in Subsection (a) unless the commission also finds that the applicant has been prevented from doing so by causes beyond his reasonable control. If the commission finds that the licensee has been prevented from complying by causes beyond his reasonable control, it may grant one additional renewal for the licensee to comply with the terms of his sworn statement. Otherwise, the commission shall deny the renewal application and may not grant a subsequent original application by the licensee for a period of two years following the date of the denial.

(d) This section does not apply to the holder of a license that was in effect on January 1, 1953. [Acts 1977, 65th Leg., p. 475, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 62.05. Records

(a) The holder of a manufacturer's license shall make and keep a record of each day's production or receipt of beer and of every sale of beer, including the name of each purchaser. Each transaction shall be recorded on the day it occurs. The licensee shall make and keep any other records that the commission or administrator requires.

(b) All required records shall be kept available for inspection by the commission or its authorized representative during reasonable office hours for at least two years.

(c) The failure to make or keep a record as required by this section, the making of a false entry in the record, or the failure to make an entry as required by this section is a violation of this code. [Acts 1977, 65th Leg., p. 475, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 62.06. Issuance of Brewer's Permit

A holder of a manufacturer's license is entitled to be issued an original or renewal brewer's permit for the same location on application to the commission and payment of the required fee.

[Acts 1977, 65th Leg., p. 475, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 62.07. Importation of Beer: Containers, Use of Tank Cars

The holder of a manufacturer's license may import beer into this state in barrels or other containers in accordance with the provisions of this code. No person may ship beer into the state in tank cars. [Acts 1977, 65th Leg., p. 476, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 62.08. Warehouses; Delivery Trucks

(a) The holder of a manufacturer's or distributor's license may maintain or engage necessary warehouses for storage purposes in areas where the sale of beer is lawful and may make deliveries from the warehouses without obtaining licenses for them.

The licensee may not import beer from outside the state directly or indirectly to an unlicensed warehouse.

(b) A warehouse or railway car in which orders for the sale of beer are taken or money from the sale of beer is collected is a separate place of business for which a license is required.

(c) A truck operated by a licensed manufacturer or distributor for the sale and delivery of beer to a licensed retail dealer at the dealer's place of business is not a separate place of business for which a license is required.

(d) The commission shall promulgate rules governing the transportation of beer, the sale of which is to be consummated at a licensed retailer's place of business.

[Acts 1977, 65th Leg., p. 476, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 62.09. Beer for Export

Regardless of any other provision of this code, a holder of a manufacturer's license may brew and package malt beverages or import them from outside the state, for shipment out of the state, even though the alcohol content, containers, packages, or labels make the beverages illegal to sell within the state. The licensee may export the beverages out of state or deliver them at his premises for shipment out of the state without being liable for any state tax on beer, ale, or malt liquor sold for resale in the state.

[Acts 1977, 65th Leg., p. 476, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 62.10. Sale of Beer to Private Clubs

The holder of a manufacturer's license may sell and deliver beer to private clubs located in wet areas without having to secure a prior order. All sales made under the authority of this section must be made in accordance with Sections 61.73 and 102.31 of this code.

[Acts 1977, 65th Leg., p. 476, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 62.11. Continuance of Operation After Local Option Election

The right of a manufacturer's licensee to continue operation after a prohibitory local option election is covered by Section 251.75 of this code.

[Acts 1977, 65th Leg., p. 476, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 63. NONRESIDENT MANUFACTURER'S LICENSE

Section

- 63.01. Authorized Activities.
- 63.02. Fee.
- 63.03. Liability for Taxes; Bond.
- 63.04. Application of Code Provisions and Rules.

§ 63.01. Authorized Activities

The holder of a nonresident manufacturer's license may transport beer into Texas to holders of import-

er's licenses in carriers or vehicles operated by holders of carrier's permits or in motor vehicles owned or leased by the nonresident manufacturer. The beer must be shipped in barrels or other containers in accordance with the provisions of this code and may not be shipped into the state in tank cars.

[Acts 1977, 65th Leg., p. 476, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 63.02. Fee

The annual state fee for a nonresident manufacturer's license is \$500. No county or city is entitled to a fee for the issuance of the license.

[Acts 1977, 65th Leg., p. 477, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 63.03. Liability for Taxes; Bond

The holder of a nonresident manufacturer's license that transports beer into Texas in a motor vehicle owned or leased by him is not primarily responsible for the payment of the taxes on the beer, which remains the responsibility of the holder of the importer's license. However, the nonresident manufacturer shall furnish the commission with a bond in an amount which, in the commission's judgment, will protect the revenue of the state from the tax due on the beer over any six-week period.

[Acts 1977, 65th Leg., p. 477, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 63.04. Application of Code Provisions and Rules

A holder of a nonresident manufacturer's license is subject to all applicable provisions of this code and all applicable rules of the commission which apply to holders of manufacturer's licenses, including rules relating to the quality, purity, and identity of beer and to protecting the public health. The commission may suspend or cancel a nonresident manufacturer's license and apply penalties in the same manner as it does with respect to a manufacturer's license.

[Acts 1977, 65th Leg., p. 477, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 64. GENERAL DISTRIBUTOR'S LICENSE

Section

- 64.01. Authorized Activities.
- 64.02. Fee.
- 64.03. Sale of Beer to Private Clubs.
- 64.04. Records.
- 64.05. Persons Ineligible for License.
- 64.06. Warehouses; Delivery Trucks.
- 64.07. May Share Premises.

§ 64.01. Authorized Activities

The holder of a general distributor's license may:

- (1) receive beer in unbroken original packages from manufacturers and from general, local, or branch distributors;

- (2) distribute or sell beer in the unbroken original packages in which it is received to general, branch, or local distributors, to retail dealers, or to ultimate consumers; and

- (3) serve free beer for consumption on the licensed premises.

[Acts 1977, 65th Leg., p. 477, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 64.02. Fee

The annual state fee for a general distributor's license is \$200.

[Acts 1977, 65th Leg., p. 477, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 64.03. Sale of Beer to Private Clubs

The holder of a general distributor's license may sell and deliver beer to private clubs located in wet areas without having to secure a prior order. All sales made under the authority of this section must be made in accordance with Sections 61.73 and 102.31 of this code.

[Acts 1977, 65th Leg., p. 477, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 64.04. Records

(a) Each holder of a general, local, or branch distributor's license shall make and keep a daily record of every receipt of beer and of every sale of beer, including the name of each purchaser. Each transaction shall be recorded on the day it occurs. The licensee shall make and keep any other records that the commission or administrator requires.

(b) All required records shall be kept available for inspection by the commission or its authorized representative during reasonable office hours for at least two years.

(c) The failure to make or keep a record as required by this section, the making of a false entry in the record, or the failure to make an entry as required by this section is a violation of this code.

[Acts 1977, 65th Leg., p. 478, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 64.05. Persons Ineligible for License

A general distributor's license may not be issued to a person who is the holder of a package store permit or a wine only package store permit.

[Acts 1977, 65th Leg., p. 478, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 64.06. Warehouses; Delivery Trucks

Section 62.08 of this code applies to the use of warehouses and delivery trucks by general distributor's licensees.

[Acts 1977, 65th Leg., p. 478, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 64.07. May Share Premises

Any number of general, local, and branch distributors may use the same premises, location, or place of business as licensed premises if the beer owned and stored by each of the distributors is segregated.

[Acts 1977, 65th Leg., p. 478, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 65. LOCAL DISTRIBUTOR'S LICENSE

Section

- 65.01. Authorized Activities.
- 65.02. Fee.
- 65.03. Sale of Beer to Private Clubs.
- 65.04. Records.
- 65.05. Persons Ineligible for License.
- 65.06. Warehouses; Delivery Trucks.
- 65.07. May Share Premises.

§ 65.01. Authorized Activities

The holder of a local distributor's license may:

(1) receive beer in unbroken original packages from manufacturers and from general, branch, or local distributors;

(2) sell and distribute beer in the unbroken original packages in which it is received to retail dealers and ultimate consumers in the county of the licensee's residence or to other licensed distributors in the state; and

(3) serve free beer for consumption on the licensed premises.

[Acts 1977, 65th Leg., p. 478, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 65.02. Fee

The annual state fee for a local distributor's license is \$50.

[Acts 1977, 65th Leg., p. 478, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 65.03. Sale of Beer to Private Clubs

The holder of a local distributor's license may sell and deliver beer to private clubs located in wet areas without having to secure a prior order. All sales made under the authority of this section must be made in accordance with Sections 61.73 and 102.31 of this code.

[Acts 1977, 65th Leg., p. 479, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 65.04. Records

Section 64.04 of this code applies to recordkeeping by local distributor's licensees.

[Acts 1977, 65th Leg., p. 479, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 65.05. Persons Ineligible for License

A local distributor's license may not be issued to any person who is the holder of a package store permit or a wine only package store permit.

[Acts 1977, 65th Leg., p. 479, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 65.06. Warehouses; Delivery Trucks

Section 62.08 of this code applies to the use of warehouses and delivery trucks by local distributor's licensees.

[Acts 1977, 65th Leg., p. 479, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 65.07. May Share Premises

The sharing of premises by distributors is covered by Section 64.07 of this code.

[Acts 1977, 65th Leg., p. 479, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 66. BRANCH DISTRIBUTOR'S LICENSE

Section

- 66.01. Authorized Activities.
- 66.02. Fee.
- 66.03. Issuance of License.
- 66.04. Persons Ineligible for License.
- 66.05. Expiration of License.
- 66.06. Renewal of License.
- 66.07. Sale of Beer to Private Clubs.
- 66.08. Records.
- 66.09. Warehouses; Delivery Trucks.
- 66.10. May Share Premises.

§ 66.01. Authorized Activities

The holder of a branch distributor's license may engage in the same activities as a holder of a general distributor's license.

[Acts 1977, 65th Leg., p. 479, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 66.02. Fee

(a) The annual state fee for a branch distributor's license is \$50.

(b) The fee for any license required to terminate in less than one year from the date of issuance is \$4.25 for each month or part of a month and must be paid in advance.

[Acts 1977, 65th Leg., p. 479, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 66.03. Issuance of License

(a) Except as provided in Subsection (b) of this section, a branch distributor's license may be issued only to the holder of a manufacturer's or general distributor's license who first has obtained the primary license in the county of his residence or domicile. The branch distributor's license may be issued for premises in any county where the sale of beer is legal.

(b) A manufacturer's or general distributor's licensee whose primary license was voided by a local option election under prior law, who took advantage of the right then existing to obtain a primary license in another county where he held a branch distributor's license without qualifying as a resident or domiciliary of that county, is not prevented from continuing to renew the primary license or from holding one or more branch licenses by the fact that the primary license is not in the county of his residence or domicile.

[Acts 1977, 65th Leg., p. 479, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 66.04. Persons Ineligible for License

A branch distributor's license may not be issued to a person who holds a package store permit or a wine only package store permit.

[Acts 1977, 65th Leg., p. 480, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 66.05. Expiration of License

A branch distributor's license expires at the same time as the holder's primary license.

[Acts 1977, 65th Leg., p. 480, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 66.06. Renewal of License

Application for renewal of a branch distributor's license may be made concurrently with the filing of the application for the renewal of the holder's primary license.

[Acts 1977, 65th Leg., p. 480, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 66.07. Sale of Beer to Private Clubs

The holder of a branch distributor's license may sell and deliver beer to private clubs located in wet areas without having to secure a prior order. All sales made under the authority of this section must be made in accordance with Sections 61.73 and 102.31 of this code.

[Acts 1977, 65th Leg., p. 480, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 66.08. Records

Section 64.04 of this code applies to recordkeeping by branch distributor's licensees.

[Acts 1977, 65th Leg., p. 480, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 66.09. Warehouses; Delivery Trucks

Section 62.08 of this code applies to the use of warehouses and delivery trucks by branch distributor's licensees.

[Acts 1977, 65th Leg., p. 480, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 66.10. May Share Premises

The sharing of premises by distributors is covered by Section 64.07 of this code.

[Acts 1977, 65th Leg., p. 480, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 67. IMPORTER'S LICENSE

- Section
- 67.01. Authorized Activities.
- 67.02. Fee.
- 67.03. Definition.
- 67.04. Eligibility for License.
- 67.05. Expiration of License.
- 67.06. Application for License.

§ 67.01. Authorized Activities

A holder of an importer's license may import beer into this state by a railway carrier, or by a common motor carrier operated under a certificate of convenience and necessity issued by the Railroad Commission of Texas or by the Interstate Commerce Commission. Each carrier must hold a carrier's permit issued under Chapter 41 of this code. All provisions of Chapter 41 relating to the transportation of liquor also apply to the transportation of beer. A carrier may not transport beer into the state unless it is consigned to an importer.

[Acts 1977, 65th Leg., p. 481, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 67.02. Fee

The fee for an importer's license is \$5 per year or fraction of a year.

[Acts 1977, 65th Leg., p. 481, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 67.03. Definition

As used in this subtitle, "importer" means a person who imports beer into the state in quantities in excess of 288 fluid ounces in any one day.

[Acts 1977, 65th Leg., p. 481, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 67.04. Eligibility for License

An importer's license may be issued only to a holder of a manufacturer's or distributor's license.

[Acts 1977, 65th Leg., p. 481, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 67.05. Expiration of License

An importer's license expires at the same time as the primary manufacturer's or distributor's license under which it is issued.

[Acts 1977, 65th Leg., p. 481, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 67.06. Application for License

An application for an importer's license must contain all information required by the commission.

[Acts 1977, 65th Leg., p. 481, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 68. IMPORTER'S CARRIER'S LICENSE

- Section
- 68.01. Authorized Activities.
- 68.02. Fee.
- 68.03. Eligibility for License.
- 68.04. Application for License; Description of Vehicles.
- 68.05. Expiration of License.
- 68.06. Designation of Vehicles.

§ 68.01. Authorized Activities

An importer who holds an importer's carrier's license may import beer into this state in vehicles owned or leased in good faith by him.

[Acts 1977, 65th Leg., p. 481, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 68.02. Fee

The fee for an importer's carrier's license is \$5 per year or fraction of a year.

[Acts 1977, 65th Leg., p. 481, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 68.03. Eligibility for License

An importer's carrier's license may be issued only to a holder of an importer's license.

[Acts 1977, 65th Leg., p. 481, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 68.04. Application for License; Description of Vehicles

(a) An application for an importer's carrier's license must contain a description of the vehicles to be used and other information required by the commission.

(b) An importer may not import beer into the state in any vehicle not fully described in his application, except as permitted in Section 67.01 of this code.

[Acts 1977, 65th Leg., p. 481, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 68.05. Expiration of License

An importer's carrier's license expires at the same time as the holder's primary importer's license.

[Acts 1977, 65th Leg., p. 481, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 68.06. Designation of Vehicles

All vehicles used under an importer's carrier's license must have painted or printed on them the designation required by the commission.

[Acts 1977, 65th Leg., p. 482, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 69. RETAIL DEALER'S ON-PREMISE LICENSE

Section

- 69.01. Authorized Activities.
- 69.02. Fee.
- 69.03. Issuance of License for Railway Cars.
- 69.04. Hotels Not Disqualified.
- 69.05. Hearings on License Application: Notice and Attendance.
- 69.06. Denial of Original Application.
- 69.07. Fingerprints.
- 69.08. License: Contents; Photograph.
- 69.09. Acquisition of Beverages for Resale From Other Licensees Prohibited.
- 69.10. Storing or Possessing Beer Off Premises Prohibited.
- 69.11. Exchange or Transportation of Beer Between Licensed Premises Under Same Ownership.
- 69.12. Possession of Certain Beverages Prohibited.
- 69.13. Breach of Peace: Retail Establishment.

§ 69.01. Authorized Activities

The holder of a retail dealer's on-premise license may sell beer in or from any lawful container to the ultimate consumer for consumption on or off the premises where sold. The licensee may not sell beer for resale.

[Acts 1977, 65th Leg., p. 482, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 69.02. Fee

Except as provided in Section 69.03 of this code, the annual state fee for a retail dealer's on-premise license is \$25.

[Acts 1977, 65th Leg., p. 482, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 69.03. Issuance of License for Railway Cars

A retail dealer's on-premise license may be issued for a railway dining, buffet, or club car. Application for a license of this type shall be made directly to the commission, and the annual state fee is \$5 for each car.

[Acts 1977, 65th Leg., p. 482, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 69.04. Hotels Not Disqualified

The fact that a hotel holds a permit to sell distilled spirits in unbroken packages does not disqualify the hotel from also obtaining a license to sell beer for on-premises consumption.

[Acts 1977, 65th Leg., p. 482, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 69.05. Hearings on License Application: Notice and Attendance

(a) On receipt of an original application for a retail dealer's on-premise license, the county judge shall give notice of all hearings before him concerning the application to the commission, the sheriff, and the chief of police of the incorporated city in which, or nearest which, the premises for which the license is sought are located.

(b) The individual natural person applying for the license or, if the applicant is not an individual natural person, the individual partner, officer, trustee, or receiver who will be primarily responsible for the management of the premises shall attend any hearing involving the application.

[Acts 1977, 65th Leg., p. 482, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 69.06. Denial of Original Application

(a) The county judge shall deny an original application for a retail dealer's on-premise license if he finds that the applicant or the applicant's spouse, during the three years immediately preceding the application, was finally convicted of a felony or one of the following offenses:

- (1) prostitution;
- (2) a vagrancy offense involving moral turpitude;
- (3) bookmaking;
- (4) gambling or gaming;
- (5) an offense involving controlled substances as defined in the Texas Controlled Substances Act or other dangerous drugs;
- (6) a violation of this code resulting in the cancellation of a license or permit, or a fine of not less than \$500;
- (7) more than three violations of this code relating to minors;
- (8) bootlegging; or
- (9) an offense involving firearms or a deadly weapon.

(b) The county judge shall also deny an original application for a license if he finds that three years has not elapsed since the termination of a sentence, parole, or probation served by the applicant or the applicant's spouse because of a felony conviction or conviction of any of the offenses described in Subsection (a) of this section.

(c) The commission shall refuse to issue a renewal of a retail dealer's on-premise license if it finds:

(1) that the applicant or the applicant's spouse has been finally convicted of a felony or one of the offenses listed in Subsection (a) of this section at any time during the three years immediately preceding the filing of the application for renewal; or

(2) that three years has not elapsed since the termination of a sentence, parole, or probation served by the applicant or the applicant's spouse because of a felony prosecution or prosecution for any of the offenses described in Subsection (a) of this section.

(d) In this section the word "applicant" includes the individual natural person holding or applying for the license or, if the holder or applicant is not an individual natural person, the individual partner, officer, trustee, or receiver who is primarily responsible for the management of the premises.

[Acts 1977, 65th Leg., p. 483, ch. 194, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1714, ch. 681, § 3.

Acts 1977, 65th Leg., p. 1714, ch. 681, § 3, purports to add art. 667-5G to Penal Code (1925), without reference to repeal of the Liquor Control Act by Acts 1977, 65th Leg., p. 557, ch. 194, § 2. As so added, art. 666-11b reads:

"(a) The County Judge, Commission, or Administrator shall refuse to approve or issue an original or renewal Retail Dealer's or Retail Dealer's On-Premise License unless the applicant for the license files with his application a certificate issued by the Comptroller of Public Accounts stating that the applicant holds, or has applied for and satisfies all legal requirements for the issuance of, a sales tax permit for the place of business for which the license is sought.

"(b) The Commission or Administrator may suspend for not more than sixty (60) days or cancel a license if the Commission or Administrator finds, after notice and hearing, that the licensee:

"(1) no longer holds a sales tax permit for the place of business covered by the license; or

"(2) is shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under

the Limited Sales, Excise and Use Tax Act (Chapter 20, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended), or is shown on the records of the Comptroller of Public Accounts as being subject to a final determination of taxes due and payable under the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes)."

§ 69.07. Fingerprints

(a) An applicant for an original retail dealer's on-premise license shall submit to the county judge of the county in which the applicant desires to engage in business a complete set of fingerprints of the individual natural person applying for the license or, if the applicant is not an individual natural person, a complete set of fingerprints of the individual partner, officer, trustee, or receiver who is to be primarily responsible for the management of the premises.

(b) The county judge shall, no later than the next calendar day after receiving the prints, forward them by mail to the Texas Department of Public Safety. The department shall classify the prints and check them against their fingerprint files and shall certify their findings concerning the criminal record of the applicant, or the lack of record, to the county judge. No license may be issued until the certification is made to the county judge.

(c) The sheriff of any county, or any district office of the commission, shall take the fingerprints of an applicant for a license without charge on forms approved by and furnished by the Texas Department of Public Safety and shall immediately deliver them to the county judge of the county where the applicant desires to engage in business.

[Acts 1977, 65th Leg., p. 483, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 69.08. License: Contents; Photograph

Each retail dealer's on-premise license shall contain the name and photograph of the individual natural person holding the license or, if the holder is not an individual natural person, the name and photograph of the individual partner, officer, trustee, or receiver who is primarily responsible for the management of the premises. The photograph may not be more than two years old and shall be furnished by the licensee. The commission may prescribe the size and nature of the photograph, the manner of furnishing it, and the method of affixing it to the license.

[Acts 1977, 65th Leg., p. 484, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 69.09. Acquisition of Beverages for Resale From Other Licensees Prohibited

No holder of a retail dealer's on-premise license may borrow or acquire from, exchange with, or loan to any other holder of a retail dealer's on-premise

license or holder of a retail dealer's off-premise license any alcoholic beverage for the purpose of resale.

[Acts 1977, 65th Leg., p. 484, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 69.10. Storing or Possessing Beer Off Premises Prohibited

No holder of a retail dealer's on-premise license may own, possess, or store beer for the purpose of resale except on the licensed premises.

[Acts 1977, 65th Leg., p. 484, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 69.11. Exchange or Transportation of Beer Between Licensed Premises Under Same Ownership

The owner of two or more licensed retail premises may not exchange or transport beer between them unless all of the conditions set out in Section 24.04 of this code are met, except that beer may be transferred between two licensed retail premises that are both covered by package store permits as provided in Section 22.08 of this code.

[Acts 1977, 65th Leg., p. 484, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 69.12. Possession of Certain Beverages Prohibited

No retail dealer's on-premise licensee, nor the licensee's officer, agent, servant, or employee, may possess on the licensed premises an alcoholic beverage which is not authorized to be sold on the premises.

[Acts 1977, 65th Leg., p. 484, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 69.13. Breach of Peace: Retail Establishment

The commission or administrator may suspend or cancel the license of a retail beer dealer after giving the licensee notice and the opportunity to show compliance with all requirements of law for retention of the license if it finds that a breach of the peace has occurred on the licensed premises or on premises under the licensee's control and that the breach of the peace was not beyond the control of the licensee and resulted from his improper supervision of persons permitted to be on the licensed premises or on premises under his control.

[Acts 1977, 65th Leg., p. 484, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 70. RETAIL DEALER'S ON-PREMISE LATE HOURS LICENSE

Section

- 70.01. Authorized Activities.
70.02. Fee.
70.03. Application of Certain Code Provisions.

§ 70.01. Authorized Activities

The holder of a retail dealer's on-premise late hours license may sell beer for consumption on the premises on Sunday between the hours of 1:00 a. m. and 2 a. m. and on any other day between the hours of 12 p. m. and 2 a. m. if the premises covered by the license are in an area where the sale of beer during the hours is authorized by this code.

[Acts 1977, 65th Leg., p. 485, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 70.02. Fee

The annual state fee for a retail dealer's on-premise late hours license is \$100.

[Acts 1977, 65th Leg., p. 485, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 70.03. Application of Certain Code Provisions

All provisions of this code which apply to a retail dealer's on-premise license also apply to a retail dealer's on-premise late hours license.

[Acts 1977, 65th Leg., p. 485, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 71. RETAIL DEALER'S OFF-PREMISE LICENSE

Section

- 71.01. Authorized Activities.
71.02. Fee.
71.03. Authority of Licensee Holding Package Store Permit or Wine Only Package Store Permit.
71.04. Possession of Certain Beverages Prohibited.
71.05. Acquisition of Beverages for Resale From Other Licensees Prohibited.
71.06. Storing or Possessing Beer Off Premises Prohibited.
71.07. Exchange or Transportation of Beer Between Licensed Premises Under Same Ownership.
71.08. Mitigating Circumstances: Retail Dealer's Off-Premise License.
71.09. Breach of Peace: Retail Establishment.

§ 71.01. Authorized Activities

The holder of a retail dealer's off-premise license may sell beer in lawful containers to consumers, but not for resale and not to be opened or consumed on or near the premises where sold.

[Acts 1977, 65th Leg., p. 485, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 71.02. Fee

The annual state fee for a retail dealer's off-premise license is \$10.

[Acts 1977, 65th Leg., p. 485, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 71.03. Authority of Licensee Holding Package Store Permit or Wine Only Package Store Permit

(a) The holder of a retail dealer's off-premise license who also holds a package store permit may sell beer directly to consumers, but not for resale and not to be opened or consumed on or near the premises where sold, in the following lots or full multiples thereof:

- (1) 6 containers holding 12 ounces each;
- (2) 3 containers holding 24 ounces each; or

(3) 3 containers holding 32 ounces each.

(b) The holder of a retail dealer's off-premise license who also holds a wine only package store permit may sell beer to consumers by the container, but not for resale and not to be opened or consumed on or near the premises where sold.

(c) The sale of beer by a holder of a retail dealer's off-premise license who also holds a package store permit is subject to the same restrictions and penalties governing the sale of liquor by package stores with regard to:

- (1) the hours of sale and delivery;
- (2) blinds and barriers;
- (3) employment of or sales and deliveries to persons under the age of 18;
- (4) sales and deliveries on Sunday; and
- (5) advertising.

(d) The sale of beer by a holder of a retail dealer's off-premise license who also holds a wine only package store permit is subject to the same restrictions and penalties governing the sale of liquor by package stores with regard to:

- (1) blinds and barriers;
- (2) employment of or sales and deliveries to persons under the age of 18;
- (3) delivery to the licensee or permittee on Sunday; and
- (4) advertising.

[Acts 1977, 65th Leg., p. 485, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 71.04. Possession of Certain Beverages Prohibited

No retail dealer's off-premise licensee, nor his officer, may possess liquor containing alcohol in excess of 14 percent by volume on the licensed premises.

[Acts 1977, 65th Leg., p. 486, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 71.05. Acquisition of Beverages for Resale From Other Licensees Prohibited

No holder of a retail dealer's off-premise license may borrow or acquire from, exchange with, or loan to any other holder of a retail dealer's off-premise license or holder of a retail dealer's on-premise license any alcoholic beverage for the purpose of resale.

[Acts 1977, 65th Leg., p. 486, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 71.06. Storing or Possessing Beer Off Premises Prohibited

No holder of a retail dealer's off-premise license may own, possess, or store beer for the purpose of resale except on the licensed premises.

[Acts 1977, 65th Leg., p. 486, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 71.07. Exchange or Transportation of Beer Between Licensed Premises Under Same Ownership

Section 69.11 of this code relates to the exchange or transportation of beer between licensed premises by retail dealers.

[Acts 1977, 65th Leg., p. 486, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 71.08. Mitigating Circumstances: Retail Dealer's Off-Premise License

Section 11.64 of this code relates to mitigating circumstances with respect to cancellation or suspension of a retail dealer's off-premise license.

[Acts 1977, 65th Leg., p. 486, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 71.09. Breach of Peace: Retail Establishment

The application of sanctions for the occurrence of a breach of the peace at a retail beer establishment is covered by Section 69.13 of this code.

[Acts 1977, 65th Leg., p. 487, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 72. TEMPORARY LICENSES

Section
 72.01. Authorized Activities.
 72.02. Fee.
 72.03. Duration of License.
 72.04. Required Basic License or Permit.
 72.05. Issuance and Use of License; Rules.
 72.06. Cancellation or Suspension of Primary License or Permit.

§ 72.01. Authorized Activities

The holder of a temporary license may sell beer in the county where the license is issued to ultimate consumers in or from any lawful container for consumption on or off the premises where sold.

[Acts 1977, 65th Leg., p. 487, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 72.02. Fee

The state fee for a temporary license is \$5. No refund shall be allowed for the surrender or nonuse of a temporary license.

[Acts 1977, 65th Leg., p. 487, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 72.03. Duration of License

A temporary license may be issued for a period of not more than four days.

[Acts 1977, 65th Leg., p. 487, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 72.04. Required Basic License or Permit

A temporary license may be issued only to a holder of a retail dealer's on-premise license or a wine and beer retailer's permit.

[Acts 1977, 65th Leg., p. 487, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 72.05. Issuance and Use of License; Rules

(a) Temporary licenses shall be issued by the administrator or the commission or the commission's authorized representative. The commission shall adopt rules governing the issuance and use of temporary licenses.

(b) Licenses shall be issued only for the sale of beer at picnics, celebrations, or similar events.

(c) The administrator or commission may refuse to issue a license if there is reason to believe the issuance of the license would be detrimental to the public.

[Acts 1977, 65th Leg., p. 487, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 72.06. Cancellation or Suspension of Primary License or Permit

The primary license or permit under which a temporary license was issued may be cancelled or suspended for a violation of this code on the premises covered by the temporary license that would justify the cancellation or suspension of a license under Section 61.71 of this code.

[Acts 1977, 65th Leg., p. 487, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 73. AGENT'S BEER LICENSE**Section**

- 73.01. Authorized Activities.
- 73.02. Fee.
- 73.03. License Required.
- 73.04. Qualification for License.
- 73.05. Grace Period.
- 73.06. Employment of Unlicensed Agent Prohibited.
- 73.07. Employment of Agent Whose License Has Been Suspended or Cancelled.
- 73.08. Rules.
- 73.09. Application for License.
- 73.10. Renewal of License.
- 73.11. Suspension or Cancellation of License.

§ 73.01. Authorized Activities

The holder of an agent's beer license, acting as an employee or representative of a licensed manufacturer of beer located inside or outside the state or as an employee or representative of a licensed distributor, may:

- (1) promote the sale of beer through methods such as solicitation, display, advertising, and personal contact with licensed retailers of beer and their agents, servants, and employees, and with consumers of beer; and
- (2) sell beer and offer it for sale.

[Acts 1977, 65th Leg., p. 488, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 73.02. Fee

(a) The annual state fee for an agent's beer license is \$3.

(b) The commission may not refund any part of the fee for any reason.

(c) No manufacturer or distributor may pay the license fee for any person or reimburse any person for the payment of the fee.

[Acts 1977, 65th Leg., p. 488, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 73.03. License Required

A person whose compensation is based mainly on the activities specified in Section 73.01 may not engage in those activities unless he holds an agent's beer license.

[Acts 1977, 65th Leg., p. 488, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 73.04. Qualification for License

The commission shall not issue an agent's beer license to a person unless it is shown to the satisfaction of the commission that the applicant is employed or has good prospects for employment as agent or representative of a manufacturer or distributor.

[Acts 1977, 65th Leg., p. 488, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 73.05. Grace Period

A person may engage in the activities specified in Section 73.01 for an initial grace period of five days during which he shall procure an agent's beer license from the commission.

[Acts 1977, 65th Leg., p. 488, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 73.06. Employment of Unlicensed Agent Prohibited

No manufacturer or distributor may use or be the beneficiary of the services of any person to carry on the activities specified in Section 73.01 if he does not hold an agent's beer license and is not covered by the grace period provided by Section 73.05 of this code.

[Acts 1977, 65th Leg., p. 488, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 73.07. Employment of Agent Whose License Has Been Suspended or Cancelled

(a) No manufacturer or distributor may employ or continue to employ in any capacity a person whose agent's beer license has been suspended by the commission during the period of suspension.

(b) No manufacturer or distributor may employ or continue to employ in any capacity a person whose agent's beer license has been cancelled for cause by the commission within one year after the date of the cancellation.

[Acts 1977, 65th Leg., p. 489, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 73.08. Rules

The commission may promulgate reasonable rules defining the qualifications and regulating the conduct of holders of agent's beer licenses.

[Acts 1977, 65th Leg., p. 489, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 73.09. Application for License

(a) An application for an agent's beer license is filed with the commission or any designated employee of the commission. The application must be on a form prescribed by the commission and include all information required by the commission.

(b) The commission, administrator, or a designated employee of the commission shall act on applications, and the county judge has no authority over the issuance or approval of agent's beer licenses. [Acts 1977, 65th Leg., p. 489, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 73.10. Renewal of License

An application for the renewal of an agent's beer license shall be made to the commission not more than 30 days before the license expires. The commission shall prescribe forms for that purpose and shall prescribe what information is required in the application.

[Acts 1977, 65th Leg., p. 489, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 73.11. Suspension or Cancellation of License

An agent's beer license may be suspended or cancelled by the commission for a violation of any rule or regulation of the commission or for any of the reasons a manufacturer's or distributor's license may be suspended or cancelled. The same procedure applicable to the suspension or cancellation of a manufacturer's or distributor's license shall be followed in the suspension or cancellation of an agent's beer license.

[Acts 1977, 65th Leg., p. 489, ch. 194, § 1, eff. Sept. 1, 1977.]

TITLE 4. REGULATORY AND PENAL PROVISIONS

CHAPTER 101. GENERAL CRIMINAL PROVISIONS

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- Section
- 101.01. Restraining Orders and Injunctions.
- 101.02. Arrest Without Warrant.
- 101.03. Search and Seizure.
- 101.04. Consent to Inspection.
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- 101.71. Inspection of Vehicle.

SUBCHAPTER A. PROCEDURAL PROVISIONS

§ 101.01. Restraining Orders and Injunctions

(a) If a credible person by affidavit informs the attorney general or a county or district attorney that a person is violating or is about to violate a provision of this code, or that a permit or license was wrongfully issued, the attorney general or county or district attorney shall begin proceedings in district court to restrain the person from violating the code or operating under the permit or license.

(b) The court may issue a restraining order without a hearing, and on notice and hearing may grant an injunction, to prevent the threatened or further violation or operation. The court may require the complaining party to file a bond in an amount and with the conditions the court finds necessary.

(c) If the court finds that a person has violated a restraining order or injunction issued under this section, it shall enter a judgment to that effect. The judgment operates to cancel without further proceedings any license or permit held by the person. The district clerk shall notify the county judge of the county where the premises covered by the permit or license are located and shall notify the commission when a judgment is entered that operates to cancel a license or permit.

(d) No license or permit may be issued to a person whose license or permit is cancelled under Subsection (c) of this section for one year after the cancellation.

[Acts 1977, 65th Leg., p. 491, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.02. Arrest Without Warrant

A peace officer may arrest without a warrant any person he observes violating any provision of this code or any rule or regulation of the commission. The officer shall take possession of all illicit beverages the person has in his possession or on his premises as provided in Chapter 103 of this code.

[Acts 1977, 65th Leg., p. 491, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.03. Search and Seizure

(a) A search warrant may issue under Chapter 18, Code of Criminal Procedure, 1965, as amended, to search for, seize, and destroy or otherwise dispose of in accordance with this code:

- (1) an illicit beverage;
- (2) any equipment or instrumentality used, or capable or designed to be used, to manufacture an illicit beverage;
- (3) a vehicle or instrumentality used or to be used for the illegal transportation of an illicit beverage;
- (4) unlawful equipment or materials used or to be used in the illegal manufacturing of an illicit beverage;
- (5) a forged or counterfeit stamp, die, plate, official signature, certificate, evidence of tax payment, license, permit, or other instrument pertaining to this code; or
- (6) any instrumentality or equipment, or parts of either of them, used or to be used, or designed or capable of use, to manufacture, print, etch, indite, or otherwise make a forged or counterfeit instrument covered by Subdivision (5) of this subsection.

(b) Any magistrate may issue a search warrant on the affidavit of a credible person, setting forth the name or description of the owner or person in charge of the premises (or stating that the name and description are unknown), the address or description of the premises, and showing that the described premises is a place where this code has been or is being violated. If the place to be searched is a private dwelling occupied as such and no part of it is used as a store, shop, hotel, boarding house, or for any other purpose except as a private residence, the affidavit must be made by two credible persons.

(c) All provisions of Chapter 18, Code of Criminal Procedure, 1965, as amended, apply to the application, issuance, and execution of the warrant except those that conflict with this section.

(d) The officer executing the warrant shall seize all items described in Subsection (a) of this section, and those items may not be taken from his custody by a writ of replevin or any other process. The officer shall retain the items pending final judgment in the proceedings.

(e) This section does not require a peace officer to obtain a search warrant to search premises covered by a license or permit.

[Acts 1977, 65th Leg., p. 491, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.04. Consent to Inspection

By accepting a license or permit, the holder consents that the commission, an authorized representative of the commission, or a peace officer may enter the licensed premises at any time to conduct an

investigation or inspect the premises for the purpose of performing any duty imposed by this code.

[Acts 1977, 65th Leg., p. 492, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.05. Negation of Exception: Information, Complaint, or Indictment

An information, complaint, or indictment charging a violation of this code need not negate an exception to an act prohibited by this code, but the exception may be urged by the defendant as a defense to the offense charged.

[Acts 1977, 65th Leg., p. 492, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.06. Testimony of Accomplice

A person may be convicted of a violation of this code on the uncorroborated testimony of an accomplice.

[Acts 1977, 65th Leg., p. 492, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.07. Duty of Peace Officers

All peace officers in the state, including those of cities, counties, and state, shall enforce the provisions of this code and cooperate with and assist the commission in detecting violations and apprehending offenders.

[Acts 1977, 65th Leg., p. 492, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.08. Duty of County Court

When a violation of this code occurs, the county court shall make a recommendation to the commission as to cancellation or suspension of any permit or license connected with the violation.

[Acts 1977, 65th Leg., p. 492, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.09. Reports of Convictions

Every county and district clerk in the state shall furnish the commission or its representative, on request, a certified copy of the judgment of conviction and of the information against a person convicted of a violation of this code. The clerk may not charge a fee for furnishing the copy.

[Acts 1977, 65th Leg., p. 492, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.10. Wholesale or Retail Sale: Prima Facie Evidence

(a) Proof that a retail permittee sold or delivered more than three gallons of distilled spirits to a person in a single or continuous transaction is prima facie evidence that the sale was at wholesale.

(b) Proof that a permittee authorized to sell distilled spirits at wholesale sold or delivered less than three gallons of distilled spirits in a single transaction is prima facie evidence that the sale was a retail sale.

(c) The presumption created by Subsection (b) of this section does not apply to the lawful delivery of 2.4 gallons or more of distilled spirits under the authority of a local distributor's permit.

[Acts 1977, 65th Leg., p. 492, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 101.11 to 101.30 reserved for expansion]

SUBCHAPTER B. OFFENSES RELATING TO DRY AREAS

§ 101.31. Alcoholic Beverages in Dry Areas

Except as otherwise provided in this code, no person in a dry area may manufacture, distill, brew, sell, import into the state, export from the state, transport, distribute, warehouse, store, solicit or take orders for, or possess with intent to sell an alcoholic beverage.

[Acts 1977, 65th Leg., p. 493, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.32. Prima Facie Evidence of Intent to Sell

(a) Possession of more than one quart of liquor in a dry area is prima facie evidence that it is possessed with intent to sell.

(b) Possession in a dry area of more than 24 twelve-ounce bottles of beer, or an equivalent amount, is prima facie evidence of possession with intent to sell.

[Acts 1977, 65th Leg., p. 493, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.33. Delivery of Liquor in Dry Area

Section 107.03 of this code relates to the delivery of liquor in a dry area.

[Acts 1977, 65th Leg., p. 493, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 101.34 to 101.40 reserved for expansion]

SUBCHAPTER C. CONTAINERS

§ 101.41. Containers, Packaging, and Dispensing Equipment of Beer: Labels

(a) No manufacturer or distributor, directly or indirectly or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may manufacture, sell, or otherwise introduce into commerce any container, packaging, or dispensing equipment of beer that does not meet the requirements of this section.

(b) Every container of beer must have a label or imprint in legible type showing the full name and address of the manufacturer and, if it contains a special brand brewed for a distributor, of the distributor. Any box, crate, carton, or similar device in which containers of beer are sold or transported must have a label meeting the same requirements.

(c) The label of a container of beer must state the net contents in terms of United States liquor measure.

(d) No container, packaging material, or dispensing equipment may bear a label or imprint that:

- (1) by wording, lettering, numbering, or illustration, or in any other manner refers or alludes to or suggests the alcoholic strength of the product, a manufacturing process, aging, analysis, or a scientific fact;

- (2) refers or alludes to the "proof," "balling," or "extract" of the product;

- (3) is untrue in any respect; or

- (4) by ambiguity, omission, or inference tends to create a misleading impression, or causes or is calculated to cause deception of the consumer with respect to the product.

[Acts 1977, 65th Leg., p. 493, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.42. Returnable Container: Acceptance by Another Manufacturer

No manufacturer of beer may purchase, accept as a return, or use a barrel, half-barrel, keg, case, or bottle permanently branded or imprinted with the name of another manufacturer.

[Acts 1977, 65th Leg., p. 494, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.43. Misbranding of Brewery Product

(a) No manufacturer or distributor, directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may sell or otherwise introduce into commerce a brewery product that is misbranded.

(b) A product is misbranded if:

- (1) it is misbranded within the meaning of the federal Food and Drug Act;

- (2) the container is so made or filled as to mislead the purchaser, or if its contents fall below the recognized standards of fill;

- (3) it misrepresents the standard of quality of products in the branded container; or

- (4) it is so labeled as to purport to be a product different from that in the container.

[Acts 1977, 65th Leg., p. 494, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.44. Containers of Beer: Capacities

No person may possess, sell, or transport any beer except in containers having a capacity of one barrel, one-half barrel, one-quarter barrel, or one-eighth barrel, or in bottles or cans having a capacity of 32 fluid ounces, 24 fluid ounces, or 12 fluid ounces.

[Acts 1977, 65th Leg., p. 494, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.45. Containers of Wine: Maximum Capacity

No person may sell wine to a retail dealer in containers with a capacity greater than 4.9 gallons.

[Acts 1977, 65th Leg., p. 494, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.46. Containers of Liquor: Minimum Capacities

(a) Except as provided in Subsection (c) of this section, no person may import, sell, or possess with intent to sell any liquor other than ale, malt liquor, and wine and vinous liquor in a container with a capacity of less than one-half pint.

(b) No person may import, sell, or possess with intent to sell ale, malt liquor, or wine and vinous liquor in a container with a capacity of less than six fluid ounces.

(c) Subsections (a) and (b) of this section do not apply to permittees or licensees while engaged in supplying airline beverage or mixed beverage permittees, nor to the possession or sale of liquor by an airline beverage or mixed beverage permittee, but none of the permittees or licensees covered by this subsection may possess liquor in a container with a capacity of less than one fluid ounce.

[Acts 1977, 65th Leg., p. 494, ch. 194, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 272, ch. 132, § 1.

Acts 1977, 65th Leg., p. 272, ch. 132, § 1, purports to amend subsec. (15) of Penal Code (1925) art. 666-17 [now, this section and Section 101.47], without reference to repeal of said article by Acts 1977, 65th Leg., p. 557, ch. 194, § 2. As so amended, subsec. (15) reads:

"(15) Except as required to supply the needs of Airline Beverage Permittees or Mixed Beverage Permittees as authorized under this Act, it shall be unlawful for any person to import, sell, offer for sale, barter, exchange, or possess for the purpose of sale any liquor the container of which contains less than six (6) ounces; provided, however, that any bona fide common carrier of persons, engaged in interstate commerce, may be authorized by the Commission to transport liquor in containers of less than six ounces but not for sale, use or consumption in Texas. The prohibitions contained herein shall not apply to any licensee or permittee under this Act when engaged in supplying the needs of Airline Beverage Permittees or Mixed Beverage Permittees and shall not apply to the possession or sale by Airline Beverage Permittees or Mixed Beverage Permittees as authorized elsewhere in this Act; provided, however, in no event shall any container of liquor contain any less than one fluid ounce.

"The Commission may adopt such reasonable regulations as may be necessary to give effect to the above provision."

§ 101.47. Carrier May Transport Liquor in Small Containers

The commission may authorize a common carrier of persons, engaged in interstate commerce, to transport liquor in containers of less than one-half pint, if the liquor is not for sale, use, or consumption in the state.

[Acts 1977, 65th Leg., p. 494, ch. 194, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 272, ch. 132, § 1.

See italicized note following Section 101.46, ante.

§ 101.48. Commission's Regulatory Authority

Sections 5.39 and 5.40 of this code relate to the commission's authority to regulate liquor containers and beer container deposits.

[Acts 1977, 65th Leg., p. 495, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 101.49 to 101.60 reserved for expansion]

SUBCHAPTER D. MISCELLANEOUS OFFENSES

§ 101.61. Violation of Code or Rule

A person who fails or refuses to comply with a requirement of this code or a valid rule of the commission violates this code.

[Acts 1977, 65th Leg., p. 495, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.62. Offensive Noise on Premises

No licensee or permittee, on premises under his control, may maintain or permit a radio, television, amplifier, piano, phonograph, music machine, orchestra, band, singer, speaker, entertainer, or other device or person that produces, amplifies, or projects music or other sound that is loud, vociferous, vulgar, indecent, lewd, or otherwise offensive to persons on or near the licensed premises.

[Acts 1977, 65th Leg., p. 495, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.63. Sale to Certain Persons

(a) A person commits an offense if he knowingly sells an alcoholic beverage to an habitual drunkard or an intoxicated or insane person.

(b) Except as provided in Subsection (c) of this section, a violation of this section is a misdemeanor punishable by a fine of not less than \$100 nor more than \$500, by confinement in jail for not more than one year, or by both.

(c) If a person has been previously convicted of a violation of this section or of Section 106.03 of this code, a violation is a misdemeanor punishable by a fine of not less than \$500 nor more than \$1,000, by confinement in jail for not more than one year, or by both.

[Acts 1977, 65th Leg., p. 495, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.64. Indecent Graphic Material

No holder of a license or permit may possess or display on the licensed premises a card, calendar, placard, picture, or handbill that is immoral, indecent, lewd, or profane.

[Acts 1977, 65th Leg., p. 495, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.65. Beverages Made From Certain Materials Prohibited

No person may manufacture, import, sell, or possess for the purpose of sale an alcoholic beverage made from:

- (1) dried grapes, dried fruits, or dried berries;
- (2) any compound made from synthetic materials;
- (3) substandard wines;
- (4) imitation wines; or
- (5) must concentrated at any time to more than 80 degrees Balling.

[Acts 1977, 65th Leg., p. 495, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.66. Beverages of Certain Alcohol Content Prohibited

No person may manufacture, sell, barter, or exchange a beverage that contains alcohol in excess of one-half of one percent by volume and not more than four percent of alcohol by weight, except beer.

[Acts 1977, 65th Leg., p. 495, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.67. Prior Approval of Malt Beverages

(a) No person may ship or cause to be shipped into the state, import into the state, manufacture and offer for sale in the state, or distribute, sell, or store in the state any beer, ale, or malt liquor unless:

- (1) a sample of the beverage or a sample of the same type and quality of beverage has been first submitted to the commission for analysis and been found by the commission or its representative to comply with all rules and regulations of the commission relating to quality, purity, and standards of measure; and

- (2) the label of the beverage has been first submitted to the commission or its representative and found to comply with all provisions of this code relating to the labeling of the particular type of beverage.

(b) Only a brewer's or nonresident brewer's permittee or a manufacturer's or nonresident manufacturer's licensee may apply for and receive label approval on beer, ale, or malt liquor.

(c) This section does not apply to the importation of beer for personal consumption and not for sale.
[Acts 1977, 65th Leg., p. 496, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.68. Consignment Sale Prohibited

A person commits an offense if he is a party to, or directly or indirectly interested in or connected with, a consignment sale of an alcoholic beverage.

[Acts 1977, 65th Leg., p. 496, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.69. False Statement

Except as provided in Section 103.05(d) of this code, a person who makes a false statement or false

representation in an application for a permit or license or in a statement, report, or other instrument to be filed with the commission and required to be sworn commits an offense punishable by imprisonment in the penitentiary for not less than 2 nor more than 10 years.

[Acts 1977, 65th Leg., p. 496, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.70. Common Nuisance

(a) A room, building, boat, structure, or other place where alcoholic beverages are sold, bartered, manufactured, stored, possessed, or consumed in violation of this code or under circumstances contrary to the purposes of this code, the beverages themselves, and all property kept or used in the place, are a common nuisance. A person who maintains or assists in maintaining the nuisance commits an offense.

(b) The county or district attorney in the county where the nuisance exists or the attorney general may sue in the name of the state for an injunction to abate and temporarily and permanently enjoin it. Except as otherwise provided in this section, the proceeding is conducted as other similar proceedings.

(c) The plaintiff is not required to give a bond. The final judgment is a judgment in rem against the property and a judgment against the defendant. If the court finds against the defendant, on final judgment it shall order that the place where the nuisance exists be closed for one year or less and until the owner, lessee, tenant, or occupant gives bond with sufficient surety as approved by the court in the penal sum of at least \$1,000. The bond must be payable to the state and conditioned:

- (1) that this code will not be violated;
- (2) that no person will be permitted to resort to the place to drink alcoholic beverages in violation of this code; and
- (3) that the defendant will pay all fines, costs, and damages assessed against him for any violation of this code.

(d) On appeal, the judgment may not be superseded except on filing an appeal bond in the penal sum of not more than \$500, in addition to the bond for costs of the appeal. That bond must be approved by the trial court and must be posted before the judgment of the court may be superseded on appeal. The bond must be conditioned that if the judgment of the trial court is finally affirmed it may be forfeited in the same manner and for any cause for which a bond required on final judgment may be forfeited for an act committed during the pendency of an appeal.

[Acts 1977, 65th Leg., p. 496, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 101.71. Inspection of Vehicle

No holder of a permit issued under Title 3, Subtitle A, of this code, may refuse to allow the commission or its authorized representative or a peace officer, on request, to make a full inspection, investigation, or search of any vehicle.

[Acts 1977, 65th Leg., p. 497, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 102. INTRA-INDUSTRY RELATIONSHIPS

SUBCHAPTER A. GENERAL PROVISIONS

Section

- 102.01. Tied House Prohibited.
- 102.02. Athletic Facility Owned by Manufacturer.
- 102.03. Persons Barred From Interest in Premises of Retail Liquor Outlet.
- 102.04. Persons Barred From Interest in Mixed Beverage Business.
- 102.05. Hotel: Multiple Interests Authorized.
- 102.06. Relationship Between Agent or Manufacturer's Agent and Package Store.
- 102.07. Prohibited Dealings With Retailer or Consumer.
- 102.08. Wholesaler: Liquor Manufactured by Affiliate.
- 102.09. Wholesaler: Interest in Distiller or Rectifier.
- 102.10. Distiller or Rectifier: Interest in Wholesaler.
- 102.11. Manufacturer or Distributor: Prohibited Interests.
- 102.12. Commercial Bribery by Manufacturer or Distributor.
- 102.13. Exclusive Outlet Agreement as to Brewery Products.
- 102.14. Manufacturer or Distributor: Furnishing Equipment or Fixtures.
- 102.15. Manufacturer or Distributor: Prohibited Dealings With Retailer.
- 102.16. Unlawful Agreements.
- 102.17. Contract for Sale of Liquor.

SUBCHAPTER B. REGULATION OF CREDIT TRANSACTIONS

- 102.31. Cash Payment Required.
- 102.32. Sale of Liquor: Credit Restrictions.

SUBCHAPTER C. TERRITORIAL LIMITS ON SALE OF BEER

- 102.51. Setting of Territorial Limits.
- 102.52. Rights of Distributors.
- 102.53. Rights of Retailers.

SUBCHAPTER A. GENERAL PROVISIONS

§ 102.01. Tied House Prohibited

(a) In this section, "tied house" means any overlapping ownership or other prohibited relationship between those engaged in the alcoholic beverage industry at different levels, that is, between a manufacturer and a wholesaler or retailer, or between a wholesaler and a retailer, as the words "wholesaler," "retailer," and "manufacturer" are ordinarily used and understood, regardless of the specific names given permits under Subtitle A, Title 3, of this code.

(b) In considering an original or renewal application for a permit issued under Subtitle A, Title 3, of this code, the commission or administrator may make any investigation or request any additional

information necessary to enforce this section and to provide strict adherence to a general policy of prohibiting the tied house and related practices. The activities prohibited by this section are unfair competition and unlawful trade practices.

(c) No person having an interest in a permit issued under Subtitle A, Title 3, of this code may secure or hold, directly or indirectly, an ownership interest in the business or corporate stocks, including a stock option, convertible debenture, or similar interest, in a permit or business of a permittee of a different level who maintains licensed premises in Texas.

(d) No person may act or serve as officer, director, or employee of the businesses of permittees at different levels.

(e) No permittee may own the premises, fixtures, or equipment of a permittee of a different level.

(f) No permittee may secure or in any manner obtain the use of any premises, fixtures, or equipment on the credit of a permittee of a different level.

(g) No permittee may loan to, or by means of his credit secure a loan for, a permittee of a different level. If a permittee secures a loan from a source outside the state, there is a presumption of a tied house relationship or subterfuge, and the permittee securing the loan has the burden of showing that he has not violated this section.

(h) No permittee may enter with a permittee of a different level or with another person or legal entity into a conspiracy or agreement to control or manage, financially or administratively, directly or indirectly, in any form or degree, the business or interests of a permittee of a different level.

(i) No permittee may enter with another permittee into any type of profit-sharing agreement or any agreement relating to the repurchase of any assets or any agreement attempting to effectuate the shipment or delivery of an alcoholic beverage on consignment.

(j) On finding that a person has violated any provision of Subsections (c) through (i) of this section, the commission or administrator shall suspend for not less than six months or cancel the permit of any permittee involved. A person who held or had an interest in a permit cancelled under this subsection is ineligible to hold or have an interest in a permit for one year after the cancellation.

(k) This section does not apply to the application for renewal of a permit held by an applicant who was engaged in the legal alcoholic beverage business in this state under a charter or permit before August 24, 1935, or to an application for a nonresident seller's or wholesaler's permit held by an applicant who continuously has been the holder of a permit of that type since January 1, 1941.

[Acts 1977, 65th Leg., p. 498, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.02. Athletic Facility Owned by Manufacturer

The total or partial ownership by a manufacturer of premises primarily designed and used for athletic contests is not a ground for the denial, suspension, or cancellation of a retail license located on those premises.

[Acts 1977, 65th Leg., p. 499, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.03. Persons Barred From Interest in Premises of Retail Liquor Outlet

(a) This section applies to the holder of a brewer's, distiller's, class A winery, class B winery, rectifier's, wholesaler's, class B wholesaler's, or wine bottler's permit.

(b) No holder of a permit named in Subsection (a) of this section may directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, own an interest of any kind in the premises where a package store permittee, wine only package store permittee, or mixed beverage permittee conducts his business.

[Acts 1977, 65th Leg., p. 499, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.04. Persons Barred From Interest in Mixed Beverage Business

(a) This section applies to any person who has an interest in the business of a distiller, brewer, rectifier, wholesaler, class B wholesaler, class A winery, class B winery, wine bottler, or local distributor's permittee. This section also applies to the agent, servant, or employee of a person who has an interest in one of those businesses.

(b) Except as permitted in Section 23.01 of this code, no person to whom this section applies may:

(1) have a direct or indirect interest in the business, premises, equipment, or fixtures of a mixed beverage establishment;

(2) furnish or lend any money, service, or other thing of value to a mixed beverage permittee or guarantee the fulfillment of a financial obligation of a mixed beverage permittee;

(3) enter or offer to enter into an agreement, condition, or system which in effect amounts to the shipment and delivery of alcoholic beverages on consignment;

(4) furnish, rent, lend, or sell to a mixed beverage permittee any equipment, fixtures, or supplies used in the selling or dispensing of alcoholic beverages;

(5) pay or make an allowance to a mixed beverage permittee for a special advertising or distributing service, or allow the permittee an excessive discount;

(6) offer to a mixed beverage permittee a prize, premium, or other inducement, except as permitted by Section 102.07(b) of this code; or

(7) advertise in the convention program or sponsor a function at a meeting or convention or a trade association of holders of mixed beverage permits, unless the trade association was incorporated before 1950.

[Acts 1977, 65th Leg., p. 499, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 1183, ch. 453, § 9, eff. Sept. 1, 1977.]

§ 102.05. Hotel: Multiple Interests Authorized

A hotel may hold a package store permit, mixed beverage permit, wine and beer retailer's permit, and retail dealer's license if the businesses are completely segregated from each other.

[Acts 1977, 65th Leg., p. 499, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.06. Relationship Between Agent or Manufacturer's Agent and Package Store

No holder of an agent's or manufacturer's agent's permit may directly or indirectly have an interest in a package store permit or wine only package store permit or be residentially domiciled with a person who has a financial interest in a package store permit or wine only package store permit.

[Acts 1977, 65th Leg., p. 499, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.07. Prohibited Dealings With Retailer or Consumer

(a) Except as provided in Subsection (b) of this section, no person who owns or has an interest in the business of a distiller, brewer, rectifier, wholesaler, class B wholesaler, class A winery, class B winery, or wine bottler, nor the agent, servant, or employee of such a person, may:

(1) own or have a direct or indirect interest in the business, premises, equipment, or fixtures of a retailer;

(2) furnish, give, or lend any money, service, or thing of value to a retailer;

(3) guarantee a financial obligation of a retailer;

(4) make or offer to enter an agreement, condition, or system which will in effect amount to the shipment and delivery of alcoholic beverages on consignment;

(5) furnish, give, rent, lend, or sell to a retail dealer any equipment, fixtures, or supplies to be used in selling or dispensing alcoholic beverages;

(6) pay or make an allowance to a retailer for a special advertising or distribution service;

(7) allow an excessive discount to a retailer;

(8) offer a prize, premium, gift, or similar inducement to a retailer or consumer or to the agent, servant, or employee of either.

(b) A permittee covered by Subsection (a) may furnish to a retailer without cost recipes, recipe books, book matches, cocktail napkins, or other ad-

vertising items showing the name of the permittee furnishing the items or the brand name of the product advertised if the individual cost of the items does not exceed 25 cents.

(c) No person who owns or has an interest in the business of a package store or wine only package store, nor the agent, servant, or employee of the person, may allow an excessive discount on liquor. [Acts 1977, 65th Leg., p. 500, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.08. Wholesaler: Liquor Manufactured by Affiliate

(a) No holder of a wholesaler's permit may own, possess, or sell any liquor manufactured, distilled, or rectified by a person, firm, or corporation that is directly or indirectly affiliated with the wholesale permittee, regardless of whether the affiliation is corporate, by management, direction, or control, or through an officer, director, agent, or employee.

(b) This section does not apply to a holder of a wholesaler's permit who held the permit on January 1, 1941, and has held it continuously since that date, who was on that date selling liquor manufactured, distilled, or rectified by such an affiliate. [Acts 1977, 65th Leg., p. 500, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.09. Wholesaler: Interest in Distiller or Rectifier

No holder of a wholesaler's permit may be affiliated with the holder of a distiller's or rectifier's permit, or with a person, firm, or corporation engaged in distilling or rectifying liquor inside or outside this state, regardless of whether the affiliation is direct or indirect, through an officer, director, agent, or employee, or by management, direction, or control. [Acts 1977, 65th Leg., p. 500, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.10. Distiller or Rectifier: Interest in Wholesaler

(a) This section applies to the following:

(1) a holder of a distiller's or rectifier's permit;

(2) a person, firm, or corporation engaged in distilling or rectifying liquor, either inside or outside this state;

(3) an officer, director, agent, or employee of an entity named in Subdivision (1) or (2) of this subsection; or

(4) an affiliate of an entity named in Subdivision (1) or (2) of this subsection, regardless of whether the affiliation is corporate or by management, direction, or control.

(b) No entity named in Subsection (a) of this section may have any interest in the permit, business, assets, or corporate stock of a holder of a wholesaler's permit.

[Acts 1977, 65th Leg., p. 500, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.11. Manufacturer or Distributor: Prohibited Interests

No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may:

(1) own any interest in the business or premises of a retail dealer of beer;

(2) hold or have an interest in a license to sell brewery products for on-premises consumption, except to the extent that a manufacturer's license permits on-premises consumption.

[Acts 1977, 65th Leg., p. 501, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.12. Commercial Bribery by Manufacturer or Distributor

No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may give or permit to be given money or any thing of value in an effort to induce agents, employees, or representatives of customers or prospective customers to influence their employers or principals to purchase or contract to purchase brewery products from the manufacturer or distributor or to refrain from buying those products from other persons.

[Acts 1977, 65th Leg., p. 501, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.13. Exclusive Outlet Agreement as to Brewery Products

No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may require, by agreement or otherwise, that a retailer engaged in the sale of brewery products purchase any of those products from him to the total or partial exclusion of the products sold or offered for sale by a competitor or require the retailer to take or dispose of a certain quota of the product.

[Acts 1977, 65th Leg., p. 501, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.14. Manufacturer or Distributor: Furnishing Equipment or Fixtures

(a) No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may furnish, give, rent, lend, or sell any equipment, fixtures, or supplies to a person engaged in selling brewery products for on-premises consumption.

(b) This section does not apply to equipment, fixtures, or supplies furnished, given, loaned, rented, or sold before November 16, 1935, except that transactions made before that date may not be used as consideration for an agreement made after that date with respect to the purchase of brewery products. If a manufacturer or distributor of brewery products or an agent or employee of one of them removes the equipment, fixtures, or supplies from the premises of the person to whom they were furnished, given,

loaned, rented, or sold, the exemption granted by this subsection no longer applies to the equipment, fixtures, or supplies.

[Acts 1977, 65th Leg., p. 501, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.15. Manufacturer or Distributor: Prohibited Dealings With Retailer

No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may:

(1) furnish, give, or lend any money or other thing of value to a person engaged or about to be engaged in selling brewery products for on-premises or off-premises consumption, or give the person any money or thing of value for his use, benefit, or relief; or

(2) guarantee the repayment of a loan or the fulfillment of a financial obligation of a person engaged in or about to be engaged in selling beer at retail.

[Acts 1977, 65th Leg., p. 502, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.16. Unlawful Agreements

(a) A brewer, distiller, winery permittee, or alcoholic beverage manufacturer, or the agent, servant, or employee of any of them, commits an offense if he orally or in writing enters or offers to enter into an agreement or other arrangement with a wholesaler or other person in the state:

(1) by which a person is required or influenced, or that is intended to require or influence a person, to purchase, otherwise obtain, produce, or require a certain volume or quota of business, more or less, of one or more types or brands of alcoholic beverages, either in a certain area, in a certain period of time, or on fulfillment of any condition; or

(2) to require or influence a person, or attempt to require or influence a person, to sell an alcoholic beverage in a manner contrary to law or in a manner calculated to induce a violation of the law.

(b) The commission or administrator shall investigate suspected violations of this section, and if either of them finds or has good reason to believe that this section has been or is being violated, the commission or administrator shall give the affected parties notice of hearing as provided in this code. On finding that a person has violated or is violating a provision of this section, the commission or administrator shall enter an order prohibiting the violator or his agents to directly or indirectly ship any of his goods into the state for a period not to exceed one year. No person may violate that order.

(c) The commission shall adopt necessary rules to effectuate this section.

[Acts 1977, 65th Leg., p. 502, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.17. Contract for Sale of Liquor

A brewer, distiller, winery permittee, manufacturer, or nonresident seller of liquor and the holder of a wholesaler's permit may enter into a contract for the sale and purchase of a specified quantity of liquor to be delivered over an agreed period of time, but only if the contract is first submitted to the commission or administrator and found by the commission or administrator not to be calculated to induce a violation of this code.

[Acts 1977, 65th Leg., p. 502, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 102.18 to 102.30 reserved for expansion]

SUBCHAPTER B. REGULATION OF CREDIT TRANSACTIONS

§ 102.31. Cash Payment Required

(a) This section applies to:

(1) the sale of beer or its containers or the original packages in which it is received, packaged, or contained by a manufacturer's or distributor's licensee to a retail dealer's on-premise or off-premise licensee, a wine and beer retailer's permittee, or a wine and beer retailer's off-premise permittee; and

(2) the sale of malt beverages by a local distributor's permittee, or by any licensee authorized to sell those beverages for resale, to a mixed beverage or daily temporary mixed beverage permittee.

(b) No person directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may make a sale covered by this section except for cash on or before delivery to the purchaser.

(c) A person who engages in a subterfuge by which credit is extended to the purchaser violates this code. Acceptance of a postdated check is not a cash sale, but a valid check or draft payable on demand may be accepted as cash. If a check or draft is accepted in payment, it must be deposited in the bank for payment or presented for payment within two days after it is received. If the check or draft is dishonored by the drawee, the licensee or permittee who accepted it shall report that fact to the commission within two days after receiving notice of dishonor. The report shall be on a form prescribed by the commission and shall contain any information the commission requires.

(d) Sundays and legal holidays are not counted in determining time periods under this section.

(e) The commission may promulgate rules to give effect to this section.

[Acts 1977, 65th Leg., p. 502, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.32. Sale of Liquor: Credit Restrictions

(a) In this section:

(1) "Wholesale dealer" means a wholesaler, class B wholesaler, class A winery, wine bottler, or local distributor's permittee.

(2) "Retailer" means a package store, wine only package store, wine and beer retailer's, wine and beer retailer's off-premise, or mixed beverage permittee, any other retailer, or a private club registration permittee.

(3) "Month" means a calendar month.

(b) No wholesale dealer may sell and no retailer may purchase liquor except for cash or on terms requiring payment by the retailer in accordance with Subsection (c) of this section.

(c) On purchases made from the 1st through 15th day of a month, payment must be made on or before the 25th day of that month. On purchases made on the 16th through the last day of a month, payment must be made on or before the 10th day of the following month.

(d) Each delivery of liquor shall be accompanied by an invoice giving the date of purchase. If a retailer becomes delinquent in the payment of an account for liquor, the wholesale dealer immediately shall report that fact in writing to the commission or administrator. No wholesale dealer may sell any liquor to a retailer who is delinquent until the delinquent account is paid in full and cleared from the records of the commission. An account becomes delinquent if it is not paid when it is required to be paid under Subsection (c) of this section.

(e) A wholesale dealer who accepts a postdated check, a note or memorandum, or participates in a scheme to assist a retailer in the violation of this section commits an offense.

(f) The commission shall adopt rules and regulations to give effect to this section.

[Acts 1977, 65th Leg., p. 503, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 102.33 to 102.50 reserved for expansion]

**SUBCHAPTER C. TERRITORIAL LIMITS ON
SALE OF BEER**

§ 102.51. Setting of Territorial Limits

(a) Each holder of a manufacturer's or nonresident manufacturer's license shall designate territorial limits in this state within which the brands of beer the licensee manufactures may be sold by general, local, or branch distributor's licensees.

(b) Each holder of a general, local, or branch distributor's license shall enter into a written agreement with each manufacturer from which the distributor purchases beer for distribution and sale in this state setting forth the nonexclusive territorial

limits within which each brand of beer purchased may be distributed and sold. A copy of the agreement and any amendments to it shall be filed with the administrator.

[Acts 1977, 65th Leg., p. 504, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.52. Rights of Distributors

Nothing in Section 102.51 of this code limits or alters the right of a holder of a general, local, or branch distributor's license to sell beer to any other holder of a general, local, or branch distributor's license, except that a distributor who has purchased beer from another distributor may distribute and sell the beer only within a territory for which the manufacturer of the brand has designated that it may be sold by a distributor.

[Acts 1977, 65th Leg., p. 504, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 102.53. Rights of Retailers

Nothing in Section 102.51 or 102.52 of this code limits or alters the right of a holder of a retail license or permit to purchase beer at the licensed premises of a general, local, or branch distributor's licensee and transport that beer to his licensed premises, except that the retailer may sell the beer only within a territory for which the manufacturer of the brand has designated that it may be sold by a distributor.

[Acts 1977, 65th Leg., p. 504, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 103. ILLICIT BEVERAGES

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§ 103.01. Illicit Beverages Prohibited

No person may possess, manufacture, transport, or sell an illicit beverage.

[Acts 1977, 65th Leg., p. 505, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.02. Equipment or Material for Manufacture of Illicit Beverages

No person may possess equipment or material designed for, capable of use for, or used in manufacturing an illicit beverage.

[Acts 1977, 65th Leg., p. 505, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.03. Seizure of Illicit Beverages, Etc.

A peace officer may seize without a warrant:

- (1) any illicit beverage, its container, and its packaging;
- (2) any vehicle, including an aircraft or watercraft, used to transport an illicit beverage;
- (3) any equipment designed for use in or used in manufacturing an illicit beverage; or
- (4) any material to be used in manufacturing an illicit beverage.

[Acts 1977, 65th Leg., p. 505, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.04. Arrest of Person in Possession

A peace officer may arrest without a warrant any person found in possession of:

- (1) an illicit beverage;
- (2) any equipment designed for use in or used in manufacturing an illicit beverage; or
- (3) any material to be used in manufacturing an illicit beverage.

[Acts 1977, 65th Leg., p. 505, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.05. Report of Seizure

(a) A peace officer who makes a seizure under Section 103.03 of this code shall make a report in quadruplicate which lists each item seized and the place and name of the owner, operator, or other person from whom it is seized. Two copies of the report shall be verified by oath.

(b) One verified copy shall be retained in the permanent files of the commission or other agency making the seizure. The other verified copy shall be filed in a permanent file with the comptroller of public accounts. Either copy is subject to inspection by any member of the legislature or by any authorized law enforcement agency of the state.

(c) One copy of the report shall be delivered to the person from whom the seizure is made.

(d) A peace officer who makes a false report of the property seized commits a felony punishable by confinement in the penitentiary for not less than two years and not more than five years.

(e) A peace officer who fails to file the reports of a seizure as required by this section commits a misdemeanor punishable by a fine of not less than \$50 nor more than \$100 or by confinement in jail for not less than 10 nor more than 90 days or by both. The commission shall insure that the reports are made by peace officers.

[Acts 1977, 65th Leg., p. 505, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.06. Beverage Delivered to Commission

Any alcoholic beverage, its container, and its packaging which has been seized by a peace officer, as provided in Section 103.03 of this code, may not be replevied and shall be delivered to the commission for immediate public or private sale in the manner the commission considers best.

[Acts 1977, 65th Leg., p. 506, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.07. Beverage of Illicit Manufacture or Unfit for Consumption

The commission may not sell but may destroy alcoholic beverages unfit for public consumption or of illicit manufacture.

[Acts 1977, 65th Leg., p. 506, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.08. Sale of Beer

(a) Any beer, its container, or its packaging which is seized under the terms of this chapter shall be disposed of in accordance with this section.

(b) On notification that beer has been seized, the commission shall promptly notify a holder of a general, local, or branch distributor's license who handles the brand of beer seized and who operates in the county in which it was seized. If the beer was seized in a dry area, the commission shall notify either the general, local, or branch distributor who handles the brand operating nearest the area or the manufacturer brewing the beer. The commission and the distributor or manufacturer shall jointly determine whether the beer is in a salable condition.

(c) If the beer is determined not to be in a salable condition, the commission shall immediately destroy it. If it is determined to be in a salable condition, it shall be offered for sale to the distributor or manufacturer. If offered to a distributor, the beer shall be sold at the distributor's cost price less any state taxes which have been paid on the beer, F.O.B. the distributor's place of business. If the beer is offered to a manufacturer, it shall be sold at the manufacturer's cost price to its nearest distributor, less any state taxes which have been paid on the beer, F.O.B., the nearest distributor's place of business. In either case, the storage or warehousing charges necessarily incurred as a result of the seizure shall be added to the cost price.

(d) If the distributor or manufacturer does not exercise the right to purchase salable beer or to purchase returnable bottles, containers, or packages at their deposit price within 10 days, the commission shall sell the beer, bottles, containers, or packages at public or private sale as provided in this chapter.

[Acts 1977, 65th Leg., p. 506, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.09. Sale of Liquor

(a) Any liquor, its container, or its packaging which is seized under the terms of this chapter shall be disposed of in accordance with this section.

(b) On notification that liquor has been seized, the commission shall promptly notify a holder of a wholesaler's permit, a general class B wholesaler's permit, or a local class B wholesaler's permit who handles the brand of liquor seized and who operates in the county in which it was seized. If the liquor was seized in a dry area, the commission shall notify the wholesaler who handles the brand seized who operates nearest the area. The commission and the wholesaler shall jointly determine whether the liquor is in a salable condition.

(c) If the liquor is determined not to be in a salable condition, the commission shall immediately destroy it. If it is determined to be in a salable condition, it shall first be offered for sale to the wholesaler notified at the wholesaler's cost price F.O.B. its place of business, plus any storage or warehousing charges necessarily incurred as a result of the seizure.

(d) If the wholesaler does not exercise the right to purchase salable liquor, containers, or packages at the price specified in this section within 10 days, the commission shall sell the liquor, container, or packages at public or private sale, as provided in this chapter.

[Acts 1977, 65th Leg., p. 506, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.10. Exercise of Discretion in Case of Mistake

The preceding sections of this subchapter shall not be construed as preventing the commission from exercising its discretion if illicit alcoholic beverages are seized as the result of an accidental shipment or other reasonable mistake. Under those circumstances, the commission may issue orders and make disposition of the alcoholic beverages as it finds just and reasonable.

[Acts 1977, 65th Leg., p. 507, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.11. Proceeds From Sale

(a) The proceeds from the sale of seized alcoholic beverages, their containers, and their packaging shall be placed in escrow in a suspense account established by the commission for that purpose, pending the outcome of the forfeiture suit provided for in this chapter.

(b) Proceeds in escrow which are not forfeited to the state as a result of the suit shall be refunded to the alleged violator. Should the state illegally seize and sell any alcoholic beverages, the person legally entitled to possession of the beverages at the time of the seizure may recover from the state the fair market value of the beverages seized and sold, with the reimbursement paid out of the proceeds held in escrow from the sale and, if the funds in escrow are not sufficient, from the confiscated liquor fund.

[Acts 1977, 65th Leg., p. 507, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.12. Ceiling Prices During Emergency

If the federal government provides a method by which illicit alcoholic beverages or other property belonging to or forfeited to the state is sold at ceiling prices during a national emergency, the commission may comply with federal law or regulations in the sale or disposal of the beverages or property, even to the extent of partially or wholly abrogating provisions of this code that are inconsistent with the federal law or regulations.

[Acts 1977, 65th Leg., p. 507, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.13. Bonding of Seized Vehicles Pending Suit

Any person with an ownership or a security interest in a vehicle that has been seized under Section 103.03 may recover possession of the vehicle pending suit for forfeiture by executing a bond with surety equal to double the appraised value of the vehicle. The bond shall be approved by the officer who made the seizure and shall secure the return of the vehicle to the custody of the seizing officer on the day of trial of the forfeiture suit.

[Acts 1977, 65th Leg., p. 507, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.14. Institution of Suit for Forfeiture

(a) The attorney general or the county or district attorney in the county in which a seizure is made shall institute a suit for forfeiture of the property or the proceeds in escrow from any sale of illicit beverages, or both, when notified by the commission or by the seizing officer that a seizure has been made under Section 103.03 of this code.

(b) The forfeiture suit shall be brought in the name of the State of Texas against the property or the proceeds in escrow, or both, and shall be brought in a court of competent jurisdiction in the county in which the seizure was made.

[Acts 1977, 65th Leg., p. 508, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.15. Notice of Forfeiture Suit

(a) Notice of the pendency of a suit for forfeiture under this chapter shall be served in the manner prescribed by law on any person in possession of the property at the time of seizure.

(b) If no person was in possession at the time of seizure or if the location of anyone who was in possession is unknown, notice of the suit shall be posted for 20 consecutive days immediately preceding the date of the suit at the courthouse door in the county in which the seizure was made.

[Acts 1977, 65th Leg., p. 508, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.16. Forfeiture of a Seized Vehicle

(a) In a suit for forfeiture of a vehicle seized under Section 103.03 of this code, the state shall have the burden of proving that the vehicle was used to transport an illicit beverage and that all

intervenor under Subsection (b) of this section, if any, knowingly violated some provision of this code.

(b) Any person with an ownership or security interest in the vehicle may intervene in the suit for forfeiture to establish his rights. An intervenor under the provisions of this section has the burden of proving that he has a valid ownership or security interest in the vehicle.

(c) If the state fails to prove that the vehicle was used to transport an illicit beverage, the court shall render judgment returning the vehicle to the owner.

(d) If the state proves that the vehicle was used to transport an illicit beverage and that all intervenors, if any, knowingly violated some provision of this code, the court shall render judgment forfeiting the vehicle to the state.

(e) If the state proves that the vehicle was used to transport an illicit beverage but fails to prove that any intervenor knowingly violated some provision of this code, the court shall render judgment delivering possession of the vehicle to the innocent intervenor with the highest priority to possession of the vehicle. [Acts 1977, 65th Leg., p. 508, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.17. Forfeiture of Other Seized Property

(a) In any suit for forfeiture of proceeds in escrow from a sale of illicit beverages or of property other than vehicles, or both, seized under Section 103.03 of this code, the state shall have the burden of proving that:

- (1) the alcoholic beverages were illicit;
- (2) the equipment is designed to be used on or is used in manufacturing an illicit beverage; or
- (3) the material is to be used in manufacturing an illicit beverage.

(b) If the state fails to prove the facts necessary for forfeiture, the court shall render judgment returning possession of the property or of the proceeds in escrow to the owner or the person in possession at the time of seizure.

(c) If the state proves the facts necessary for forfeiture, the court shall render judgment forfeiting the property or the proceeds in escrow, or both, to the state and ordering disposal in accordance with the provisions of Section 103.20 or Section 103.18(c) of this code.

[Acts 1977, 65th Leg., p. 508, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.18. Intervention by Secured Creditors

(a) In any suit for forfeiture of proceeds in escrow from any sale of illicit beverages or of property other than vehicles, or both, seized under Section 103.03 of this code, any person who has a security interest in any of the seized property may intervene to establish his rights.

(b) An intervenor under the provisions of this section shall have the burden of proving that he has

a valid security interest in the property and that he had no knowledge that the property in which he has a security interest had been used or was to be used in violation of this code at the time the security interest was created.

(c) If an intervenor under this section establishes a security interest and a lack of knowledge of unlawful use of the property, the court, in the judgment forfeiting the property, shall issue an order of sale directed to the sheriff or any constable of the county in which the property was seized. The order shall command the sheriff or constable to conduct a sale at the courthouse door of all or part of the property, whichever the court considers proper, in the same manner as personal property is sold under execution.

(d) The proceeds of a sale under Subsection (c) of this section shall be applied first to the payment of the costs of suit and the expenses incident to the sale. After the costs of suit and expenses of sale have been approved by the court that tried the suit, any remaining proceeds shall be applied toward payment of creditors secured by the property, according to their priorities. After all secured creditors are satisfied, any remaining proceeds shall be paid to the commission to be allocated in accordance with the provisions of Section 103.23 of this code.

(e) If all intervenors under this section fail to establish a valid security interest or lack of knowledge of unlawful use of the property, the court, in the judgment forfeiting the property, shall order disposal of the property in accordance with the provisions of Section 103.20 of this code.

[Acts 1977, 65th Leg., p. 509, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.19. Transfer of Security Interests

All security interests in property sold under this chapter shall be transferred to the proceeds of the sale.

[Acts 1977, 65th Leg., p. 509, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.20. Disposition of Forfeited Property

(a) The commission may sell property, other than proceeds in escrow, forfeited to the state at a public or private sale in the manner the commission considers best.

(b) If in the opinion of the commission or the administrator the property is needed for the use of the commission, the commission may retain and use the property until it is no longer needed, at which time it shall be sold in accordance with Subsection (a) of this section.

[Acts 1977, 65th Leg., p. 509, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.21. Bill of Sale to Purchaser

When executing a sale under this chapter, the commission or the sheriff or constable shall issue a bill of sale to each purchaser of property. The bill

of sale shall convey a valid and unimpaired title in the property to the purchaser.

[Acts 1977, 65th Leg., p. 509, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.22. Costs of Forfeiture Suits

The commission shall pay all costs of forfeiture suits out of the confiscated liquor fund or any other fund available to the commission for that purpose.

[Acts 1977, 65th Leg., p. 510, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 103.23. Allocation of Proceeds of Sale

Proceeds from a forfeiture sale and proceeds in escrow which are forfeited to the state in a forfeiture suit shall be disposed of by depositing 35 percent of the proceeds in a separate fund in the state treasury designated as the confiscated liquor fund and depositing 65 percent of the proceeds in the general revenue fund. The confiscated liquor fund may be appropriated to the commission to defray the expenses of accumulating evidence pertaining to violations of this code; assembling, storing, transporting, selling, and accounting for confiscated alcoholic beverages, containers, devices, and property; and any other purposes deemed necessary by the commission in administering and enforcing this code. Any unexpended balance in the confiscated liquor fund at the end of a biennium shall remain in the fund subject to further appropriation for the same purposes.

[Acts 1977, 65th Leg., p. 510, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 104. REGULATION OF RETAILERS

Section

- 104.01. Lewd, Immoral, Indecent Conduct.
 104.02. Blinds and Barriers.
 104.03. Conspiracy; Accepting Unlawful Benefit.
 104.04. Draft Beer Dispenser: Sign Required.

§ 104.01. Lewd, Immoral, Indecent Conduct

No person authorized to sell beer at retail, nor his agent, servant, or employee, may engage in or permit conduct on the premises of the retailer which is lewd, immoral, or offensive to public decency, including, but not limited to, any of the following acts:

- (1) the use of loud and vociferous or obscene, vulgar, or indecent language, or permitting its use;
- (2) the exposure of person or permitting a person to expose his person;
- (3) rudely displaying or permitting a person to rudely display a pistol or other deadly weapon in a manner calculated to disturb persons in the retail establishment;
- (4) solicitation of any person for coins to operate a musical instrument or other device;

(5) solicitation of any person to buy drinks for consumption by the retailer or any of his employees;

(6) becoming intoxicated on the licensed premises or permitting an intoxicated person to remain on the licensed premises;

(7) permitting lewd or vulgar entertainment or acts;

(8) permitting solicitations of persons for immoral or sexual purposes;

(9) failing or refusing to comply with state or municipal health or sanitary laws or ordinances; or

(10) possession of a narcotic or any equipment used or designed for the administering of a narcotic or permitting a person on the licensed premises to do so.

[Acts 1977, 65th Leg., p. 510, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 104.02. Blinds and Barriers

(a) No person may install or maintain a blind or barrier in the opening or door of a retail alcoholic beverage establishment or paint the windows, at or above a point 54 inches above the ground or sidewalk beneath the window, in a manner that will obstruct the view of the general public.

(b) No person may install or maintain a curtain, hanging, sign, or other obstruction that prevents a clear view of the interior of a package store or wine only package store, except a drug store that holds one of those permits may display drug merchandise notwithstanding this subsection.

[Acts 1977, 65th Leg., p. 511, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 104.03. Conspiracy; Accepting Unlawful Benefit

A retail dealer or his agent, servant, or employee commits an offense if he conspires with another person to violate or accepts the benefits of a violation of this code or a valid rule of the commission.

[Acts 1977, 65th Leg., p. 511, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 104.04. Draft Beer Dispenser: Sign Required

No retail dealer may dispense draft beer unless each faucet or other dispensing apparatus is equipped with a sign clearly indicating the name or brand of the product being dispensed through the faucet or apparatus. The sign must be in full sight of the purchaser, and the letters on it must be legible.

[Acts 1977, 65th Leg., p. 511, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 105. HOURS OF SALE AND CONSUMPTION

- Section
- 105.01. Hours of Sale: Liquor.
- 105.02. Hours of Sale: Wholesalers and Local Distributors to Retailers.
- 105.03. Hours of Sale: Mixed Beverages.
- 105.04. Hours of Sale: Wine and Beer Retailer.
- 105.05. Hours of Sale: Beer.
- 105.06. Hours of Consumption.

§ 105.01. Hours of Sale: Liquor

Except as provided in Sections 105.02, 105.03, and 105.04 of this code, no person may sell, offer for sale, or deliver any liquor:

- (1) on Christmas Day;
- (2) on Sunday; or
- (3) before 10 a. m. or after 9 p. m. on any other day.

[Acts 1977, 65th Leg., p. 511, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 105.02. Hours of Sale: Wholesalers and Local Distributors to Retailers

A wholesaler or a local distributor's permittee may sell, offer for sale, or deliver liquor to a retailer between 7 a. m. and 9 p. m. on any day except Sunday and Christmas Day.

[Acts 1977, 65th Leg., p. 511, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 1183, ch. 453, § 10, eff. Sept. 10, 1977.]

§ 105.03. Hours of Sale: Mixed Beverages

(a) No person may sell or offer for sale mixed beverages at any time not permitted by this section.

(b) A mixed beverage permittee may sell and offer for sale mixed beverages between 7 a. m. and midnight on any day except Sunday. On Sunday he may sell mixed beverages between midnight and 1:00 a. m. and between noon and midnight.

(c) In a county having a population of 300,000 or more, according to the last preceding federal census, a holder of a mixed beverage late hours permit may also sell and offer for sale mixed beverages between midnight and 2 a. m. on any day.

(d) In a county having a population of less than 300,000, according to the last preceding federal census, the extended hours prescribed in Subsection (c) of this section are effective for the sale of mixed beverages and the offer to sell them by a holder of a mixed beverages late hours permit:

- (1) in the unincorporated areas of the county if the extended hours are adopted by an order of the commissioners court; and
- (2) in an incorporated city or town if the extended hours are adopted by an ordinance of the governing body of the city or town.

(e) A violation of a city ordinance or order of a commissioners court adopted pursuant to Subsection (d) of this section is a violation of this code. [Acts 1977, 65th Leg., p. 511, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 105.04. Hours of Sale: Wine and Beer Retailer

The hours of sale and delivery for alcoholic beverages sold under a wine and beer retailer's permit or a wine and beer retailer's off-premise permit are the same as those prescribed for the sale of beer under Section 105.05 of this code.

[Acts 1977, 65th Leg., p. 512, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 105.05. Hours of Sale: Beer

(a) No person may sell, offer for sale, or deliver beer at any time not permitted by this section.

(b) A person may sell, offer for sale, or deliver beer between 7 a. m. and midnight on any day except Sunday. On Sunday he may sell beer between midnight and 1:00 a. m. and between noon and midnight.

(c) In a county having a population of 300,000 or more, according to the last preceding federal census, a holder of a retail dealer's on-premise late hours license may also sell, offer for sale, and deliver beer between midnight and 2 a. m. on any day.

(d) In a county having a population of less than 300,000, according to the last preceding federal census, the extended hours prescribed in Subsection (b) of this section are effective for the sale, offer to sell, and delivery of beer by a holder of a retail dealer's on-premise late hours license:

- (1) in the unincorporated areas of the county if the extended hours are adopted by an order of the commissioners court; and
- (2) in an incorporated city or town if the extended hours are adopted by an ordinance of the governing body of the city or town.

(e) A violation of a city ordinance or order of a commissioners court adopted pursuant to Subsection (d) of this section is a violation of this code. [Acts 1977, 65th Leg., p. 512, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 105.06. Hours of Consumption

(a) In this section:

- (1) "Extended hours area" means an area:
 - (A) located in a county having a population of more than 300,000, according to the last preceding federal census; or
 - (B) located in a county having a population of not more than 300,000, according to the last preceding federal census, if the area has been made subject to the extended hours of sale provided in Section 105.03 or 105.05 of this code.
- (2) "Standard hours area" means an area which is not an extended hours area.

(b) In a standard hours area, a person commits an offense if he consumes or possesses with intent to consume an alcoholic beverage in a public place at any time on Sunday between 1:15 a. m. and 12 noon or on any other day between 12:15 a. m. and 7 a. m.

(c) In an extended hours area, a person commits an offense if he consumes or possesses with intent to consume an alcoholic beverage in a public place at any time on Sunday between 2:15 a. m. and 12 noon and on any other day between 2:15 a. m. and 7 a. m.

(d) Proof that an alcoholic beverage was possessed with intent to consume in violation of this section requires evidence that the person consumed an alcoholic beverage on that day in violation of this section.

(e) An offense under this section is a misdemeanor punishable by a fine of not more than \$50. [Acts 1977, 65th Leg., p. 512, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 106. PROVISIONS RELATING TO AGE

Section	
106.01.	Definition.
106.02.	Purchase of Alcohol by a Minor.
106.03.	Sale to Minors.
106.04.	Consumption of Alcohol by a Minor.
106.05.	Possession of Alcohol by a Minor.
106.06.	Purchase of Alcohol for a Minor; Furnishing Alcohol to a Minor.
106.07.	Misrepresentation of Age by a Minor.
106.08.	Importation by a Minor.
106.09.	Employment of Minors.
106.10.	Plea of Guilty by Minor.
106.11.	Parent or Guardian at Trial.
106.12.	Expungement of Conviction of a Minor.
106.13.	Sanctions Against Retailer.

§ 106.01. Definition

In this chapter, "minor" means a person under 18 years of age.

[Acts 1977, 65th Leg., p. 513, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 106.02. Purchase of Alcohol by a Minor

(a) A minor commits an offense if he purchases an alcoholic beverage.

(b) Except as provided in Subsection (c) of this section, a violation of this section is a misdemeanor punishable by a fine of not less than \$25 nor more than \$200.

(c) If a person has been previously convicted of a violation of this section, a violation is a misdemeanor punishable by a fine of not less than \$100 nor more than \$500.

[Acts 1977, 65th Leg., p. 513, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 106.03. Sale to Minors

(a) A person commits an offense if he knowingly sells an alcoholic beverage to a minor.

(b) A person who sells a minor an alcoholic beverage does not commit an offense if the minor falsely represents himself to be 18 years old or older by displaying an apparently valid Texas driver's license containing a physical description consistent with his appearance for the purpose of inducing the person to sell him an alcoholic beverage.

(c) Except as provided in Subsection (d) of this section, a violation of this section is a misdemeanor punishable by a fine of not less than \$100 nor more than \$500, by confinement in jail for not more than one year, or by both.

(d) If a person has been previously convicted of a violation of this section or Section 101.63 of this code, a violation is a misdemeanor punishable by a fine of not less than \$500 nor more than \$1,000, by confinement in jail for not more than one year, or by both.

[Acts 1977, 65th Leg., p. 513, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 106.04. Consumption of Alcohol by a Minor

(a) Except as provided in Subsection (b) of this section, a minor commits an offense if he consumes an alcoholic beverage.

(b) A minor may consume an alcoholic beverage if he is in the visible presence of an adult parent, guardian, or spouse.

(c) Except as provided in Subsection (d) of this section, a violation of this section is a misdemeanor punishable by a fine of not less than \$25 nor more than \$200.

(d) If a person has been previously convicted of a violation of this section or Section 106.05 of this code, a violation is a misdemeanor punishable by a fine of not less than \$100 nor more than \$500.

[Acts 1977, 65th Leg., p. 514, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 106.05. Possession of Alcohol by a Minor

(a) Except as provided in Subsection (b) of this section, a minor commits an offense if he possesses an alcoholic beverage.

(b) A minor may possess an alcoholic beverage:

(1) while on the premises of a licensee or permittee if he is an employee of the licensee or permittee and the employment is not prohibited by this code; or

(2) if he is in the presence of an adult parent, guardian, or spouse, or other adult to whom he has been committed by a court.

(c) Except as provided in Subsection (d) of this section, a violation of this section is a misdemeanor punishable by a fine of not less than \$25 nor more than \$200.

(d) If a person has been previously convicted of a violation of this section or Section 106.04 of this code, a violation is a misdemeanor punishable by a fine of not less than \$100 nor more than \$500.

[Acts 1977, 65th Leg., p. 514, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 106.06. Purchase of Alcohol for a Minor; Furnishing Alcohol to a Minor

(a) Except as provided in Subsection (b) of this section, a person commits an offense if he purchases an alcoholic beverage for or gives or knowingly makes available an alcoholic beverage to a minor.

(b) A person may purchase an alcoholic beverage for or give an alcoholic beverage to a minor if he is the minor's adult parent, guardian, or spouse, or an adult in whose custody the minor has been committed by a court, and he is visibly present when the minor possesses or consumes the alcoholic beverage.

(c) A violation of this section is a misdemeanor punishable by a fine of not less than \$100 nor more than \$500.

[Acts 1977, 65th Leg., p. 514, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 106.07. Misrepresentation of Age by a Minor

(a) A minor commits an offense if he falsely states that he is 18 years of age or older or presents any document that indicates he is 18 years of age or older to a person engaged in selling or serving alcoholic beverages.

(b) Except as provided in Subsection (c) of this section, a violation of this section is a misdemeanor punishable by a fine of not less than \$25 nor more than \$200.

(c) If a person has been previously convicted of a violation of this section, a violation is a misdemeanor punishable by a fine of not less than \$100 nor more than \$500.

[Acts 1977, 65th Leg., p. 514, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 106.08. Importation by a Minor

No minor may import into this state or possess with intent to import into this state any alcoholic beverage.

[Acts 1977, 65th Leg., p. 515, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 106.09. Employment of Minors

(a) Except as provided in Subsections (b) and (c) of this section, no person may employ a minor to sell, prepare, serve, or otherwise handle liquor, or to assist in doing so.

(b) A holder of a wine only package store permit may employ a person 16 years old or older to work in any capacity.

(c) A holder of a mixed beverage permit may employ a minor to work in any capacity other than the actual selling, preparing, or serving of mixed beverages.

[Acts 1977, 65th Leg., p. 515, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 106.10. Plea of Guilty by Minor

No minor may plead guilty to an offense under this chapter except in open court before a judge.

[Acts 1977, 65th Leg., p. 515, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 106.11. Parent or Guardian at Trial

(a) Except as provided in Subsection (d) of this section, no minor may be convicted of an offense under this chapter unless his parent or legal guardian is present in court.

(b) If the parent or legal guardian of a minor accused of a violation of this chapter resides within the jurisdiction of the court before whom the case is to be heard, the court shall summon the parent or legal guardian to appear in court and shall require him to be present at all proceedings in the case.

(c) If the parent or legal guardian of a minor accused of a violation of this chapter resides outside the jurisdiction of the court before whom the case is to be heard, the court shall give written notice of the charge against the minor to the parent or legal guardian.

(d) If the court is unable to locate or to compel the presence of a minor's parent or legal guardian after diligent effort, the court may waive the requirement of presence of a parent or legal guardian.

[Acts 1977, 65th Leg., p. 515, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 106.12. Expungement of Conviction of a Minor

(a) Any person convicted of not more than one violation of this code while a minor, on attaining the age of 18 years, may apply to the court in which he was convicted to have the conviction expunged.

(b) The application shall contain the applicant's sworn statement that he was not convicted of any violation of this code while a minor other than the one he seeks to have expunged.

(c) If the court finds that the applicant was not convicted of any other violation of this code while he was a minor, the court shall order the conviction, together with all complaints, verdicts, sentences, and other documents relating to the offense, to be expunged from the applicant's record. After entry of the order, the applicant shall be released from all disabilities resulting from the conviction, and the conviction may not be shown or made known for any purpose.

[Acts 1977, 65th Leg., p. 515, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 106.13. Sanctions Against Retailer

(a) Except as provided in Subsections (b) and (c) of this section, the commission or administrator may cancel or suspend for not more than 60 days a retail license or permit or a private club registration permit if it is found, on notice and hearing, that the licensee or permittee knowingly sold, served, dispensed, or delivered an alcoholic beverage to a minor in violation of this code or knowingly permitted a minor to violate Section 106.04 or 106.05 of this code on the licensed premises.

(b) For a second offense the commission or administrator may cancel the license or permit or suspend

it for not more than three months. For a third offense within a period of 36 consecutive months the commission or administrator may cancel the permit or suspend it for not more than 12 months.

(c) The commission or administrator may relax the provisions of this section concerning suspension and cancellation and assess a sanction the commission or administrator finds just under the circumstances if, at a hearing, the licensee or permittee establishes to the satisfaction of the commission or administrator:

(1) that the violation could not reasonably have been prevented by the permittee or licensee by the exercise of due diligence;

(2) that the permittee or licensee was entrapped; or

(3) that an agent, servant, or employee of the permittee or licensee violated this code without the knowledge of the permittee or licensee.

[Acts 1977, 65th Leg., p. 516, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 107. TRANSPORTATION AND IMPORTATION

Section

- 107.01. Transportation of Liquor: Statement Required.
- 107.02. Transportation of Beer: Statement Required.
- 107.03. Delivery of Liquor in Dry Area.
- 107.04. Delivery of Beer in Dry Area.
- 107.05. Importation of Liquor.
- 107.06. Importation of Beer.
- 107.07. Importation for Personal Use; Importation by Railroad Companies.
- 107.08. Transportation of Beverages for Personal Consumption.

§ 107.01. Transportation of Liquor: Statement Required

(a) No person may transport liquor into this state or on a public highway, street, or alley in this state unless the person accompanying or in charge of the shipment has with him, available for exhibition and inspection, a written statement furnished and signed by the shipper showing the name and address of the consignor and the consignee, the origin and destination of the shipment, and any other information required by rule or regulation of the commission.

(b) The person in charge of the shipment while it is being transported shall exhibit the statement to the commission, an authorized representative of the commission, or a peace officer on demand, and it is a violation of this code to fail or refuse to do so. The representative or officer shall accept the written statement as prima facie evidence of the legal right to transport the liquor.

[Acts 1977, 65th Leg., p. 516, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 107.02. Transportation of Beer: Statement Required

(a) It is lawful for a person to transport beer from any place where its sale, manufacture, or distribution is authorized to another place in the state where its sale, manufacture, or distribution is authorized, or from the state boundary to a place where its sale, manufacture, or distribution is authorized, even though the route of transportation may cross a dry area.

(b) A shipment of beer must be accompanied by a written statement furnished and signed by the shipper showing:

(1) the name and address of the consignor and consignee;

(2) the origin and destination of the shipment; and

(3) any other information required by the commission or administrator.

(c) The person in charge of the shipment while it is being transported shall exhibit the written statement to any representative of the commission or peace officer who demands to see it. The statement shall be accepted by the representative or peace officer as prima facie evidence of the legal right to transport the beer.

(d) A person who transports beer not accompanied by the required statement, or who fails to exhibit the statement after a lawful demand, violates this code.

[Acts 1977, 65th Leg., p. 517, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 107.03. Delivery of Liquor in Dry Area

No carrier may transport and deliver liquor to a person in a dry area in this state except for a purpose authorized by this code.

[Acts 1977, 65th Leg., p. 517, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 107.04. Delivery of Beer in Dry Area

A common carrier may not deliver beer in a dry area unless it is consigned to a local or general distributor's licensee who has previously stated that he intends to transport it to a licensed place of business in a wet area. A common carrier who transports beer to a distributor in a dry area shall comply strictly with this section and Section 107.02 of this code.

[Acts 1977, 65th Leg., p. 517, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 107.05. Importation of Liquor

(a) No person may import liquor into the state and deliver it to a person not authorized to import it.

(b) This section does not apply to the transportation of liquor into the state as authorized by Section 107.07 of this code.

[Acts 1977, 65th Leg., p. 517, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 107.06. Importation of Beer

(a) No person may import beer into the state except the holder of a manufacturer's or general, local, or branch distributor's license.

(b) No person may transport beer into this state unless it is consigned and delivered to one of the licensees named in Subsection (a) of this section.

(c) This section does not apply to the importation or transportation of military beer consigned to a military installation or to the importation of beer as authorized under Section 107.07 of this code.

[Acts 1977, 65th Leg., p. 517, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 107.07. Importation for Personal Use; Importation by Railroad Companies

(a) A Texas resident may import not more than one quart of liquor for his own personal use without being required to hold a permit. A nonresident of Texas may import not more than a gallon of liquor for his own personal use without being required to hold a permit. A person importing liquor into the state under this subsection must pay the state tax on liquor and affix the required tax stamps. No person under the age of 18 years and no intoxicated person may import any liquor into the state.

(b) A person may import beer into this state for his own personal use without being required to hold a license, but may not import more than 24 twelve-ounce bottles or an equivalent quantity in one day. He must pay the state tax on beer.

(c) A member of the armed forces stationed in Texas is treated as a Texas resident for the purposes of Subsections (a) and (b) of this section.

(d) A railroad company operating in this state may import beer owned by the company in quantities necessary to meet the needs of its passengers, but it may not sell or serve beer in a dry area.

[Acts 1977, 65th Leg., p. 518, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 107.08. Transportation of Beverages for Personal Consumption

A person who purchases an alcoholic beverage for his own consumption may transport it from a place where its sale is legal to a place where its possession is legal without holding a license or permit.

[Acts 1977, 65th Leg., p. 518, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 108. ADVERTISING

SUBCHAPTER A. GENERAL PROVISIONS RELATING TO ADVERTISING

Section

108.01. Deceptive, Disparaging, or Otherwise Unlawful Advertising.

108.02. Prohibited Forms of Advertising.

108.03. Regulation of Promotional Activities.

108.04. Acts of Promotional or Courtesy Nature: Administrative Discretion.

Section

108.05. Allowance for Advertisement or Distribution.

108.06. Prizes and Premiums.

108.07. Advertising of Mixed Beverage Establishments.

SUBCHAPTER B. OUTDOOR ADVERTISING

108.51. Definitions.

108.52. Permissible Outdoor Advertising.

108.53. Billboards and Electric Signs: When Permit is Required.

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108.55. Local Regulation of Billboards, Electric Signs.

108.56. Dry Areas.

SUBCHAPTER A. GENERAL PROVISIONS RELATING TO ADVERTISING

§ 108.01. Deceptive, Disparaging, or Otherwise Unlawful Advertising

(a) No manufacturer or distributor directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may publish, disseminate, or cause to be published or disseminated by any medium enumerated in Subsection (b) of this section an advertisement of a brewery product that:

- (1) causes or is reasonably calculated to cause deception of the consumer with respect to the product advertised;
- (2) directly or by ambiguity, omission, or inference tends to create a misleading impression;
- (3) is untrue in any particular;
- (4) refers to the alcohol content of the product;
- (5) disparages a competitor's product; or
- (6) is obscene or indecent.

(b) The media covered by this section include:

- (1) radio broadcasting;
- (2) newspapers, periodicals, and other publications;
- (3) signs and outdoor advertising; and
- (4) any printed or graphic matter.

[Acts 1977, 65th Leg., p. 519, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 108.02. Prohibited Forms of Advertising

No person may advertise an alcoholic beverage or the sale of an alcoholic beverage by the employment or use of a sound vehicle or handbill on a public street, alley, or highway.

[Acts 1977, 65th Leg., p. 519, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 108.03. Regulation of Promotional Activities

The commission shall adopt rules permitting and regulating the use of business cards, menu cards, stationery, service vehicles and equipment, and delivery vehicles and equipment that bear alcoholic beverage advertising. The commission shall also adopt rules permitting and regulating the use of insignia advertising beer by brand name on caps, regalia, or uniforms worn by employees of manufac-

turers or distributors or by participants in a game, sport, athletic contest, or revue if the participants are sponsored by a manufacturer or distributor. [Acts 1977, 65th Leg., p. 519, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 108.04. Acts of Promotional or Courtesy Nature: Administrative Discretion

The commission may promulgate rules which shall set definite limitations consistent with the general provisions of this code, relaxing the restrictions of Sections 102.14, 102.15, and 108.06 of this code, with respect to:

- (1) the sale or gift of novelties advertising the product of a manufacturer or distributor;
- (2) the making of gifts to civic, religious, or charitable organizations;
- (3) the cleaning and maintenance of coil connections for dispensing draught beer;
- (4) the lending of equipment for special occasions; and
- (5) acts of a purely courtesy nature.

[Acts 1977, 65th Leg., p. 519, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 108.05. Allowance for Advertisement or Distribution

No manufacturer or distributor, directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may pay or make an allowance to a retail dealer for an advertising or distribution service.

[Acts 1977, 65th Leg., p. 520, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 108.06. Prizes and Premiums

No manufacturer or distributor, directly or indirectly, or through a subsidiary, affiliate, agent, employee, officer, director, or firm member, may offer a prize, premium, gift, or other inducement to a dealer in or consumer of brewery products.

[Acts 1977, 65th Leg., p. 520, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 108.07. Advertising of Mixed Beverage Establishments

The provisions of this code applicable to outdoor advertising and to advertising in or on the premises do not apply to establishments for which a mixed beverage permit has been issued. The commission or administrator shall promulgate reasonable rules relating to that type of advertising, and violation of any of those rules is a violation of this code. [Acts 1977, 65th Leg., p. 520, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 108.08 to 108.50 reserved for expansion]

SUBCHAPTER B. OUTDOOR ADVERTISING

§ 108.51. Definitions

In this subchapter:

(1) "Outdoor advertising" means any sign bearing a word, mark, description, or other device that is used to advertise an alcoholic beverage or the business of a person who manufactures, sells, or distributes an alcoholic beverage if the sign is displayed outside the walls or enclosure of a building or structure where a license or permit is issued or if it is displayed inside a building but within five feet of an exterior wall facing a street or highway so that it is visible by a person of ordinary vision from outside the building. "Outdoor advertising" does not include advertising appearing on radio or television, in a public vehicular conveyance for hire, or in a newspaper, magazine, or other literary publication published periodically. For the purpose of this definition the word "sign," with respect to a retailer, does not include an identifying label affixed to a container as authorized by law or to a card or certificate of membership in an association or organization if the card or certificate is not larger than 80 square inches.

(2) "Billboard" means a structure directly attached to the land, a house, or a building having one or more spaces used to display a sign or advertisement of an alcoholic beverage or a person engaged in the manufacture, sale, or distribution of alcoholic beverages, whether or not the structure is artificially lighted. "Billboard" does not include a wall or other part of a structure used as a building, fence, screen, front, or barrier.

(3) "Electric sign" means a structure or device other than an illuminated billboard by which artificial light produced by electricity is used to advertise the alcoholic beverage business by a person who manufactures, sells, or distributes alcoholic beverages or to advertise an alcoholic beverage.

[Acts 1977, 65th Leg., p. 520, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 108.52. Permissible Outdoor Advertising

(a) No outdoor advertising is permitted in this state except that which is authorized by this section or under rules of the commission or administrator promulgated pursuant to Section 108.03 of this code.

(b) Billboards and electric signs are permitted if they are not located in a manner contrary to this code.

(c) Retail licensees and permittees may erect or maintain one sign at each place of business which may read as follows:

- (1) if a beer retailer, the sign may read "Beer";

(2) if an off-premises beer retailer, the sign may read "Beer" or "Beer to Go";

(3) if a wine and beer retailer, the sign may read "Beer," "Beer and Wine," or "Beer, Wine and Ale";

(4) if a wine and beer off-premises retailer, the sign may read "Beer," "Beer to Go," "Beer and Wine," "Beer and Wine to Go," "Beer, Wine and Ale," or "Beer, Wine and Ale to Go";

(5) if a package store permittee, the sign may read "Package Store," "Liquors," or "Wines and Liquors," and if a retail dealer's off-premise license is also held, the sign may read "Package Store," "Wines, Liquors and Beer," or "Wine, Liquors and Beer to Go"; or

(6) if a wine only package store permittee, the sign may read "Wine" or "Wines," and if a retail dealer's off-premise license is also held, the sign may read "Wines and Beer," "Wine and Beer," or "Wine and Beer to Go."

(d) A sign erected under Subsection (c) of this section may be placed inside or outside the place of business so as to be visible to the general public. None of the letters on a sign may be more than 12 inches in height, and no sign may contain any wording, insignia, or device representative of the brand or name of an alcoholic beverage. The commission or administrator may permit a licensee or permittee to erect or maintain one sign at each entrance or side of a building occupied by him if it faces more than one street or highway.

(e) Billboards, electric signs, or other signs to designate the firm name or business of a permittee or licensee authorized to manufacture, rectify, bottle, or wholesale alcoholic beverages may be displayed at the licensee's or permittee's place of business.

(f) A display composed of alcoholic beverages or printed or lithographed material advertising alcoholic beverages located inside the licensed premises is permitted if the alcoholic beverages or advertising material is not placed within six inches of a window or opening facing a street, alley, or highway. A card or certificate of membership in an association or organization is not "advertising material" for the purpose of this subsection if it is not larger than 80 square inches.

[Acts 1977, 65th Leg., p. 521, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 108.53. Billboards and Electric Signs: When Permit is Required

(a) No person may erect a billboard or electric sign advertising an alcoholic beverage within 200 feet of a retail establishment authorized to sell that beverage unless he has first obtained a permit for that purpose from the commission. No permit is required for a billboard or electric sign that is not located within 200 feet of a retail establishment authorized to sell the advertised alcoholic beverage.

(b) The commission or administrator shall provide permit application forms, which may contain any information the commission or administrator deems necessary. The application shall contain a statement that the erection or maintenance of the billboard or electric sign will not have the effect of advertising or directing patronage to a particular retail establishment authorized to sell alcoholic beverages. Application shall be made under oath, addressed to the commission or administrator.

(c) The commission or administrator shall issue a permit if either of them finds that all statements in the application are true and the erection or maintenance of the billboard or electric sign will not be contrary to this code or to a rule of the commission. Otherwise, the commission or administrator shall refuse to issue a permit.

[Acts 1977, 65th Leg., p. 521, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 108.54. Nonconforming Outdoor Advertising: Seizure, Removal

(a) No person may erect, maintain, or display any outdoor advertising, billboard, or electric sign which does not conform in all respects to the provisions of this code. A billboard or electric sign that does not conform is illegal equipment which is subject to seizure and forfeiture as provided in this code.

(b) The owner of any outdoor advertising that does not conform to the provisions of this code is responsible for removing it from public view immediately, and the failure to do so is a violation of this code.

[Acts 1977, 65th Leg., p. 522, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 108.55. Local Regulation of Billboards, Electric Signs

No person may erect or maintain a billboard or electric sign in violation of an ordinance of an incorporated city or town.

[Acts 1977, 65th Leg., p. 522, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 108.56. Dry Areas

No person may erect or maintain a billboard or electric sign in an area or zone where the sale of alcoholic beverages is prohibited by law.

[Acts 1977, 65th Leg., p. 522, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 109. MISCELLANEOUS REGULATORY PROVISIONS

SUBCHAPTER A. SALVAGED AND INSURED LOSSES

- Section
- 109.01. Sale of Salvaged or Insured Loss.
- 109.02. Registration of Beverages With Commission.
- 109.03. Prerequisite to Salability.
- 109.04. Sale of Beer: Procedure.
- 109.05. Sale of Liquor: Procedure.
- 109.06. Purchaser's Right to Use Beverages.
- 109.07. Salvor May Reject Bid.

SUBCHAPTER B. HOME PRODUCTION OF WINE

Section

- 109.21. Home Production of Wine.
109.22. Sale of Materials for Home Production of Wine.

SUBCHAPTER C. LOCAL REGULATION OF ALCOHOLIC BEVERAGES

- 109.31. Municipal Regulation of Liquor.
109.32. Municipal and County Regulation of Beer.
109.33. Sales Near School, Church, or Hospital.

SUBCHAPTER D. OTHER MISCELLANEOUS PROVISIONS

- 109.51. Sacramental Wine.
109.52. Warehouse Receipts.
109.53. Citizenship of Permittee; Control of Premises; Subterfuge Ownership; Etc.

SUBCHAPTER A. SALVAGED AND INSURED LOSSES

§ 109.01. Sale of Salvaged or Insured Loss

If a person who does not hold a permit or license to sell alcoholic beverages acquires possession of alcoholic beverages as an insurer or insurance salvor in the salvage or liquidation of an insured damage or loss sustained in this state by a qualified licensee or permittee, he may sell the beverages in one lot or parcel as provided in this subchapter without being required to obtain a license or permit.

[Acts 1977, 65th Leg., p. 523, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 109.02. Registration of Beverages With Commission

Immediately after taking possession of the alcoholic beverages, the insurer or insurance salvor shall register them with the commission, furnishing the commission a detailed inventory and the exact location of the beverages. At the time of registration, the registrant shall post with the commission a surety bond in an amount that the administrator finds adequate to protect the state against the taxes due on the beverages, if any are due. The registrant shall remit with the registration a fee of \$10. The fee only permits the sale of the beverages listed in the registration.

[Acts 1977, 65th Leg., p. 523, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 109.03. Prerequisite to Salability

An alcoholic beverage is salable under this subchapter only if it has not been adulterated, it is fit for human consumption, all tax stamps required by law have been affixed, and the labels are legible as to contents, brand, and manufacturer.

[Acts 1977, 65th Leg., p. 523, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 109.04. Sale of Beer: Procedure

(a) When the commission is notified under this subchapter of the acquisition of beer or its containers or original packages, it shall immediately notify a holder of a general, local, or branch distributor's license who handles the brand of beer and who

operates in the county where it is located or, if it is located in a dry area or if no distributor operates in the county, the nearest distributor handling the brand or the manufacturer who brewed it.

(b) The insurer or insurance salvor, the commission, and the distributor or manufacturer shall jointly agree whether the beer is salable. If it is determined to be unsalable, the commission shall destroy it. If it is determined to be salable, the manufacturer or distributor shall be given the opportunity to purchase it. A distributor may purchase beer at the cost price less any state taxes that have been paid, F.O.B. its place of business. A manufacturer may purchase beer at the cost price to the nearest distributor of the brand, less any state taxes that have been paid, F.O.B. that distributor's place of business. A manufacturer or distributor may purchase returnable bottles, containers, or packages at their deposit price.

(c) If the distributor or manufacturer does not exercise the right to purchase the merchandise within 10 days after being given the opportunity to purchase it, the insurer or insurance salvor may sell it to any qualified licensee or permittee as provided in Section 109.01 of this code.

[Acts 1977, 65th Leg., p. 523, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 109.05. Sale of Liquor: Procedure

(a) When the commission is notified under this subchapter of the acquisition of liquor or its containers or original packages, it shall immediately notify the holder or holders of wholesaler's, class B wholesaler's, or local class B wholesaler's permits who handle and regularly sell the brand or brands of liquor involved and who operate in the area where the liquor is located, or who operate in the nearest wet area if the liquor is in a dry area. The commission shall also notify the nonresident seller's permittees who handle the brand or brands of liquor involved, or the manufacturer's agent's permittees who represent those nonresident seller's permittees.

(b) The commission, the permittees who are notified, and the insurer or insurance salvor shall jointly determine whether the liquor is salable. If the liquor is determined to be unsalable, the commission shall destroy it. If it is determined to be salable, it shall first be offered for sale to the wholesaler and nonresident seller of the brand or brands at their cost price, less any state taxes that have been paid on the liquor.

(c) If the wholesaler does not exercise the right to purchase the liquor, container, or packages within 10 days after it is offered, the commission shall sell it at a public or private sale.

[Acts 1977, 65th Leg., p. 524, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 109.06. Purchaser's Right to Use Beverages

A permittee or licensee who purchases alcoholic beverages under this subchapter may treat them as other alcoholic beverages acquired by him as provided in this code.

[Acts 1977, 65th Leg., p. 524, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 109.07. Salvor May Reject Bid

A salvor may reject a bid made on only a part of a whole salvage.

[Acts 1977, 65th Leg., p. 524, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 109.08 to 109.20 reserved for expansion]

SUBCHAPTER B. HOME PRODUCTION OF WINE

§ 109.21. Home Production of Wine

(a) The head of a family or an unmarried adult may produce for the use of his family or himself not more than 200 gallons of wine per year. No license or permit is required, but before beginning production the person shall file two copies of a statement containing the information required under Subsection (b) of this section. One copy of the statement, with a \$1 filing fee, shall be filed with the commission's state headquarters in Austin. Another copy shall be filed with the commission's district office that has jurisdiction over the area where the wine is to be produced.

(b) The statement must specify the name of the person who intends to produce wine, his address, the ingredients to be used, the number of gallons to be produced, the number of adult persons in the family (if the person is head of a family), and any other information required by the commission.

(c) The commission may prohibit the use of any ingredient it finds detrimental to health or susceptible of use to evade this code. Only wine made from the normal alcoholic fermentation of the juices of dandelions or grapes, raisins, or other fruits may be produced under this section. The possession of wine produced under this section is not an offense if the person making it complies with all provisions of this section, the ingredients used conform to the statement, and the wine is not distilled, fortified, or otherwise altered to increase its alcohol content.

[Acts 1977, 65th Leg., p. 524, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 109.22. Sale of Materials for Home Production of Wine

No person may sell any material designed for the home production of wine unless it is accompanied with the following statement, with the current mailing address of the commission inserted in the blank: "No person may commence the production of wine for family or personal use unless he has first filed the following information and a \$1 filing fee with

the Texas Alcoholic Beverage Commission, whose address is _____:

Name

Post Office Address

Number of gallons of wine to be produced not to exceed 200 gallons

Ingredients to be used

WARNING: Violation of the filing requirement constitutes a misdemeanor under state law punishable by fine of not less than \$100 and not more than \$1,000, or by confinement in the county jail for not more than one year, or by both such fine and confinement."

[Acts 1977, 65th Leg., p. 525, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 109.23 to 109.30 reserved for expansion]

SUBCHAPTER C. LOCAL REGULATION OF ALCOHOLIC BEVERAGES

§ 109.31. Municipal Regulation of Liquor

A city by charter may prohibit the sale of liquor in all or part of the residential sections of the city.

[Acts 1977, 65th Leg., p. 525, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 109.32. Municipal and County Regulation of Beer

(a) An incorporated city or town by charter or ordinance may:

(1) prohibit the sale of beer in a residential area; and

(2) regulate the sale of beer and prescribe the hours when it may be sold, except the city or town may not permit the sale of beer when its sale is prohibited by this code.

(b) In a county that has only one incorporated city or town that has a majority of the population of the county, according to the most recent federal census, and where the city or town has shortened the hours of sale for beer on Sundays by a valid charter amendment or ordinance before January 1, 1957, the commissioners court may enter an order prohibiting the sale of beer on Sundays during the hours it is prohibited in the city or town. The order may apply to all or part of the area of the county located outside the city or town. The commissioners court may not adopt the order unless it first publishes notice for four consecutive weeks in a newspaper of general circulation in the county published in the county or a nearby county.

(c) In exercising the authority granted by this section, the city, town, or county may distinguish between retailers selling beer for on-premises consumption and retailers, manufacturers, or distributors who do not sell beer for on-premises consumption.

[Acts 1977, 65th Leg., p. 525, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 109.33. Sales Near School, Church, or Hospital

The commissioners court of a county may enact regulations applicable in areas in the county outside an incorporated city or town, and the governing board of an incorporated city or town may enact regulations applicable in the city or town, prohibiting the sale of alcoholic beverages by a dealer whose place of business is within 300 feet of a church, public school, or public hospital. The measurement of the distance shall be along the property lines of the street fronts and from front door to front door, and in direct line across intersections.

[Acts 1977, 65th Leg., p. 526, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 109.34 to 109.50 reserved for expansion]

SUBCHAPTER D. OTHER MISCELLANEOUS
PROVISIONS

§ 109.51. Sacramental Wine

Nothing in this code limits the right of a minister, priest, rabbi, or religious organization from obtaining sacramental wine for sacramental purposes only, directly from any lawful source inside or outside the state. No fee or tax may be directly or indirectly charged for the exercise of this right. The commission by rule and regulation may regulate the importation of sacramental wine and prevent unlawful use of the right granted by this section.

[Acts 1977, 65th Leg., p. 526, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 109.52. Warehouse Receipts

A bank, trust company, or other financial institution that owns or possesses warehouse receipts for alcoholic beverages as security for a loan, after receiving permission from the commission or administrator, may sell the beverages to a licensee or permittee authorized to purchase them.

[Acts 1977, 65th Leg., p. 526, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 109.53. Citizenship of Permittee; Control of Premises; Subterfuge Ownership; Etc.

No person who has not been a citizen of Texas for a period of three years immediately preceding the filing of his application therefor shall be eligible to receive a permit under this code. No permit except a brewer's permit, and such other licenses and permits as are necessary to the operation of a brewer's permit, shall be issued to a corporation unless the same be incorporated under the laws of the state and unless at least 51 percent of the stock of the corporation is owned at all times by citizens who have resided within the state for a period of three years and who possess the qualifications required of other applicants for permits; provided, however, that the restrictions contained in the preceding clause shall not apply to domestic or foreign corpora-

tions that were engaged in the legal alcoholic beverage business in this state under charter or permit prior to August 24, 1935. Partnerships, firms, and associations applying for permits shall be composed wholly of citizens possessing the qualifications above enumerated. Any corporation (except carrier) holding a permit under this code which shall violate any provisions hereof, or any rule or regulation promulgated hereunder, shall be subject to forfeiture of its charter and it shall be the duty of the attorney general, when any such violation is called to his attention, to file a suit for such cancellation in a district court of Travis County. Such provisions of this section as require Texas citizenship or require incorporation in Texas shall not apply to the holders of agent's, industrial, medicinal and carrier's permits. No person shall sell, warehouse, store or solicit orders for any liquor in any wet area without first having procured a permit of the class required for such privilege, or consent to the use of or allow his permit to be displayed by or used by any person other than the one to whom the permit was issued. It is the intent of the legislature to prevent subterfuge ownership of or unlawful use of a permit or the premises covered by such permit; and all provisions of this code shall be liberally construed to carry out this intent, and it shall be the duty of the commission or the administrator to provide strict adherence to the general policy of preventing subterfuge ownership and related practices hereinafter declared to constitute unlawful trade practices. No applicant for a package store permit or a renewal thereof shall have authority to designate as "premise" and the commission or administrator shall not approve a lesser area than that specifically defined as "premise" in Section 11.49(a) of this code. Every permittee shall have and maintain exclusive occupancy and control of the entire licensed premises in every phase of the storage, distribution, possession, and transportation and sale of all alcoholic beverages purchased, stored or sold on the licensed premises. Any device, scheme or plan which surrenders control of the employees, premises or business of the permittee to persons other than the permittee shall be unlawful. No person under the age of 18 years, unless accompanied by his or her parent, guardian, adult husband or adult wife, or other adult person into whose custody he or she has been committed for the time by some court, shall knowingly be allowed on the premises of the holder of a package store permit. Any package store permittee who shall be injured in his business or property by another package store permittee by reason of anything prohibited in this section may institute suit in any district court in the county wherein the violation is alleged to have occurred to require enforcement by injunctive procedures and/or to recover threefold the damages by him sustained; plus costs of suit including a reasonable attorney's fee. The provision prohibiting the

licensing of only a portion of a building as premise for a package store permit shall not apply to hotels as already defined in this code.

[Acts 1977, 65th Leg., p. 526, ch. 194, § 1, eff. Sept. 1, 1977.]

TITLE 5. TAXATION

CHAPTER 201. LIQUOR TAXES

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- 201.02. "First Sale" Defined.
- 201.03. Tax on Distilled Spirits.
- 201.04. Tax on Vinous Liquor.
- 201.05. Reporting System.
- 201.06. Payment of Tax; Discounts.
- 201.07. Due Date.
- 201.08. Exemption From Tax.
- 201.09. Refund Due on Disposition Outside of State.
- 201.10. Excess Tax.
- 201.11. Tax Credits and Refunds.
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- 201.46. Tax Liability.
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- 201.94. Liability for Tax.
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- 201.97. Printing, Distribution, and Use of Stamps.

SUBCHAPTER A. TAX ON LIQUOR OTHER THAN ALE AND MALT LIQUOR

§ 201.01. Liquor

In this subchapter, "liquor" does not include ale or malt liquor.

[Acts 1977, 65th Leg., p. 529, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.02. "First Sale" Defined

In this subchapter, "first sale":

(1) as applied to liquor imported into this state by the holder of a wholesaler's permit authorizing importation, means the first actual sale by the permittee to the holder of any other permit authorizing the retail sale of the beverage or to the holder of a local distributor's permit; and

(2) as applied to all other liquor, means the first sale, possession, distribution, or use in this state.

[Acts 1977, 65th Leg., p. 529, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.03. Tax on Distilled Spirits

(a) A tax is imposed on the first sale of distilled spirits at the rate of \$2 per gallon.

(b) The minimum tax imposed on packages of distilled spirits containing two ounces or less is five cents per package.

(c) Should packages containing less than one-half pint but more than two ounces ever be legalized in this state, the minimum tax imposed on each of these packages is \$0.122.

[Acts 1977, 65th Leg., p. 529, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.04. Tax on Vinous Liquor

(a) A tax is imposed on the first sale of vinous liquor that does not contain over 14 percent of alcohol by volume at the rate of 17 cents per gallon.

(b) A tax is imposed on vinous liquor that contains more than 14 percent of alcohol by volume at the rate of 34 cents per gallon.

(c) A tax is imposed on artificially carbonated and natural sparkling vinous liquor at the rate of 43 cents per gallon.

[Acts 1977, 65th Leg., p. 529, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.05. Reporting System

A person who holds a permit authorizing the importation of liquor into this state shall pay the liquor tax by the reporting system under bond.

[Acts 1977, 65th Leg., p. 530, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.06. Payment of Tax; Discounts

(a) The tax on liquor, levied and computed under this subchapter, shall be paid by a remittance payable to the state treasurer and forwarded together with any required sworn statement of taxes due to

the commission in Austin on or before the date it is due.

(b) A discount of two percent of the amount due shall be withheld by the permittee for keeping records, furnishing bonds, and properly accounting for the remittance of the tax due. No discount is permitted if the tax is delinquent at the time of payment.

[Acts 1977, 65th Leg., p. 530, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.07. Due Date

The tax on liquor is due and payable on the 15th of the month following the first sale.

[Acts 1977, 65th Leg., p. 530, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.08. Exemption From Tax

(a) No tax may be collected on liquor:

(1) shipped out of state for consumption outside the state; or

(2) sold aboard a ship for ship's supplies.

(b) The commission shall provide forms for claiming the exemption prescribed by this section.

(c) A tax credit shall be allowed for payment of any unintended or excess tax.

[Acts 1977, 65th Leg., p. 530, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.09. Refund Due on Disposition Outside of State

The holder of any permit authorizing the transportation of liquor out of this state may apply to the commission for a refund of the excise tax on liquor on which the state tax has been paid on proper proof that the liquor was sold or disposed of outside of this state.

[Acts 1977, 65th Leg., p. 530, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.10. Excess Tax

A permittee is entitled to a refund or tax credit on future tax payment for any excess tax on liquor paid through oversight, mistake, error, or miscalculation.

[Acts 1977, 65th Leg., p. 530, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.11. Tax Credits and Refunds

The commission shall provide by rule for the equitable and final disposition of tax refunds or credits when liquor tax is overpaid or paid by mistake. It shall prescribe the time and manner for filing claims for credits and refunds and provide appropriate forms.

[Acts 1977, 65th Leg., p. 530, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.12. Appropriations for Refunds

Necessary funds from the collection of the tax on imported liquor before the revenue from that tax has been allocated may be appropriated for the payment of refunds of tax on imported liquor.

[Acts 1977, 65th Leg., p. 530, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.13. Sale of Untaxed Liquor Prohibited

No person may sell, offer for sale, or store for the purpose of sale in this state any liquor on which the state or federal tax, if due, has not been paid.

[Acts 1977, 65th Leg., p. 530, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.14. Invoices of Transported Liquor

A holder of a permit authorizing the wholesaling of liquor and the transporting of liquor outside of this state shall furnish to the commission duplicate copies of all invoices for the sale of liquor transported outside of this state within 24 hours after the liquor has been removed from the permittee's place of business.

[Acts 1977, 65th Leg., p. 531, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.15. Evidence in Suit

In any suit brought to enforce the collection of tax owed by the holder of a permit authorizing the importation of liquor into this state, a certificate by the commission or administrator showing the delinquency is prima facie evidence of:

(1) the levy of the tax or the delinquency of the stated amount of tax and penalty; and

(2) compliance by the commission with the provisions of this code relating to the computation and levy of the tax.

[Acts 1977, 65th Leg., p. 531, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.16. Penalty

A person who violates any section of this subchapter except Section 201.09 or 201.13 of this code commits a misdemeanor which on conviction is punishable by a fine of not less than \$100 nor more than \$1,000 or by imprisonment in the county jail for not less than 30 days nor more than one year. Violations of Sections 201.09 and 201.13 are punishable in accordance with Section 1.05 of this code.

[Acts 1977, 65th Leg., p. 531, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.17. Liquor in Metric Containers

For the purpose of the taxes imposed on liquor by this subchapter and on ale and malt liquor by Subchapter B of this chapter, if the liquor is in metric containers the amount of tax due is determined by converting the metric amount into the equivalent amount in gallons and applying the appropriate tax rate. The commission shall prepare tables showing the amount of tax due on various types of liquor, including ale and malt liquor, in metric containers.

[Acts 1977, 65th Leg., p. 531, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 201.18 to 201.40 reserved for expansion]

SUBCHAPTER B. TAX ON ALE AND MALT LIQUOR

§ 201.41. First Sale

"First sale" of ale or malt liquor means its first sale in Texas or its importation into this state, whichever occurs first, but not both.

[Acts 1977, 65th Leg., p. 531, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.42. Tax on Ale and Malt Liquor

A tax is imposed on the first sale of ale and malt liquor at the rate of \$0.165 per gallon.

[Acts 1977, 65th Leg., p. 531, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.43. Duty to Pay Tax; Due Date

(a) The importer has the primary duty to pay the tax on ale and malt liquor imported into this state.

(b) The brewer has the primary duty to pay the tax on ale and malt liquor brewed in this state.

(c) The tax is due and payable on the 15th day of the month following the month in which the taxable first sale occurs.

[Acts 1977, 65th Leg., p. 531, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.44. Tax Exemptions

No tax may be collected on ale or malt liquor:

(1) shipped out of the state for consumption outside the state; or

(2) sold aboard a ship for ship's supplies.

[Acts 1977, 65th Leg., p. 391, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.45. Prohibition of Sale of Untaxed Ale or Malt Liquor

No person may sell, offer for sale, or store for the purpose of sale in this state any ale or malt liquor on which the state or federal tax, if due, has not been paid.

[Acts 1977, 65th Leg., p. 532, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.46. Tax Liability

A person possessing ale or malt liquor on which the tax is delinquent is liable for the delinquent tax in addition to the criminal penalties.

[Acts 1977, 65th Leg., p. 532, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.47. Tax Refunds and Credits

(a) The holder of a permit authorizing the transportation of ale or malt liquor out of the state may apply to the commission for a refund of the excise tax on ale or malt liquor that has been paid on proper proof that the ale or malt liquor was sold or disposed of outside the state.

(b) Tax credits shall be allowed for overpayment or mistaken payment of the tax on ale or malt liquor, and the commission shall provide by rule for the equitable and final disposition of the tax credits.

[Acts 1977, 65th Leg., p. 532, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.48. Payment

The tax on ale and malt liquor shall be paid by a remittance payable to the state treasurer and forwarded, together with any required sworn statements of taxes due, to the commission in Austin on or before the date it is due. A discount of two percent of the amount due shall be withheld by the permittee or licensee for keeping records, furnishing bonds, and properly accounting for the remittance of the tax due. No discount is permitted if the tax is delinquent at the time of payment.

[Acts 1977, 65th Leg., p. 391, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.49. May Require Information

(a) The commission may require all brewers, non-resident brewers, importers, wholesalers, and class B wholesalers of ale and malt liquor to provide information as to purchases, sales, and shipments to enable the commission to collect the full amount of the tax due. No brewer, nonresident brewer, importer, wholesaler, or class B wholesaler may fail or refuse to furnish the required information.

(b) The commission may seize or withhold from sale the brewer's, nonresident brewer's, importer's, wholesaler's, or class B wholesaler's ale or malt liquor for failure or refusal to supply the information required under Subsection (a) of this section or to permit the commission to make an investigation of pertinent records, whether the records are inside or outside of this state.

[Acts 1977, 65th Leg., p. 532, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.50. Invoices of Transported Liquor

The holder of a permit authorizing the wholesaling of liquor and the transportation of it out of the state shall furnish to the commission duplicate copies of all invoices for the sale of liquor transported out of the state within 24 hours after the liquor has been removed from the permittee's place of business. Violation of this section is punishable by the penalty prescribed in Section 201.16 of this code.

[Acts 1977, 65th Leg., p. 532, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.51. Evidence in Suit

In any suit brought to enforce the collection of tax due on ale or malt liquor brewed in or imported into this state, a certificate by the commission or administrator showing the delinquency is prima facie evidence of:

(1) the levy of the tax or the delinquency of the stated amount of tax and penalty; and

(2) compliance by the commission with the provisions of this code relating to the computation and levy of the tax.

[Acts 1977, 65th Leg., p. 533, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.52. Ale and Malt Liquor in Metric Containers

Section 201.17 of this code applies to the taxation of ale and malt liquor in metric containers.

[Acts 1977, 65th Leg., p. 533, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 201.53 to 201.70 reserved for expansion]

SUBCHAPTER C. STAMPS

§ 201.71. Stamps

Unless the liquor is exempt from tax or payment has been or is to be made by a permittee in accordance with the provisions of Subchapter A, B, or D of this chapter, the tax levied under Subchapter A or B shall be paid by affixing a stamp or stamps on each bottle or container of liquor. The stamp shall be affixed in strict accordance with the commission's rules and regulations.

[Acts 1977, 65th Leg., p. 533, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.72. Duty to Print

The commission and the board of control shall have engraved or printed the liquor and beer tax stamps required by this code. The board of control shall let the contracts for the stamps required by this code as provided by law. The commission shall expend funds necessary to keep an ample supply of stamps on hand.

[Acts 1977, 65th Leg., p. 533, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.73. Design

The commission shall prescribe the design and denomination of the tax stamps. Each stamp must show the amount of tax for which it evidences payment and shall contain the words "Texas State Tax Paid."

[Acts 1977, 65th Leg., p. 533, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.74. State Treasurer

(a) The state treasurer is responsible for the custody and sale of tax stamps and for the proceeds of the sales under his official bond.

(b) The treasurer shall sell tax stamps only to qualified persons designated by the commission and to no other person.

(c) The treasurer may designate any state or national bank in this state as his agent to deliver and collect for any tax stamps and to remit the sale proceeds to him.

(d) Invoices for tax stamps shall be issued by the treasurer in triplicate and numbered consecutively. The original of the invoice shall be forwarded to the purchaser or to the person in whose care it may be sent for the benefit of a qualified purchaser. The second copy shall be transmitted to the commission daily and accompanied by those statements required

by the commission. The third copy shall be retained by the treasurer.

(e) The treasurer shall make and keep a permanent record of all tax stamps received by him as well as all tax stamps sold. This record shall provide a perpetual inventory of all tax stamps and their disposition. The record must be available at all times to the commission or its authorized representatives.

[Acts 1977, 65th Leg., p. 533, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.75. Delivery of Stamps

The commission shall prescribe the manner in which tax stamps are delivered by the state treasurer to the commission for use and sale by its inspectors in charge of ports of entry.

[Acts 1977, 65th Leg., p. 534, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.76. Refunds

(a) The commission may make refunds for tax stamps in all cases where:

(1) stamped liquor is returned to the distillery or manufacturer, on certification by a duly authorized representative of the commission who inspected the shipment;

(2) stamped liquor has been destroyed, on certification by a duly authorized representative of the commission that the liquor has been destroyed;

(3) a person who has been authorized to purchase tax stamps and is in possession of unused tax stamps on discontinuation of business; and

(4) tax stamps of improper value have been erroneously affixed to a bottle or container of liquor and those tax stamps have been destroyed in a manner prescribed by the commission.

(b) To obtain a refund under this section, it must be shown that the tax stamps for which a refund is asked were purchased from the state treasurer and that the refund is made to a person authorized to purchase tax stamps from the treasurer. No other refunds for tax stamps are allowed.

(c) Sufficient funds to pay refunds for tax stamps may be appropriated from the revenue derived from the sale of the tax stamps before that revenue has been allocated.

[Acts 1977, 65th Leg., p. 534, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.77. Who May Purchase Stamps

The commission shall designate those permittees or other persons entitled to purchase state tax stamps.

[Acts 1977, 65th Leg., p. 534, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.78. Stamps for Wine

Tax stamps for wine shall be issued in multiples of the rate assessed for each pint and for each one-tenth of a gallon.

[Acts 1977, 65th Leg., p. 534, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.79. Alternative Method of Collecting Tax on Wine

The commission may provide by rule an alternative method of collecting the tax on wine. That method may dispense with the use of tax stamps. [Acts 1977, 65th Leg., p. 534, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.80. Exemption

The commission may prescribe by order special rules for the payment of the tax imposed by Subchapter A or B of this chapter in any circumstance that in the judgment of the commission creates an emergency or makes it impractical to require the affixing of tax stamps. [Acts 1977, 65th Leg., p. 534, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.81. Stamps for Distilled Spirits

Tax stamps for distilled spirits may be issued only in multiples of the rate assessed each half-pint, except that when distilled spirits are contained in containers of one-tenth of a gallon, tax stamps shall be issued at the assessed rate for each type of distilled spirit. [Acts 1977, 65th Leg., p. 534, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.82. Imported Distilled Spirits; Federal Stamp

A container of distilled spirits that has a federal liquor strip stamp attached or that has been imported from a foreign country is subject to taxation and must have the appropriate state tax stamp for distilled spirits affixed to it, unless it is taxed under the reporting system. [Acts 1977, 65th Leg., p. 535, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 201.83 to 201.90 reserved for expansion]

SUBCHAPTER D. TAX ON LIQUOR PRESCRIPTIONS

§ 201.91. Tax on Liquor Prescriptions

A tax is imposed on each liquor prescription filled by a pharmacist at the rate of 22 cents per prescription. [Acts 1977, 65th Leg., p. 535, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.92. Tax Stamp

The tax on liquor prescriptions levied by Section 201.91 of this code shall be paid by affixing a tax stamp to each prescription before the prescribed liquor is sold or dispensed by the pharmacist. [Acts 1977, 65th Leg., p. 535, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.93. Prohibitions

No person may sell any liquor by prescription without first affixing the required tax stamp to the prescription and to the container of prescribed liquor. [Acts 1977, 65th Leg., p. 535, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.94. Liability for Tax

The liquor prescription tax is a liability on the owner of the pharmacy or drug store selling the prescribed liquor. [Acts 1977, 65th Leg., p. 535, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.95. Revocation of Permit

Failure to pay the tax due on liquor prescriptions is a ground for revocation of any permit authorizing the sale of liquor by prescription. [Acts 1977, 65th Leg., p. 535, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.96. Suit

If the owner of a pharmacy fails to pay the tax on liquor prescriptions, the commission may sue him to collect the amount due. [Acts 1977, 65th Leg., p. 535, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 201.97. Printing, Distribution, and Use of Stamps

(a) The commission shall design the tax stamp required by this subchapter. Each tax stamp shall have a serial number or other identifying mark printed on it. Each tax stamp shall be in duplicate so that one of each of the counterparts may be affixed to the container of liquor and the other to the prescription under which the liquor is sold.

(b) On requisition of the commission, the tax stamps shall be printed under the direction of the board of control and furnished to the state treasurer, who shall furnish the tax stamps only to holders of medicinal permits in this state.

(c) The commission may regulate the manner in which the tax stamps are affixed, cancelled, or accounted for. [Acts 1977, 65th Leg., p. 535, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 202. MIXED BEVERAGE TAX

Section	
202.01.	Definitions.
202.02.	Tax on Gross Receipts.
202.03.	Tax Return; Due Date.
202.04.	Payment.
202.05.	Civil Penalty for Failure to File or Pay.
202.06.	Records of Tax Receipts.
202.07.	Violations: Penalty.
202.08.	Aggravated Violations: Penalty.
202.09.	Tax Account Examination; Additional Tax; Penalty.
202.10.	Record of Tax Receipts.
202.11.	Stamps.
202.12.	Violators Ineligible for Permit.
202.13.	May Keep Records at Single Location.

§ 202.01. Definitions

In this chapter:

(1) "Permittee" means a mixed beverage permittee, mixed beverage late hours permittee, daily temporary mixed beverage permittee, pri-

vate club registration permittee, or private club late hours permittee.

(2) "Business day" means the period of time between 3 a. m. one day and 3 a. m. the next day.

[Acts 1977, 65th Leg., p. 536, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 202.02. Tax on Gross Receipts

A tax at the rate of 10 percent is imposed on the gross receipts of a permittee from the sale, preparation, or service of mixed beverages or from the sale, preparation, or service of ice or nonalcoholic beverages that are sold, prepared, or served for the purpose of being mixed with alcoholic beverages and consumed on the premises of the permittee.

[Acts 1977, 65th Leg., p. 536, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 202.03. Tax Return; Due Date

(a) Each permittee shall file a sworn tax return with the commission on or before the 15th day of every month.

(b) The return shall be in a form prescribed by the commission or administrator and shall include a statement of the total gross taxable receipts during the preceding month and any other information required by the commission or administrator.

(c) Tax due for a business day which falls in two different months is allocated to the month during which the business day begins.

[Acts 1977, 65th Leg., p. 536, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 202.04. Payment

The tax due for the preceding month shall accompany the return and be in the form of a cashier's check, certified check, or postal money order payable to the State of Texas. The commission shall deposit the revenue in the mixed beverage tax clearance fund.

[Acts 1977, 65th Leg., p. 536, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 202.05. Civil Penalty for Failure to File or Pay

If any permittee fails to file a return or to pay to the commission the tax as required by this subchapter when the return or payment is due, the permittee shall forfeit an amount equal to five percent of the amount due as a penalty, and after 30 days the penalty is increased to 10 percent of the amount due.

[Acts 1977, 65th Leg., p. 536, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 202.06. Records of Tax Receipts

(a) Each permittee shall make and keep a record, in a form prescribed by the commission or administrator, of all tax receipts, including the total for each business day.

(b) Permittees, except daily temporary mixed beverage permittees, shall keep a copy of this record, as well as all other records of receipts and disburse-

ments by the permittee, on file on the premises for a period of two years. The record is open to inspection by any agent of the commission or by any peace officer at any time.

(c) Daily temporary mixed beverage permittees shall file a copy of the records for each month with the tax return for that month as prescribed by the commission.

[Acts 1977, 65th Leg., p. 537, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 202.07. Violations: Penalty

(a) No person may fail to keep a record in the manner required by this chapter, fail to file any return in the manner required by this chapter, keep a false record, or file a false return.

(b) A person who violates this section is punishable by a fine of not more than \$1,000, or by confinement in the county jail for not more than 30 days, or by both.

[Acts 1977, 65th Leg., p. 537, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 202.08. Aggravated Violations: Penalty

(a) No person may knowingly fail to keep any record in the manner required by this chapter, fail to file any return in the manner required by this chapter, keep a false record, or file a false return.

(b) A person who violates this section is punishable by a fine of not less than \$500 nor more than \$1,000 and by confinement in the county jail for not less than 30 days nor more than two years.

(c) The commission or administrator shall cancel the permit of any permittee found by the commission or administrator, after notice and hearing, to have violated or have been convicted of violating this section.

[Acts 1977, 65th Leg., p. 537, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 202.09. Tax Account Examination; Additional Tax; Penalty

(a) The commission shall examine the tax account of each permittee and collect any additional taxes due as established through any information or records in the possession of, or available to, the commission or that may come into the commission's possession.

(b) For the convenience of the commission in examining tax accounts of mixed beverage permittees and private club registration permittees, each of these permittees is required to purchase separately and individually for each licensed premises any and all alcoholic beverages to be sold or served on the licensed premises.

(c) When additional taxes are established as due based on an examination by the commission, a penalty equal to 10 percent of the additional taxes due shall be collected with the additional taxes due.

[Acts 1977, 65th Leg., p. 537, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 202.10. Record of Tax Receipts

The commission shall keep a record indicating the name of the permittee from whom each return is received, the incorporated city or town, if any, and county in which the permittee's premises are located, and the amount of the tax received.

[Acts 1977, 65th Leg., p. 537, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 202.11. Stamps

(a) No mixed beverage permittee, daily temporary mixed beverage permittee, or private club registration permittee may possess or permit any person to possess on the premises any distilled spirits in any container not bearing a serially numbered identification stamp issued by the commission or other identification approved by the commission.

(b) No local distributor's permittee may knowingly sell, ship, or deliver any distilled spirits in any container not bearing a serially numbered identification stamp issued by the commission or other identification approved by the commission.

(c) Identification stamps shall be issued only to holders of local distributor's permits, who shall affix the stamps in a manner prescribed by the commission or administrator.

[Acts 1977, 65th Leg., p. 538, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 202.12. Violators Ineligible for Permit

(a) No mixed beverage, daily temporary mixed beverage, or private club registration permit may ever be issued to any of the following:

(1) a person whose permit was cancelled for a violation of Section 28.06(c) or 202.08 of this code;

(2) a person who held an interest of any kind in a permit that was cancelled for a violation of Section 28.06(c) or 202.08 of this code;

(3) a person who held 50 percent or more of the stock, either in his own name or by any other means, of a corporation whose permit was cancelled because of a violation of Section 28.06(c) or 202.08 of this code;

(4) a corporation if any person holding more than 50 percent or more of the stock, either in his own name or by any other means, is disqualified from obtaining a permit in his individual capacity because of a violation of Section 28.06(c) or 202.08 of this code; or

(5) a person residentially domiciled with a person who is barred from obtaining a permit because of a violation of Section 28.06(c) or 202.08 of this code.

(b) For the purposes of this section, a person is treated as holding 50 percent or more of the stock in a corporation if that person and his parents, children, and siblings, and all persons with whom he is residentially domiciled, together own 50 percent or more of the stock in the corporation.

[Acts 1977, 65th Leg., p. 538, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 202.13. May Keep Records at Single Location

(a) If two or more establishments operated under a permit or permits named in Section 202.01(1) of this code are located in the same county and are under the same or substantially the same ownership, the holder or holders of the permits may apply to the administrator, on a form furnished by the administrator for that purpose, for permission to keep all required records for those establishments at a single location in the county. The single location need not be the licensed premises of one of the establishments.

(b) If the administrator decides to approve the application, he must do so in writing and may impose any conditions regarding the keeping of the records that he finds appropriate.

(c) If records are kept at a single location under this section, the records for each establishment must still be kept separately.

[Acts 1977, 65th Leg., p. 538, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 203. BEER TAX

Section	
203.01.	Tax on Beer.
203.02.	Tax on First Sale or Importation.
203.03.	Duty to Pay Tax; Due Date.
203.04.	Tax on Unsalable Beer.
203.05.	Exemption From Tax.
203.06.	Excess Tax.
203.07.	Claims for Refunds.
203.08.	Tax Exemption for Certain Manufacturers.
203.09.	Statements.
203.10.	Payment of Taxes; Discount.
203.11.	Evidence in Suit.
203.12.	Tax Liability.

§ 203.01. Tax on Beer

A tax is imposed on the first sale of beer manufactured in this state or on the importation of beer into this state at the rate of five dollars per barrel.

[Acts 1977, 65th Leg., p. 539, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 203.02. Tax on First Sale or Importation

The tax levied by Section 203.01 of this code applies to the first sale in this state or to the importation into this state, whichever occurs first, but not to both.

[Acts 1977, 65th Leg., p. 539, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 203.03. Duty to Pay Tax; Due Date

(a) The importer shall pay the tax on beer imported into this state.

(b) The manufacturer shall pay the tax on beer manufactured in this state.

(c) The tax is due and payable on the 15th day of the month following the month in which the taxable first sale or importation occurred.

[Acts 1977, 65th Leg., p. 539, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 203.04. Tax on Unsalable Beer

No tax imposed under Section 203.01 of this code may be imposed or collected on beer that for any reason has been found and declared to be unsalable by the commission or administrator. A manufacturer or distributor is entitled to a refund of any tax he has paid on unsalable beer.

[Acts 1977, 65th Leg., p. 539, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 203.05. Exemption From Tax

(a) No tax may be collected on beer:

(1) shipped out of this state for consumption outside of this state;

(2) sold aboard ships for ship's supplies; or

(3) shipped to any installation of the national military establishment under federal jurisdiction for consumption by military personnel on that installation.

(b) The commission shall provide forms on which distributors and manufacturers may claim these exemptions from the tax on beer.

(c) If after paying the tax on beer a manufacturer or distributor becomes eligible for one of the above exemptions, the manufacturer or distributor is entitled to a refund.

[Acts 1977, 65th Leg., p. 539, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 203.06. Excess Tax

A manufacturer or distributor is entitled to a refund or credit on future tax payment for any excess tax on beer paid through oversight, mistake, error, or miscalculation.

[Acts 1977, 65th Leg., p. 540, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 203.07. Claims for Refunds

(a) The commission or administrator shall prescribe by rule for the claiming of tax refunds and credits authorized under this chapter, including provisions as to the time and manner for claiming the refunds and credits.

(b) Necessary funds from the collection of beer tax before it is allocated may be appropriated for the payment of beer tax refunds.

[Acts 1977, 65th Leg., p. 540, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 203.08. Tax Exemption for Certain Manufacturers

A manufacturer whose annual production of beer in this state does not exceed 75,000 barrels is exempt from the payment of 25 percent of the tax imposed under Section 203.01 of this code on each barrel of beer manufactured in this state.

[Acts 1977, 65th Leg., p. 540, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 203.09. Statements

(a) The commission may require manufacturers of beer manufactured in this state or imported into this

state, importers, and distributors to provide information as to purchases, sales, and shipments to enable the commission to collect the full amount of beer tax due. No manufacturer, importer, or distributor may fail or refuse to furnish the information.

(b) The commission may seize or withhold from sale the manufacturer's, importer's, or distributor's beer for failure or refusal to supply the information required under Subsection (a) of this section or to permit the commission to make an investigation of pertinent records whether inside or outside this state.

[Acts 1977, 65th Leg., p. 540, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 203.10. Payment of Taxes; Discount

The tax on beer shall be paid by a remittance payable to the state treasurer and forwarded with any required sworn statements of taxes due to the commission in Austin on or before the due date. A discount of two percent of the amount due shall be withheld by the permittee or licensee for keeping records, furnishing bonds, and properly accounting for the remittance of the tax due. No discount is permitted if the tax is delinquent at the time of payment.

[Acts 1977, 65th Leg., p. 540, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 203.11. Evidence in Suit

In a suit brought to enforce the collection of tax due on beer manufactured in or imported into this state, a certificate by the commission or administrator showing the delinquency is prima facie evidence of:

(1) the levy of the tax or the delinquency of the stated amount of tax and penalty; and

(2) compliance by the commission with the provisions of this code in relation to the computation and levy of the tax.

[Acts 1977, 65th Leg., p. 540, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 203.12. Tax Liability

A person possessing beer on which the tax is delinquent is liable for the delinquent taxes in addition to the criminal penalties.

[Acts 1977, 65th Leg., p. 540, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 204. BONDS

Section	
204.01.	Bond Required.
204.02.	Form and Conditions.
204.03.	Amount of Bond.
204.04.	Multiple Permits, One Bond.
204.05.	Cancellation of Bond.

§ 204.01. Bond Required

(a) Except as otherwise provided in this section, the following licensees and permittees shall furnish a bond:

- (1) those authorized to import alcoholic beverages into the state;
- (2) manufacturers of beer and brewers of ale or malt liquor in the state;
- (3) permittees subject to the gross receipts tax on mixed beverages imposed by Section 202.02 of this code; and
- (4) all other permittees.

(b) No bond is required of a holder of a carriers, local cartage, wine and beer retailers, nonresident seller's, manufacturer's agent's, or agent's permit.

(c) No bond is required of a retail licensee or permittee who is not responsible for the primary payment of an alcoholic beverage excise tax to this state. This subsection does not exempt permittees subject to the gross receipts tax on mixed beverages imposed by Section 202.02 of this code.

(d) A permittee required to furnish a bond to secure the payment of the gross receipts tax on mixed beverages may furnish, in lieu of all or part of the amount of the bond required:

- (1) one or more certificates of deposit or savings assigned to the state, issued by one or more banks or savings institutions authorized to do business in this state; or
- (2) one or more letters of credit issued by one or more banks or savings institutions authorized to do business in this state.

(e) If certificates of deposit or savings or letters of credit are furnished under Subsection (d) of this section, the administrator shall keep them in his possession. Interest earned on a certificate of deposit or savings is not subject to the assignment and remains the property of the owner of the certificate. [Acts 1977, 65th Leg., p. 541, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 1183, ch. 453, § 11, eff. Sept. 1, 1977.]

§ 204.02. Form and Conditions

(a) A bond required under this chapter must be executed with the permittee or licensee as principal, a qualified surety company doing business in this state as surety, and the state as payee. All bonds of permittees must be payable in Travis County.

(b) The bond must be conditioned as required by the commission. Bonds required of permittees must be conditioned that as long as the applicant holds the permit he will not violate any law of this state relating to the traffic in or transportation, sale, or delivery of liquor or any valid rule of the commission. The bonds of permittees who are required to account for taxes and fees must also be conditioned that the permittee will account for and pay all permit fees and taxes levied by this code.

(c) The form of all bonds must be approved by the attorney general.

(d) A certificate of deposit or savings furnished by a permittee to secure the payment of the gross receipts tax on mixed beverages must be assigned to the state in a manner approved by the administrator to secure the payment of the tax.

(e) A letter of credit furnished by a permittee to secure the payment of the gross receipts tax on mixed beverages must be in a form and contain any conditions required by the administrator to secure the payment of the tax.

[Acts 1977, 65th Leg., p. 541, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 1184, ch. 453, § 12, eff. Sept. 1, 1977.]

§ 204.03. Amount of Bond

(a) The commission or administrator shall set the amount of all bonds required under this chapter.

(b) A permittee who furnishes certificates of deposit or savings or letters of credit in lieu of all or part of the amount of bonds required by the commission or administrator to secure the payment of the gross receipts tax on mixed beverages may furnish any combination of these methods of securing the tax which satisfies that amount. The total of the bonds, certificates, and letters of credit of a permittee subject to the gross receipts tax on mixed beverages must be in an amount that, in the opinion of the commission or administrator, will protect the state, but in no case may the commission or administrator set the amount at less than \$1,000 or more than \$25,000.

(c) Bonds of other permittees, except those permittees covered by Subsection (d) of this section, may not be set at an amount less than \$1,000 or more than \$25,000.

(d) Bonds to insure the payment of the tax on distilled spirits imposed by Section 201.03 of this code, the tax on vinous liquor imposed by Section 201.04 of this code, the tax on ale and malt liquor imposed by Section 201.42 of this code, or the tax on beer imposed by Section 203.01 of this code, shall be set at an amount that will protect the state against the anticipated tax liability of the principal for any six-week period.

[Acts 1977, 65th Leg., p. 541, ch. 194, § 1, eff. Sept. 1, 1977. Amended by Acts 1977, 65th Leg., p. 1184, ch. 453, § 13, eff. Sept. 1, 1977.]

§ 204.04. Multiple Permits, One Bond

If another permit is required, incidental to the operation of a business for which a basic permit is procured, the commission may accept one bond to support all of the permits. The commission shall determine the amount of the bond.

[Acts 1977, 65th Leg., p. 542, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 204.05. Cancellation of Bond

The commission may not cancel a surety bond until the surety company has paid and discharged in full all of its liabilities on the bond to the state as of the date of cancellation.

[Acts 1977, 65th Leg., p. 542, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 205. REVENUE ALLOCATION

Section

205.01. Clearance Fund.

205.02. Disposition of Receipts.

205.03. Mixed Beverage Tax Clearance Fund.

§ 205.01. Clearance Fund

(a) In this chapter, "clearance fund" means the fund created by the provisions of Section 2, Article XX, Chapter 184, Acts of the 47th Legislature, Regular Session, 1941.

(b) Funds allocated to the clearance fund shall only be used for the purposes expressed in the Act creating it.

[Acts 1977, 65th Leg., p. 542, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 205.02. Disposition of Receipts

(a) After allocation of funds to defray administrative expenses as provided in the current departmental appropriations act, receipts from the sale of tax stamps and funds derived from taxes on distilled spirits, wine, beer, and ale and malt liquor shall be deposited in the state treasury as follows:

- (1) one-fourth to the available school fund; and
- (2) three-fourths to the clearance fund.

(b) All revenues derived from the collection of permit or license fees provided for in this code, except fees for temporary licenses, shall be deposited to the credit of the clearance fund.

(c) Receipts derived from the gross receipts tax on mixed beverages imposed by Section 202.02 of this code shall be deposited to the credit of a special clearance fund known as the mixed beverage tax clearance fund.

[Acts 1977, 65th Leg., p. 542, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 205.03. Mixed Beverage Tax Clearance Fund

(a) In this section, "permittee" means a mixed beverage permittee, mixed beverage late hours permittee, daily temporary mixed beverage permittee, private club registration permittee, or a private club late hours permittee.

(b) Before the end of the month following each calendar quarter, the commission shall submit to the comptroller of public accounts a report showing the total amount of taxes received during the quarter from permittees outside an incorporated city or town

within each county and the total amount received from permittees within each incorporated city or town in each county.

(c) As soon as possible after receipt of each quarterly report of the commission, the comptroller shall issue to each county a warrant drawn on the mixed beverage tax clearance fund in the amount of 15 percent of receipts from permittees within the county during the quarter and shall issue to each incorporated city or town a warrant drawn on that fund in the amount of 15 percent of receipts from permittees within the incorporated city or town during the quarter, as shown by the commission's report. The remainder of the receipts for the quarter shall be transferred to the general revenue fund.

[Acts 1977, 65th Leg., p. 543, ch. 194, § 1, eff. Sept. 1, 1977.]

CHAPTER 206. PROVISIONS GENERALLY APPLICABLE TO TAXATION

Section

206.01. Records.

206.02. Proof of Taxes Due.

206.03. Importation Without Tax Stamp.

206.04. Jurisdiction Ceded to Federal Government.

206.05. Unmutilated Stamps.

206.06. Forgery or Counterfeiting.

§ 206.01. Records

(a) A permittee who distills, rectifies, manufactures, or receives any liquor shall make and keep a record of each day's production or receipt of liquor and the amount of tax stamps purchased by the permittee. A permittee other than a retailer shall make and keep a record of each sale of liquor and to whom the sale is made. Each transaction shall be entered on the day it occurs. Permittees shall make and keep any other records required by the commission. All required records shall be kept available for inspection by the commission or its authorized representatives for at least two years.

(b) No person may fail or refuse to make and retain for at least two years any record required by this section.

(c) No person may fail or refuse to keep any record required by this section open for inspection by the commission or its duly authorized representatives during reasonable office hours.

(d) No person may knowingly, with intent to defraud, make or cause to be made any false entry in any record required by this section or with like intent, alter or cause to be altered any item in one of those records.

[Acts 1977, 65th Leg., p. 543, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 206.02. Proof of Taxes Due

In a suit or claim by the attorney general for taxes due, he may attach or file as an exhibit a

report or audit of a permittee or licensee with an affidavit made by the administrator or his representative stating that the taxes shown to be due by the report or audit are past due and unpaid and that all payments and credits have been allowed. Unless the opposing party files an answer in the same form and manner as required by Rule 185, Texas Rules of Civil Procedure, the audit or report constitutes prima facie evidence of the taxes due. The provisions of Rule 185 are applicable to a suit to collect taxes under this section.

[Acts 1977, 65th Leg., p. 544, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 206.03. Importation Without Tax Stamp

A person commits an offense if he imports or transports liquor into this state without the proper state tax stamps affixed to the containers if the liquor is consigned to, intended for delivery to, or being transported to a person or place inside this state unless the liquor is consigned to a holder of a permit authorizing the importation of liquor.

[Acts 1977, 65th Leg., p. 544, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 206.04. Jurisdiction Ceded to Federal Government

(a) No person may transport or ship or cause to be transported or shipped any alcoholic beverage into any area in this state in which the state has ceded police jurisdiction to the federal government or any of its agencies unless the containers or packages holding those alcoholic beverages have a Texas tax stamp affixed if required by this code.

(b) Common carriers are not required to see that tax stamps are affixed.

[Acts 1977, 65th Leg., p. 544, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 206.05. Unmutilated Stamps

No person may possess, buy, sell, or offer to buy or sell any empty carton, case, package, keg, barrel, bottle, or any other kind of alcoholic beverage container on which the state tax stamps have not been mutilated or defaced.

[Acts 1977, 65th Leg., p. 544, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 206.06. Forgery or Counterfeiting

(a) In this section, "counterfeit" or "forged" means printed, manufactured or made by, or under the direction of, or issued, sold, or circulated by a person not authorized to do so under the provisions of this code.

(b) No person may forge or counterfeit a stamp provided for in this code or print, engrave, make, issue, sell, circulate, or possess with intent to use, sell, circulate, or pass a forged or counterfeit stamp or place or cause to be placed any forged or counterfeit stamp on any container of alcoholic beverage.

(c) No person may print, engrave, make, issue, sell, or circulate with intent to defraud or knowingly

possess a forged or counterfeit permit, license, official signature, certificate, evidence of tax payment, or other instrument.

(d) No person may possess a stamp or a part of a stamp, die, plate, device, machine, or other instrument used or designed for use for forging or counterfeiting any instrument named in Subsection (b) or (c) of this section.

(e) Conviction for an offense defined in this section may be had on the uncorroborated evidence of an accomplice. A court, officer, or tribunal having jurisdiction of an offense defined in this section or any district or county attorney may subpoena any person and compel his attendance as a witness to testify as to the violation of any provision of this section. Any person so summoned and examined is immune from prosecution for the violation of any provision of this section about which he may testify.

(f) A person who violates any provision of this section commits a felony punishable by imprisonment in the penitentiary for not less than 2 nor more than 20 years.

[Acts 1977, 65th Leg., p. 544, ch. 194, § 1, eff. Sept. 1, 1977.]

TITLE 6. LOCAL OPTION ELECTIONS

CHAPTER 251. LOCAL OPTION ELECTIONS

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SUBCHAPTER A. MANNER OF CALLING
ELECTION

§ 251.01. Election to be Held

On proper petition by the required number of voters of a county, or of a justice precinct or incorporated city or town in the county, the commissioners court shall order a local option election in the political subdivision to determine whether or not the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be prohibited or legalized in the county, justice precinct, or incorporated city or town.

[Acts 1977, 65th Leg., p. 546, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.02. Qualifications for Political Subdivision
to Hold Election

(a) A political subdivision must have been in existence for at least 18 months before holding a local option election to legalize or prohibit the sale of liquor. The political subdivision must include substantially all the area encompassed by the subdivision at the time of its creation and may include any other area subsequently legally annexed by or added to the political subdivision.

(b) Subsection (a) of this section does not apply to a city or town incorporated before December 1, 1971.

[Acts 1977, 65th Leg., p. 546, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.03. Application for Petition

If 10 or more qualified voters of any county, justice precinct, or incorporated city or town file a written application, the county clerk of the county shall issue to the applicants a petition to be circulated among the qualified voters of that political subdivision for the signatures of those qualified voters in the area who desire that a local option election be called in that area for the purpose of determining whether the sale of alcoholic beverages of one or more of the various types and alcoholic contents

shall be prohibited or legalized in the political subdivision.

[Acts 1977, 65th Leg., p. 546, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.04. Heading, Statement, and Issue on Appli-
cation for Petition to Prohibit

An application for a petition seeking an election to prohibit the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be headed: "Application for Local Option Election Petition to Prohibit." The application shall contain a statement just ahead of the signatures of the applicants, as follows: "It is the hope, purpose and intent of the applicants whose signatures appear hereon to see prohibited the sale of alcoholic beverages referred to in the issue set out above." The petition shall clearly state the issue to be voted on, and that issue must be one of those issues set out in Section 251.14 of this code.

[Acts 1977, 65th Leg., p. 547, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.05. Heading, Statement, and Issue on Appli-
cation for Petition to Legalize

An application for a petition seeking an election to legalize the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be headed: "Application for Local Option Election Petition to Legalize." The application shall contain a statement just ahead of the signatures of the applicants, as follows: "It is the hope, purpose and intent of the applicants whose signatures appear hereon to see legalized the sale of alcoholic beverages referred to in the issue set out above." The petition shall clearly state the issue to be voted on, and that issue must be one of those issues set out in Section 251.14 of this code.

[Acts 1977, 65th Leg., p. 547, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.06. Petition Requirements

Each petition shall show the date it is issued by the county clerk and be serially numbered. Each page of a petition shall bear the same date and serial number and the actual seal of the county clerk rather than a facsimile of that seal.

[Acts 1977, 65th Leg., p. 547, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.07. Heading and Statement on Petition to
Prohibit

The petition for a local option election seeking to prohibit the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be headed "Petition for Local Option Election to Prohibit." The petition shall contain a statement just ahead of the signatures of the petitioners, as follows: "It is the hope, purpose and intent of the petitioners whose signatures appear hereon to see prohibited the sale of alcoholic beverages referred to in the issue set out above." The petition must

clearly state the issue to be voted on, and that issue must be one of those issues set out in Section 251.14 of this code.

[Acts 1977, 65th Leg., p. 547, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.08. Heading and Statement on Petition to Legalize

The petition for a local option election seeking to legalize the sale of alcoholic beverages of one or more of the various types and alcoholic contents shall be headed "Petition for Local Option Election to Legalize." The petition shall contain a statement just ahead of the signatures of the petitioners, as follows: "It is the hope, purpose and intent of the petitioners whose signatures appear hereon to see legalized the sale of alcoholic beverages referred to in the issue set out above." The petition must clearly state the issue to be voted on, and that issue must be one of those issues set out in Section 251.14 of this code.

[Acts 1977, 65th Leg., p. 547, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.09. Copies of Petition

(a) The county clerk shall supply as many copies of the petition as may be required by the applicants but not to exceed more than one page of the petition for every 10 registered voters in the county, justice precinct, or incorporated city or town. Each copy shall bear the date, number, and seal on each page as required on the original petition.

(b) The county clerk shall keep a copy of each petition and a record of the applicants for that petition.

[Acts 1977, 65th Leg., p. 548, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.10. Verification of Petition

(a) The county clerk shall check the names of the signers of petitions and the voting precincts in which they reside to determine whether the signers of the petition were qualified voters of the county, justice precinct, or incorporated city or town at the time the petition was issued. The county clerk shall certify to the commissioners court the number of qualified voters signing the petition.

(b) No signature may be counted, either by the county clerk or commissioners court, where there is reason to believe that:

- (1) it is not the actual signature of the purported signer;
- (2) the voter registration certificate number is not correct;
- (3) the voter registration certificate number is not in the actual handwriting of the signer;
- (4) it is a duplication either of a name or of handwriting used in any other signature on the petition;

(5) the residence address of the signer is not correct or is not in the actual handwriting of the signer; or

(6) the name of the voter is not signed exactly as it appears on the official copy of the current list of registered voters for the voting year in which the petition is issued.

[Acts 1977, 65th Leg., p. 548, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.11. Requirements to Order Election

The commissioners court, at its next regular session after the petition is filed, shall order a local option election to be held on the issue set out in the petition if the petition is filed with the county clerk not later than 30 days after it is issued and bears in the actual handwriting of the signers the following:

- (1) the actual signatures of a number of qualified voters of the political subdivision equal to 35 percent of the votes cast in the subdivision for governor in the last preceding general election for that office;
- (2) a notation showing the residence address of each of the signers; and
- (3) each signer's voter registration certificate number.

[Acts 1977, 65th Leg., p. 548, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.12. Record in Minutes

The date a petition is presented, the names of the signers, and the action taken with respect to the petition shall be entered in the minutes of the commissioners court.

[Acts 1977, 65th Leg., p. 548, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.13. Issues to Appear in Order for Election

(a) The order for the election shall state in its heading and text whether the local option election to be held is for the purpose of prohibiting or legalizing the sale of the alcoholic beverages set out in the issue recited in the application and petition.

(b) The order shall state the issue to be voted on in the election.

[Acts 1977, 65th Leg., p. 548, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.14. Issues

(a) In the ballot issues prescribed in this section, "wine" is limited to vinous beverages that do not contain more than 14 percent alcohol by volume and includes malt beverages that do not exceed that alcohol content. For local option purposes, those beverages, sold and dispensed to the public in unbroken, sealed, individual containers, are a separate and distinct type of alcoholic beverage.

(b) In areas where any type or classification of alcoholic beverages is prohibited and the issue submitted pertains to legalization of the sale of one or more of the prohibited types or classifications, one of the following issues must be submitted:

(1) "For the legal sale of beer for off-premise consumption only" and "Against the legal sale of beer for off-premise consumption only."

(2) "For the legal sale of beer" and "Against the legal sale of beer."

(3) "For the legal sale of beer and wine for off-premise consumption only" and "Against the legal sale of beer and wine for off-premise consumption only."

(4) "For the legal sale of beer and wine" and "Against the legal sale of beer and wine."

(5) "For the legal sale of all alcoholic beverages for off-premise consumption only" and "Against the legal sale of all alcoholic beverages for off-premise consumption only."

(6) "For the legal sale of all alcoholic beverages except mixed beverages" and "Against the legal sale of all alcoholic beverages except mixed beverages."

(7) "For the legal sale of all alcoholic beverages including mixed beverages" and "Against the legal sale of all alcoholic beverages including mixed beverages."

(8) "For the legal sale of mixed beverages" and "Against the legal sale of mixed beverages."

(c) In areas where the sale of all alcoholic beverages including mixed beverages has been legalized, one of the following issues shall be submitted in any prohibitory election:

(1) "For the legal sale of beer for off-premise consumption only" and "Against the legal sale of beer for off-premise consumption only."

(2) "For the legal sale of beer" and "Against the legal sale of beer."

(3) "For the legal sale of beer and wine for off-premise consumption only" and "Against the legal sale of beer and wine for off-premise consumption only."

(4) "For the legal sale of beer and wine" and "Against the legal sale of beer and wine."

(5) "For the legal sale of all alcoholic beverages for off-premise consumption only" and "Against the legal sale of all alcoholic beverages for off-premise consumption only."

(6) "For the legal sale of all alcoholic beverages except mixed beverages" and "Against the legal sale of all alcoholic beverages except mixed beverages."

(7) "For the legal sale of all alcoholic beverages including mixed beverages" and "Against the legal sale of all alcoholic beverages including mixed beverages."

(8) "For the legal sale of mixed beverages" and "Against the legal sale of mixed beverages."

(d) In areas where the sale of all alcoholic beverages except mixed beverages has been legalized one of the following issues shall be submitted in any prohibitory elections:

(1) "For the legal sale of beer for off-premise consumption only" and "Against the legal sale of beer for off-premise consumption only."

(2) "For the legal sale of beer" and "Against the legal sale of beer."

(3) "For the legal sale of beer and wine for off-premise consumption only" and "Against the legal sale of beer and wine for off-premise consumption only."

(4) "For the legal sale of beer and wine" and "Against the legal sale of beer and wine."

(5) "For the legal sale of all alcoholic beverages for off-premise consumption only" and "Against the legal sale of all alcoholic beverages for off-premise consumption only."

(6) "For the legal sale of all alcoholic beverages except mixed beverages" and "Against the legal sale of all alcoholic beverages except mixed beverages."

(e) In areas where the sale of beverages containing alcohol not in excess of 14 percent by volume has been legalized, and those of higher alcoholic content are prohibited, one of the following issues shall be submitted in any prohibitory election:

(1) "For the legal sale of beer for off-premise consumption only" and "Against the legal sale of beer for off-premise consumption only."

(2) "For the legal sale of beer" and "Against the legal sale of beer."

(3) "For the legal sale of beer and wine for off-premise consumption only" and "Against the legal sale of beer and wine for off-premise consumption only."

(4) "For the legal sale of beer and wine" and "Against the legal sale of beer and wine."

(f) In areas where the sale of beer containing alcohol not exceeding four percent by weight has been legalized, and all other alcoholic beverages are prohibited, one of the following issues shall be submitted in any prohibitory election:

(1) "For the legal sale of beer for off-premise consumption only" and "Against the legal sale of beer for off-premise consumption only."

(2) "For the legal sale of beer" and "Against the legal sale of beer."

(g) In an area where the sale of a particular type of alcoholic beverage has been legalized only for off-premises consumption, no alcoholic beverage may be consumed on the licensed premises and no type of alcoholic beverage other than the type legalized may be sold.

[Acts 1977; 65th Leg., p. 549, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.15. Issue on Mixed Beverages

(a) No local option election affects the sale of mixed beverages unless the proposition specifically mentions mixed beverages.

(b) In any legalization or prohibitory local option election where any shade or aspect of the issue submitted involves the sale of mixed beverages, any other type or classification of alcoholic beverage that was legalized prior to the election remains legalized without regard to the outcome of that election on the question of mixed beverages.

[Acts 1977, 65th Leg., p. 550, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.16. Evidence of Validity

The commissioners court order for election is prima facie evidence of compliance with all provisions necessary to give the order validity or to give the commissioners court jurisdiction to make it valid.

[Acts 1977, 65th Leg., p. 551, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.17. Frequency of Elections

No local option election on a particular issue may be held in a political subdivision until one year has elapsed since the last local option election in that subdivision on that issue.

[Acts 1977, 65th Leg., p. 551, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 251.18 to 251.30 reserved for expansion]

SUBCHAPTER B. ELECTION

§ 251.31. Conform to General Election Laws

(a) The officers holding the local option election shall conform to the general laws regulating elections unless otherwise provided in this chapter.

(b) The votes shall be counted after the polls are closed and the report of the election submitted to the commissioners court within 24 hours after the closing of the polls.

[Acts 1977, 65th Leg., p. 551, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.32. Notice of Election

The county clerk shall post or cause to be posted at least one copy of the election order in each precinct of the county, justice precinct, or incorporated city or town affected. The notice shall be posted at least six days prior to election day.

[Acts 1977, 65th Leg., p. 551, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.33. Time of Election

The election must be held on a day not less than 20 nor more than 30 days after the date of the commissioners court order for an election.

[Acts 1977, 65th Leg., p. 551, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.34. Voting Places

(a) The election shall be held at a voting place in each regular county election precinct as established by the commissioners court inside the affected territory if the election is for the entire county or for a justice precinct.

(b) The election shall be held at a voting place in each election precinct established by the governing body of the city or town for its municipal elections if the election is for an incorporated city or town. If the governing body of a city or town has not established precincts for its municipal elections, the commissioners court shall prescribe the election precincts for the local option election under the rules governing establishment of precincts for municipal elections.

(c) The election shall be held at the customary polling place in each election precinct. If the customary polling place is not available, the commissioners court shall designate another polling place.

(d) The order for the election shall state the polling place for each election precinct and the precinct numbers of county precincts included in each municipal election precinct if the election is for an incorporated city or town.

[Acts 1977, 65th Leg., p. 551, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.35. Appointment of Election Judges, Clerks, and Watchers

(a) Election judges, clerks, and watchers shall be qualified voters of the election precinct in which they are named to serve.

(b) Appointment of election judges and clerks shall be in accordance with the general election laws.

(c) Election watchers may be appointed in accordance with general law, but they must be qualified voters of the election precinct where they serve.

[Acts 1977, 65th Leg., p. 551, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.36. Public School of Instruction

(a) The county judge shall cause to be held a public school of instruction for those who actually conduct the election at the polling places not less than three days before the local option election.

(b) The county clerk shall post in his office a notice of the time and place of the school at least 48 hours before it is held.

(c) The county clerk shall notify each presiding judge of the time and place where the school is to be held.

(d) Each presiding judge shall notify each appointed clerk and watcher of the election in his precinct of the time and place of the school.

(e) This school will be open to any interested person.

[Acts 1977, 65th Leg., p. 552, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.37. Official Ballot

(a) At the election the vote shall be by official ballot. The words "Official Ballot" shall be printed at the top of the ballot.

(b) Beneath the words "Official Ballot" shall be printed the following instruction note: "Scratch or mark out one statement so that the one remaining indicates the way you wish to vote."

(c) The issue appropriate to the election order shall be printed on the ballot in the exact language stated in Section 251.14 of this code.

(d) The county clerk shall furnish the presiding judge of each election precinct with at least the number of ballots equal to the number of qualified voters in the precinct plus 10 percent of that number of voters.

[Acts 1977, 65th Leg., p. 552, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.38. Issue on Ballot

The issue ordered to appear on the ballot for an election ordered by the commissioners court shall be the same as that applied for and set out in the petition.

[Acts 1977, 65th Leg., p. 552, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.39. Marking Ballot

(a) In elections to legalize the sale of alcoholic beverages:

(1) those in favor of legalization shall strike the words "Against the legal sale of, etc.," by making a pencil mark through them; and

(2) those who oppose legalization shall strike the words "For the legal sale of, etc.," by making a pencil mark through them.

(b) In elections to prohibit the sale of alcoholic beverages:

(1) those who favor prohibition shall strike the words "For the legal sale of, etc.," by making a pencil mark through them; and

(2) those who oppose prohibition shall strike the words "Against the legal sale of, etc.," by making a pencil mark through them.

(c) The ballot must be marked as provided in Subsections (a) and (b) of this section, but failure of a voter to mark his ballot in strict conformity with those directions does not invalidate the ballot. The ballot must be counted if the intention of the voter is clearly ascertainable, except where the law expressly prohibits the counting of the ballot.

[Acts 1977, 65th Leg., p. 552, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.40. County to Pay Election Expense

(a) The county shall pay the expense of holding a local option election authorized by this code in the county, justice precinct, or incorporated city or town in that county, subject to the limitations in this section.

(b) County expense is limited to the holding of one election in each of the political subdivisions in Subsection (a) of this section in a one-year period where the intent of the election is to legalize the sale of alcoholic beverages. County expense is limited to the holding of one election in each of the political subdivisions in Subsection (a) of this section in a one-year period where the intent of the election is to prohibit the sale of alcoholic beverages.

(c) All other local option elections shall be paid by the county from funds derived by the county as prescribed in Section 251.41 of this code.

[Acts 1977, 65th Leg., p. 553, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.41. Financing Election

(a) If under Section 251.40 of this code the county is not required to pay the cost of the election, the county clerk shall require a deposit before the issuance of a petition for a local option election.

(b) The deposit must be in the form of a cashier's check in the total amount of 25 cents per voter listed on the current list of registered voters residing in the county, justice precinct, or incorporated city or town where the election is to be held.

(c) The money received shall be deposited in the county's general fund. No refund may be made to the applicants regardless of whether the petition is returned to the county clerk or the election is ordered.

(d) The county clerk may not issue a petition to the applicants unless the deposit is made, if a deposit is required by this code.

(e) A violation of Subsection (d) of this section is a misdemeanor punishable by a fine of not less than \$200 nor more than \$500, or confinement in the county jail for not more than 30 days, or both.

[Acts 1977, 65th Leg., p. 553, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 251.42 to 251.50 reserved for expansion]

SUBCHAPTER C. PROCEDURE FOLLOWING
ELECTION

§ 251.51. Canvass of Votes; Declaration of Result

(a) On the fifth day after the election, or as soon after the fifth day as practicable, the commissioners court shall meet in special session to canvass the returns. On completing the canvass, the commissioners court shall make an order declaring the result and cause the clerk of the commissioners court to record the order as provided by law.

(b) If, in a prohibitory election, a majority of the votes cast favor the issue "Against the legal sale . . .," the court's order must state that the sale of the type or types of beverages stated in the issue at the election is prohibited effective 30 days after the order is entered. The prohibition remains in

effect until changed by a subsequent local option election held under this code.

(c) If, in a legalization election, a majority of the votes cast favor the issue "For the legal sale . . .," the legal sale of the type or types of beverages stated in the issue at the election is legal on the entering of the court's order. The legalization remains in effect until changed by a subsequent local option held under this code.

(d) The local option status of a subdivision is not changed if:

(1) in a prohibitory election, a majority of the votes cast favor the issue "For the legal sale . . ."; or

(2) in a legalization election, a majority of the votes cast favor the issue "Against the legal sale . . ."

[Acts 1977, 65th Leg., p. 553, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.52. Order Prima Facie Evidence

The order of the commissioners court declaring the result of the election is prima facie evidence that all provisions of law have been complied with in giving notice of and holding the election, counting and returning the votes, and declaring the result of the election.

[Acts 1977, 65th Leg., p. 554, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.53. Certification of Result

Within three days after the result of a local option election has been declared, the county clerk shall certify the result to the secretary of state and the commission. The clerk may not charge a fee for this service.

[Acts 1977, 65th Leg., p. 554, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.54. Posting Order Prohibiting Sale

A commissioners court order declaring the result of a local option election and prohibiting the sale of any or all types of alcoholic beverages must be published by posting the order at three public places in the county or other political subdivision in which the election was held. The posting of the order shall be recorded in the minutes of the commissioners court by the county judge. The entry in the minutes or a copy certified under the hand and seal of the county clerk is prima facie evidence of posting.

[Acts 1977, 65th Leg., p. 554, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.55. Election Contest

(a) A qualified voter of the county, justice precinct, or incorporated city or town where a local option election is held may contest the election any time within 30 days after the result of that election is declared.

(b) The enforcement of local option laws in the political subdivision in which the election is being

contested is not suspended during the election contest.

(c) The district court of the county in which the election is held has original and exclusive jurisdiction of all suits to contest the election. The district court has jurisdiction to try and determine all matters connected with the election. If it appears from the evidence that such irregularities existed in bringing about or holding the election that the true result of the election is impossible to determine or the result is very doubtful, the court shall hold the election to be void and order the proper officer to order another election to be held by having a certified copy of the judgment and order of the court to be delivered to that officer.

(d) The election contest is conducted in the same manner as an election contest of a general election.

(e) Election contests have precedence in the district and appellate courts.

(f) The result of an election contest finally settles all questions relating to the validity of that election. No person may call the legality of that election in question again in any other suit or proceeding.

(g) If no election contest is instituted within the 30-day time limit, it is conclusively presumed that that election is valid and binding in all respects upon all courts.

[Acts 1977, 65th Leg., p. 554, ch. 194, § 1, eff. Sept. 1, 1977.]

[Sections 251.56 to 251.70 reserved for expansion]

SUBCHAPTER D. MISCELLANEOUS LOCAL OPTION PROVISIONS

§ 251.71. Wet and Dry Areas

(a) An area is a "dry area" as to an alcoholic beverage of a particular type and alcohol content if the sale of that beverage is unlawful in the area. An area is a "wet area" as to an alcoholic beverage of a particular type and alcoholic content if the sale of that beverage is lawful in the area.

(b) Those areas that are wet or dry when this code takes effect retain that status until the status of the area is changed as provided in this code.

(c) All trial courts of this state shall take judicial notice of the wet or dry status of an area in a criminal prosecution.

(d) In an information, complaint, or indictment, an allegation that an area is a dry area as to a particular type of alcoholic beverage is sufficient, but a different status of the area may be urged and proved as a defense.

[Acts 1977, 65th Leg., p. 555, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.72. Change of Status

Except as provided in Section 251.73 of this code, an authorized voting unit that has exercised or may exercise the right of local option retains the status adopted, whether absolute prohibition or legalization of the sale of alcoholic beverages of one or more of the various types and alcoholic contents on which an issue may be submitted under the terms of Section 251.14 of this code, until that status is changed by a subsequent local option election in the same authorized voting unit.

[Acts 1977, 65th Leg., p. 555, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.73. Prevailing Status: Resolution of Conflicts

To insure that each voter has the maximum possible control over the status of the sale of alcoholic beverages in the area where he resides:

(1) the status that resulted from or is the result of a duly called election for an incorporated city or town prevails against the status that resulted from or is the result of a duly called election in a justice precinct or county in which the incorporated city or town, or any part of it is contained; and

(2) the status that resulted or is the result of a duly called election for a justice precinct prevails against the status that resulted from or is the result of a duly called election in an incorporated city or town in which the justice precinct is wholly contained or in a county in which the justice precinct is located.

[Acts 1977, 65th Leg., p. 555, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.74. Airport and Stadium as Wet Areas

(a) This section applies to any county:

(1) that has a population of more than 500,000, according to the most recent federal census;

(2) in which the sale of all alcoholic beverages has been legalized in all or any part of the county; and

(3) where, at the general election on November 3, 1970, the voters approved the constitutional amendment authorizing the sale of mixed beverages on a local option basis.

(b) In a county covered by this section, the commissioners court may designate as an area wet for the sale of mixed beverages only:

(1) the area encompassed by the building structure of a professional sports stadium, used wholly or partly for professional sporting events and having a seating capacity of at least 40,000, and not more than 125 acres of adjacent land used for the benefit of the stadium, regardless of ownership of the land, if no registered voters reside there; and

(2) the area encompassed by a regional airport.

(c) The order of the commissioners court authorizes the issuance of a mixed beverage permit. [Acts 1977, 65th Leg., p. 555, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.741. Certain Airports as Wet Areas

In addition to those areas declared wet by order of the commissioners court under the authority of Section 251.74 of this code, in a county with a population of more than 175,000 according to the most recent federal census where the sale of mixed beverages only is legalized in the most populous city in the county by a local option election held after May 18, 1971, the area actually encompassed by any municipal airport under the jurisdiction of that city is wet for the sale of mixed beverages only. Subsequent local option elections held by that city do not affect the local option status of the airport unless the result of the election prohibits the sale of mixed beverages, in which case the provisions of this section do not apply.

[Added by Acts 1977, 65th Leg., p. 1184, ch. 453, § 14, eff. Sept. 1, 1977.]

§ 251.75. Continuance of Operation as Manufacturer or Brewer

Notwithstanding any other provision of this code, if the sale of beer or ale is prohibited in an area by a local option election, a holder of a manufacturer's license or brewer's permit that was issued prior to the election may not be denied an original or renewal manufacturer's license or brewer's permit for the same location on the ground that the local option status of the area prohibits the sale of beer or ale. Except for the right to sell beer or ale contrary to the local option status of the area, the licensee or permittee may engage in all activities authorized by the license or permit, including the manufacturing, brewing, possessing, storing, and packaging of beer or ale, and transporting it to an area where its sale is legal. The licensee or permittee may deliver beer or ale at his licensed premises to a purchaser from outside the state, an authorized carrier, distributor, or class B wholesaler. The purchaser, carrier, distributor, or class B wholesaler may not receive the beer or ale for transportation unless there has first been an order, acceptance, and payment or legal satisfaction of payment in an area where the sale of beer or ale is legal.

[Acts 1977, 65th Leg., p. 556, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.76. Continuance of Operation as Distiller

Notwithstanding any other provision of this code, a person who has been issued a distiller's permit may not subsequently be denied an original or renewal distiller's permit for the same location on the ground that the sale of distilled spirits has been prohibited in the area by a local option election. A person holding a permit at the time of the election or issued a permit under this section may exercise all privileg-

es granted by this code to the holder of a distiller's permit, including the manufacturing, possessing, storing, packaging, and bottling of distilled spirits and the transportation of them to areas in which their sale is legal.

[Acts 1977, 65th Leg., p. 556, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.77. Continuance of Operation as Distributor

(a) Notwithstanding any other provision of this code, if the sale of beer is prohibited by local option election, a licensed distributor of beer whose warehouse or other facilities used in connection with the distributorship are located in the area affected, has the right to continue to operate as a distributor in that area and maintain the necessary premises and facilities for distribution. The distributor continues to enjoy all the rights and privileges incident to distributorship, including the right to possess, store, warehouse, and sell beer in that area, and deliver beer into and out of that area.

(b) A distributor in the area affected may sell or deliver beer only to licensed outlets located where the sale of beer is legal.

[Acts 1977, 65th Leg., p. 556, ch. 194, § 1, eff. Sept. 1, 1977.]

§ 251.78. Continuance of Operation as Wholesaler

(a) Notwithstanding any other provision of this code, if the sale of the type or types of liquor

authorized to be sold by the holder of a wholesaler's permit whose warehouse or other facility used in connection with the wholesale operation is prohibited in an area by local option election, the holder of the wholesaler's permit shall have the right to continue to operate as a wholesaler in that area and maintain the necessary premises and facilities for the wholesale operation. The wholesaler shall enjoy all the rights and privileges incident to the permit, including the right to possess, store, warehouse, sell, deliver, and receive liquor.

(b) A wholesaler in the area affected may only sell or deliver liquor to permittees located where the sale of liquor is legal.

§ 251.79. Areas in Which Certain Permits and Licenses May be Issued

Notwithstanding any other provision of this code, a wholesaler's permit, general class B wholesaler's permit, local class B wholesaler's permit, or general, local or branch distributor's license may be issued and licensed premises maintained in any area where the sale of any alcoholic beverage is legal. A person issued a permit or license under this section may exercise all rights and privileges of other permittees and licensees of the same class.

[Acts 1977, 65th Leg., p. 557, ch. 194, § 1, eff. Sept. 1, 1977.]

DISPOSITION TABLE

Showing where provisions of former articles of the Penal Code of 1925
are covered in the Alcoholic Beverage Code.

P.C. Article	Alcoholic Beverage Code Section	P.C. Article	Alcoholic Beverage Code Section
666-1 -----	-----	666-9 -----	101.05
666-2 -----	1.03	666-10 -----	11.39
666-3 -----	25.09	666-11 -----	11.41
	69.12		11.43
666-3 -----	71.04		11.45
666-3a -----	1.04		11.46
	11.49		11.47
	11.50		11.48
666-4 -----	11.01	666-11a -----	28.03
Subsec.		666-12 -----	11.61
(a-1) -----	109.21		11.68
	109.22	666-12a -----	
(b) -----	101.31	Subsec.	
(b-1) -----	251.79	(1) -----	11.62
(c) -----	105.06	(2) -----	11.41
(d) -----	105.06	(3) -----	5.43
666-5 -----	5.01	(4) -----	11.63
	5.02		11.65
	5.03	(5) -----	5.45
	5.04		5.47
	5.05		5.48
	5.06		206.02
	5.07(a)	(6) -----	5.12
	5.07(b)	666-12b -----	106.13
	5.08	666-13 -----	
	5.09	Subsec.	
	5.10	(a) -----	11.09
	5.11	(b) -----	11.03
666-5a -----	5.13		11.10
666-5b -----	-----	(c) -----	11.69
666-6 -----		(d) -----	101.04
Subd.		(e) -----	109.52
(a) -----	5.31	(f) -----	28.05
	5.32	666-14 -----	11.67
	5.33		5.17
	5.34	666-15 -----	
(b) -----	5.35	Subd.	
(c) -----	5.36	(1) -----	12.01
(d) -----	5.31		12.02
(e) -----	5.37		37.04
(f) -----	5.38	(1a) -----	13.01
	5.39		13.02
	101.45		13.03
(g) -----	5.41	(2) -----	14.01
666-7 -----	5.44		14.02
666-7a -----	5.42	(3) -----	16.01
666-7b -----	5.14		16.02
666-7c -----	5.15		16.03
666-7d -----	5.16		16.04
666-8 -----	107.07	(4) -----	17.01

DISPOSITION TABLE

120-B

P.C. Article 666—15 Subd.	Alcoholic Beverage Code Section	P.C. Article 666—15 Subd.	Alcoholic Beverage Code Section
(4) -----	17.02	(17) -----	25.10
	17.03		105.04
(5) -----	15.01	(17)-A -----	26.01
	15.02		26.02
(6) -----	11.34		26.03
	19.01		26.04
	19.02		105.04
(7) -----	20.01	(17a) -----	11.38
	20.02		27.01
(7a) -----	21.01		27.02
	21.02		27.03
(7b) -----	-----		27.04
(8) -----	22.01		27.05
	22.02		27.06
	22.08	(18) -----	18.01
	22.09		18.02
(9) -----	24.01		18.03
	24.02	(19) -----	39.01
	24.04		39.02
	24.08		39.03
(10) -----	35.01		39.04
	35.02		39.05
	35.03		39.21
	35.04		39.22
	35.05		39.23
	35.06		39.24
(11) -----	38.01		39.25
	38.02		39.26
	38.03		39.27
	38.04		39.28
	38.05		39.29
	38.06		39.30
(12) -----	41.01		39.31
	41.02		39.32
	41.03		39.41
	41.04	(20) -----	40.01
(13) -----	42.01		40.02
	42.02		40.03
	42.03		40.04
	42.04		40.05
(14) -----	22.08	(21)(a) -----	34.01
	24.04	(21)(b) -----	11.38
	43.01		34.06
	43.02		34.02
	43.03		34.03
	43.04		34.06
	43.05	(21)(c) -----	34.01
	43.06	(21)(d) -----	34.04
(15) -----	46.01	(21)(e) -----	34.04
	46.02	(21)(f) -----	34.05
	46.03	(22)(a) -----	28.01
	46.04	(22)(b) -----	28.01
(16) -----	45.01	(22)(c) -----	28.02
	45.02	(23)(a) -----	30.02
	45.03		30.03
(17) -----	11.31	(23)(b) -----	30.01
	25.01		30.03
	25.02	(23)(c) -----	30.04
	25.03	(23)(d) -----	30.05
	25.04	(23)(e) -----	30.03

DISPOSITION TABLE

P.C. Article	Alcoholic Beverage Code Section	P.C. Article	Alcoholic Beverage Code Section
666-15		666-15½, subsec. A	
Subd.		Subd.	
(23)(c) -----	30.06	(1) -----	37.01
(24) -----	29.01		37.03
	29.02	(2) -----	37.05
	29.03	(3) -----	37.14
(25)(a) -----	31.01	(4) -----	37.07
	31.03	(5) -----	-----
(25)(b) -----	31.03	(6) -----	37.08
	31.04	(7) -----	37.12
(25)(c) -----	31.04	(8) -----	37.06
(25)(d) -----	31.03	(9) -----	37.02
(25)(e) -----	31.02		37.10
666-15a -----	109.51	666-15½, subsec. B -----	36.01
666-15a1 -----	11.04		36.02
	11.38		36.03
	61.36		36.04
666-15b -----	11.02		36.05
	11.36	666-16 -----	204.01
666-15c			204.02
Subsec.			204.03
(1) -----	11.31		204.04
	11.35		204.05
	11.40	666-17	
(2) -----	11.32	Subsec.	
	11.33	(1) -----	22.06
	11.39		22.07
(3) -----	11.08		24.05
	11.07		24.06
666-15d -----	11.42		24.07
666-15e			71.03
Subsec.		(2) -----	22.04
1 -----	32.03		22.05
	32.05	(3) -----	102.07
	32.06	(4) -----	101.71
	32.09	(5) -----	106.09
	32.10	(7) -----	206.05
2 -----	32.14	(8) -----	22.10
3 -----	32.14		24.09
4 -----	32.14	(9) -----	11.68
5 -----	32.01	(10) -----	22.11
	32.03		24.10
	32.07	(11) -----	101.61
	32.12	(12) -----	101.68
5a -----	32.03	(13) -----	103.01
6 -----	11.38	(14)(a) -----	106.02
	32.02		106.04
	32.04		106.05
	32.13	(14)(b) -----	106.06
	32.16	(14)(c) -----	106.06
6a -----	32.15	(14)(d) -----	106.07
7 -----	32.17	(14)(e) -----	106.10
7a -----	32.18		106.11
8 -----	32.02	(14)(f) -----	106.12
9 -----	32.19	(15) -----	101.46
10 -----	32.17		101.47
11 -----	-----	(16) -----	104.02
(12) -----	32.11	(17) -----	11.68
13 -----	11.38		61.84
666-15f -----	33.01	(18) -----	107.03
	33.02		107.05
	33.03	(19) -----	101.65

DISPOSITION TABLE

120-D

P.C. Article	Alcoholic Beverage Code Section	P.C. Article	Alcoholic Beverage Code Section
666-17		666-20d	
Subsec.		Subsec.	
(20) -----	206.03	(b) -----	202.02
(21) -----	106.08	(c) -----	202.01
(22) -----	11.06		202.06
	22.03	(d) -----	202.03
	24.03		202.05
	43.07	(e)(1) -----	202.04
(23) -----	11.05		205.02
(24) -----	35.07	(e)(2) -----	202.10
	36.07		205.03
(25) -----	—	(e)(3) -----	205.03
(26) -----	104.03	(f) -----	204.01
(27) -----	37.09		204.02
(28) -----	102.09		204.03
	102.10	(g) -----	202.11
(29) -----	102.08	(h) -----	202.09
(30) -----	11.61	(i) -----	202.07
(31) -----	11.68	(j) -----	202.08
(32) -----	201.82	(k) -----	201.12
(33) -----	107.05	(l) -----	202.12
	206.04	(m) -----	202.13
(34) -----	102.06	666-20e -----	19.03
(35) -----	102.03		19.04
	102.04		23.01
(36) -----	101.64		23.02
(37) -----	23.12		23.03
	102.31		23.05
	102.32		23.06
			28.01
666-17a			28.07
Subsec.			32.01
(1) -----	103.02		32.08
	101.69		36.06
666-17b -----	102.01		37.13
666-18 -----	109.53		44.01
666-19 -----	11.61		44.02
	11.70		44.03
	11.71	666-20e-1 -----	20.01
666-20 -----	101.03		21.01
666-20a			23.01
Subsec.			62.10
(a) -----	201.91		64.03
(b) -----	201.92		65.03
(c) -----	—		66.07
(d) -----	201.94	666-21	
	201.95	Subsec.	
	201.96	(1) -----	201.03
(e) -----	201.97		201.04
(f) -----	201.93		201.42
666-20b		(2) -----	201.02
Subsec.			201.41
(a) -----	28.08	(3) -----	201.05
(b) -----	28.09		201.06
(c) -----	28.09		201.07
(d) -----	28.09		201.10
(e) -----	28.09		201.11
(f) -----	28.10		201.12
(g) -----	28.10		201.15
666-20c -----	28.06		204.01
666-20d			204.02
Subsec.			204.03
(a) -----	202.01		

DISPOSITION TABLE

P.C. Article	Alcoholic Beverage Code Section	P.C. Article	Alcoholic Beverage Code Section
666-21		666-27	
Subsec.		Subsec.	
(3) -----	205.02	(a) -----	107.01
(4) -----	201.08	(b) -----	102.16
	201.11	666-27½ -----	102.17
(5) -----	201.71	666-28 -----	206.06
	201.80	666-29 -----	101.70
(6) -----	201.14	666-30	
	201.50	Subsec.	
(7) -----	201.16	(a) -----	103.06
666-21a -----	201.71		103.07
	201.78		103.08(a)
	201.81		103.08(b)
666-21b -----	201.77		103.08(c)
666-21c -----	206.01		103.08(d)
666-21d -----	---		103.09(a)
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666-36	251.31	666-49a	22.12
666-37			24.11
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(d) -----	251.14		251.75
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(f) -----	251.14	Acts 62nd, Ch. 65	28.04
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(i) -----	251.15	Acts 62nd, Ch. 531	109.01
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(b)	64.01	667-5F	25.06
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BUSINESS AND COMMERCE CODE

TITLE 1. UNIFORM COMMERCIAL CODE

CHAPTER 2. SALES

SUBCHAPTER C. GENERAL OBLIGATION AND CONSTRUCTION OF CONTRACT

§ 2.326. Sale on Approval and Sale or Return; Consignment Sales and Rights of Creditors

[See Compact Edition, Volume 1 for text of (a) to (c)(2)]

(3) complies with the filing provisions of the chapter on Secured Transactions (Chapter 9), or

(4) is delivering a work of art subject to the Artists' Consignment Act.

[See Compact Edition, Volume 1 for text of (d)]
[Amended by Acts 1977, 65th Leg., p. 1530, ch. 623, § 4, eff. Aug. 29, 1977.]

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

SUBCHAPTER A. SHORT TITLE, APPLICABILITY AND DEFINITIONS

§ 9.110. Sufficiency of Description

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

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

SUBCHAPTER D. FILING

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

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

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

Name of debtor (or assignor) _____
Address _____

Name of secured party (or assignee) _____
Address _____

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

(Describe) _____

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

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

(Describe Real Estate) _____

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

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

(use _____

whichever _____

Signature of Debtor (or Assignor)

is _____

applicable)

Signature of Secured Party (or Assignee)

(d) A financing statement may be amended by filing a writing signed by both the debtor and the secured party, provided, however, that an amendment to a financing statement which changes only the name of the secured party or the required address of either the secured party or the debtor is sufficient when it is signed by the secured party instead of the debtor. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. In this chapter, unless the context otherwise requires, the term "financing statement" means the original financing statement and any amendments.

(e) A financing statement covering timber to be cut or covering minerals or the like (including oil and gas) or accounts subject to Subsection (e) of Section 9.103, or a financing statement filed as a

fixture filing (Section 9.313), must show that it covers this type of collateral, must recite that it is to be filed for record in the real estate records, and the financing statement must contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement must show the name of a record owner.

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

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

[Amended by Acts 1975, 64th Leg., p. 940, ch. 353, §§ 2, 3, eff. June 19, 1975; Acts 1977, 65th Leg., p. 333, ch. 163, § 1, eff. Aug. 29, 1977.]

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

(a) Presentation for filing of a financing statement or other statement and tender of the filing fee or acceptance of the financing statement or other statement by the filing officer constitutes filing under this chapter.

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

(d) Except as provided in Subsection (g) a filing officer shall mark each financing statement with a file number and with the date and hour of filing and shall hold the financing statement or a microfilm or other photographic copy thereof for public inspection.

In addition the filing officer shall index the financing statements according to the name of the debtor and shall note in the index the file number and the address of the debtor given in the financing statement. The filing officer shall mark each continuation statement with the date and hour of filing and shall note it in the index of the original financing statement.

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

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

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

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

[Amended by Acts 1975, 64th Leg., p. 941, ch. 353, § 4, eff. June 19, 1975; Acts 1977, 65th Leg., p. 333, ch. 163, §§ 2, 3, eff. Aug. 29, 1977.]

§ 9.404. Termination Statement

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

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

statement was filed pursuant to Subsection (e) of Section 9.402, \$3.00.

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

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

(a) A financing statement may disclose an assignment of a security interest in the collateral described in the financing statement by indication in the financing statement of the name and address of the assignee or by an assignment itself or a copy thereof on the face or back of the financing statement. On presentation to the filing officer of such a financing statement the filing officer shall mark the same as provided in Section 9.403.

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

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

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

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

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

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

SUBCHAPTER E. DEFAULT

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

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

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

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

[Amended by Acts 1975, 64th Leg., p. 942, ch. 353, § 8, eff. June 19, 1975; Acts 1977, 65th Leg., p. 333, ch. 163, § 4, eff. Aug. 29, 1977.]

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

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

(b) In any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation. Written notice of such proposal shall be sent to the debtor if he has not signed after default a statement renouncing or modifying his rights under this subsection. In the case of consumer goods no other notice need be given. In other cases notice shall be given to any

other secured party who has a security interest in the same collateral and who has duly filed in the office of the Secretary of State or the County Clerk in the proper county in this state a financing statement indexed in the name of the debtor or from whom the secured party has received (before sending his notice to the debtor or before the debtor's renunciation of his rights) written notice of a claim of an interest in the collateral. If the secured party receives objection in writing from a person entitled to receive notification within twenty-one days after the notice was sent, the secured party must dispose of the collateral under Section 9.504. In the absence of such written objection the secured party may retain the collateral in satisfaction of the debtor's obligation.

[Amended by Acts 1975, 64th Leg., p. 943, ch. 353, § 9, eff. June 19, 1975; Acts 1977, 65th Leg., p. 334, ch. 163, § 6, eff. Aug. 29, 1977.]

CHAPTER 11. EFFECTIVE DATE AND TRANSITION PROVISIONS—1973 AMENDMENTS

§ 11.105. Transition Provision on Change of Place of Filing

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

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

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

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

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

§ 11.108. Presumption That Rule of Law Continues Unchanged

Unless a change in law has clearly been made, the provisions of this title with 1973, 1975, and 1977 amendments shall be deemed declaratory of the meaning of the title.

[Amended by Acts 1975, 64th Leg., p. 944, ch. 353, § 12, eff. June 19, 1975; Acts 1977, 65th Leg., p. 334, ch. 163, § 5, eff. Aug. 29, 1977.]

TITLE 2. COMPETITION AND TRADE PRACTICES

CHAPTER 17. DECEPTIVE TRADE PRACTICES

SUBCHAPTER E. DECEPTIVE TRADE PRACTICES AND CONSUMER PROTECTION

Section

17.50A. Damages: Defenses [NEW].

17.55A. Indemnity [NEW].

§ 17.45. Definitions

As used in this subchapter:

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

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

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

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

(5) "Unconscionable action or course of action" means an act or practice which, to a person's detriment:

(A) takes advantage of the lack of knowledge, ability, experience, or capacity of a person to a grossly unfair degree; or

(B) results in a gross disparity between the value received and consideration paid, in a transaction involving transfer of consideration.

[See Compact Edition, Volume 1 for text of (6) to (9)]

[Amended by Acts 1975, 64th Leg., p. 149, ch. 62, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 600, ch. 216, § 1, eff. May 23, 1977.]

§ 17.46. Deceptive Trade Practices Unlawful

[See Compact Edition, Volume 1 for text of (a) to (b)(18)]

(19) representing that a guarantee or warranty confers or involves rights or remedies which

it does not have or involve, provided, however, that nothing in this subchapter shall be construed to expand the implied warranty of merchantability as defined in Sections 2.314 through 2.318 of the Business & Commerce Code to involve obligations in excess of those which are appropriate to the goods;

(20) selling or offering to sell, either directly or associated with the sale of goods or services, a right of participation in a multi-level distributorship. As used herein, "multi-level distributorship" means a sales plan for the distribution of goods or services in which promises of rebate or payment are made to individuals, conditioned upon those individuals recommending or securing additional individuals to assume positions in the sales operation, and where the rebate or payment is not exclusively conditioned on or in relation to proceeds from the retail sales of goods; or

[Text of subd. (21) added by Acts 1977, 65th Leg., p. 601, ch. 216, § 3]

(21) representing that work or services have been performed on, or parts replaced in, goods when the work or services were not performed or the parts replaced.

[Text of subd. (21) added by Acts 1977, 65th Leg., p. 892, ch. 336, § 1]

(21) filing suit founded upon a written contractual obligation of and signed by the defendant to pay money arising out of or based on a consumer transaction for goods, services, loans, or extensions of credit intended primarily for personal, family, household, or agricultural use in any county other than in the county in which the defendant resides at the time of the commencement of the action or in the county in which the defendant in fact signed the contract, except that it is not a violation of this subsection where the defendant resides in a county having a population of less than 250,000 and the suit was filed in the nearest county with a population of 250,000 or more; provided, however, that a violation of this subsection shall not occur where it is shown by the person filing such suit he neither knew or had reason to know that the county in which such suit was filed was neither the county in which the defendant resides at the commencement of the suit nor the county in which the defendant in fact signed the contract; and provided further that a violation of this Act shall not occur by the joinder of multiple parties to an obligation where venue is otherwise proper as to the primary obligor or to any joint obligor.

(c)(1) It is the intent of the legislature that in construing Subsection (a) of this section in suits

brought under Section 17.47 of this subchapter the courts to the extent possible will be guided by Subsection (b) of this section and the interpretations given by the Federal Trade Commission and federal courts to Section 5(a)(1) of the Federal Trade Commission Act [15 U.S.C.A. 45(a)(1)].

(2) It is the intent of the legislature that in construing Subsection (a) of this section in suits brought under Section 17.50 of this subchapter the courts to the extent possible will be guided by Subsection (b) of this section and the interpretations given by the federal courts to Section 5(a)(1) of the Federal Trade Commission Act [15 U.S.C.A. 45(a)(1)].

[Amended by Acts 1977, 65th Leg., p. 601, ch. 216, §§ 2, 3, eff. May 23, 1977; Acts 1977, 65th Leg., p. 892, ch. 336, § 1, eff. Aug. 29, 1977.]

§ 17.47. Restraining Orders

(a) Whenever the consumer protection division has reason to believe that any person is engaging in, has engaged in, or is about to engage in any act or practice declared to be unlawful by this subchapter, and that proceedings would be in the public interest, the division may bring an action in the name of the state against the person to restrain by temporary restraining order, temporary injunction, or permanent injunction the use of such method, act, or practice. The consumer protection division may bring any action under this section against a licensed insurer or insurance agent for a violation of this subchapter, Article 21.21, Texas Insurance Code, as amended, or the rules and regulations of the State Board of Insurance issued under Article 21.21, Texas Insurance Code, as amended, only on the written request of the State Board of Insurance or the commissioner of insurance.

Nothing herein shall require the consumer protection division to notify such person that court action is or may be under consideration. Provided, however, the consumer protection division shall, at least seven days prior to instituting such court action, contact such person to inform him in general of the alleged unlawful conduct. Cessation of unlawful conduct after such prior contact shall not render such court action moot under any circumstances, and such injunctive relief shall lie even if such person has ceased such unlawful conduct after such prior contact. Such prior contact shall not be required if, in the opinion of the consumer protection division, there is good cause to believe that such person would evade service of process if prior contact were made or that such person would destroy relevant records if prior contact were made.

(b) An action brought under Subsection (a) of this section which alleges a claim to relief under this section may be commenced in the district court of the county in which the person against whom it is brought resides, has his principal place of business,

has done business, or in the district court of the county where the transaction occurred, or, on the consent of the parties, in a district court of Travis County. The court may issue temporary restraining orders, temporary or permanent injunctions to restrain and prevent violations of this subchapter and such injunctive relief shall be issued without bond.

(c) In addition to the request for a temporary restraining order, or permanent injunction in a proceeding brought under Subsection (a) of this section, the consumer protection division may request a civil penalty of not more than \$2,000 per violation, not to exceed a total of \$10,000, to be paid to the state.

(d) The court may make such additional orders or judgments as are necessary to compensate identifiable persons for actual damages or to restore money or property, real or personal, which may have been acquired by means of any unlawful act or practice. Damages may not include any damages incurred beyond a point two years prior to the institution of the action by the consumer protection division. Orders of the court may also include the appointment of a receiver or a sequestration of assets if a person who has been ordered by a court to make restitution under this section has failed to do so within three months after the order to make restitution has become final and nonappealable.

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

[Amended by Acts 1977, 65th Leg., p. 602, ch. 216, § 4, eff. May 23, 1977.]

§ 17.50. Relief for Consumers

(a) A consumer may maintain an action if he has been adversely affected by any of the following:

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

(2) breach of an express or implied warranty;

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

[Amended by Acts 1977, 65th Leg., p. 603, ch. 216, § 5, eff. May 23, 1977.]

§ 17.50A. Damages: Defenses

In an action brought under Section 17.50 of this subchapter, actual damages only and attorney's fees reasonable in relation to the amount of work expended and court costs may be awarded where the defendant:

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

(2) proves that he had no written notice of the consumer's complaint before suit was filed, or that within 30 days after he was given written notice he tendered to the consumer (a) the cash value of the consideration received from

the consumer or the cash value of the benefit promised, whichever is greater, and (b) the expenses, including attorney's fees, if any, reasonably incurred by the consumer in asserting his claim against the defendant; or

(3) in the case of a suit under Section 17.50(a)(2), the defendant proves that he was not given a reasonable opportunity to cure the defects or malfunctions before suit was filed.

[Added by Acts 1977, 65th Leg., p. 604, ch. 216, § 6, eff. May 23, 1977.]

§ 17.51 to 17.54. Repealed by Acts 1977, 65th Leg., p. 605, ch. 216, §§ 10 to 13, eff. May 23, 1977

Prior to repeal, § 17.54 was amended by Acts 1975, 64th Leg., p. 149, ch. 62, § 2.

See, now, § 17.50A.

§ 17.55A. Indemnity

A person against whom an action has been brought under this subchapter may seek contribution or indemnity from one who, under the statute law or at common law, may have liability for the damaging event of which the consumer complains. A person seeking indemnity as provided by this section may recover all sums that he is required to pay as a result of the action, his attorney's fees reasonable in relation to the amount of work performed in maintaining his action for indemnity, and his costs.

[Added by Acts 1977, 65th Leg., p. 604, ch. 216, § 7, eff. May 23, 1977.]

§ 17.56. Venue

An action brought which alleges a claim to relief under Section 17.50 of this subchapter may be commenced in the county in which the person against whom the suit is brought resides, has his principal place of business, or has done business.

[Amended by Acts 1977, 65th Leg., p. 604, ch. 216, § 8, eff. May 23, 1977.]

§ 17.59. Post Judgment Relief

(a) If a money judgment entered under this subchapter is unsatisfied 30 days after it becomes final and if the prevailing party has made a good faith attempt to obtain satisfaction of the judgment, the following presumptions exist with respect to the party against whom the judgment was entered:

(1) that the defendant is insolvent or in danger of becoming insolvent; and

(2) that the defendant's property is in danger of being lost, removed, or otherwise exempted from collection on the judgment; and

(3) that the prevailing party will be materially injured unless a receiver is appointed over the defendant's business; and

(4) that there is no adequate remedy other than receivership available to the prevailing party.

(b) Subject to the provisions of Subsection (a) of this section, a prevailing party may move that the defendant show cause why a receiver should not be appointed. Upon adequate notice and hearing, the court shall appoint a receiver over the defendant's business unless the defendant proves that all of the presumptions set forth in Subsection (a) of this section are not applicable.

(c) The order appointing a receiver must clearly state whether the receiver will have general power to manage and operate the defendant's business or have power to manage only a defendant's finances. The order shall limit the duration of the receivership to such time as the judgment or judgments awarded under this subchapter are paid in full. Where there are judgments against a defendant which have been awarded to more than one plaintiff, the court shall have discretion to take any action necessary to efficiently operate a receivership in order to accomplish the purpose of collecting the judgments.

[Amended by Acts 1977, 65th Leg., p. 604, ch. 216, § 9, eff. May 23, 1977.]

TITLE 3. INSOLVENCY, FRAUDULENT TRANSFERS, AND FRAUD

CHAPTER 26. STATUTE OF FRAUDS

§ 26.01. Promise or Agreement Must be In Writing

[See Compact Edition, Volume 1 for text of (a) to (a)(2)]

(b) Subsection (a) of this section applies to:

[See Compact Edition, Volume 1 for text of (b)(1) to (6)]

(7) a promise or agreement to pay a commission for the sale or purchase of:

- (A) an oil or gas mining lease;
- (B) an oil or gas royalty;
- (C) minerals; or
- (D) a mineral interest; and

(8) an agreement, promise, contract, or warranty of cure relating to medical care or results thereof made by a physician or health care provider as defined in Section 1.03, Medical Liability and Insurance Improvement Act of Texas. This section shall not apply to pharmacists.

[Amended by Acts 1977, 65th Leg., p. 2053, ch. 817, § 21.01, eff. Aug. 29, 1977.]

1 West's Tex.Stats. & Codes '77 Supp.—6

TITLE 4. MISCELLANEOUS COMMERCIAL PROVISIONS

Chapter	Section
36. Assumed Business or Professional Name	
[New] -----	36.01

CHAPTER 36. ASSUMED BUSINESS OR PROFESSIONAL NAME [NEW]

SUBCHAPTER A. GENERAL PROVISIONS

Section
36.01. Short Title.
36.02. Definitions.
36.03. Exclusion of Insurance Companies.

SUBCHAPTER B. ASSUMED BUSINESS OR PROFESSIONAL NAME CERTIFICATE

36.10. For Unincorporated Business or Profession.
36.11. For Incorporated Business or Profession.
36.12. Material Change in Information; New Certificate.
36.13. Duration of Certificate; Renewal; Termination of Existing Certificates.
36.14. Abandonment of Use of Assumed Business or Professional Name.
36.15. Index of Certificates; Filing Fees.
36.16. Prescribed Forms.
36.17. Effect of Filing.

SUBCHAPTER C. CIVIL AND CRIMINAL PENALTIES

36.25. Civil Penalties.
36.26. Criminal Penalty.

SUBCHAPTER A. GENERAL PROVISIONS

§ 36.01. Short Title

This chapter may be cited as the Assumed Business or Professional Name Act.

[Added by Acts 1977, 65th Leg., p. 1095, ch. 403, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 Act repealed Civil Statutes, Arts. 5924 to 5927b; § 3 amended Insurance Code, Art. 21.43(b); and § 4 thereof provided:

"If a court of competent jurisdiction shall adjudge any clause, sentence, subsection, or section of this Act to be invalid or unconstitutional, such judgment or decree shall not affect, impair, invalidate, or nullify the remainder of this Act, but the effect thereof shall be confined to the clause, sentence, subsection, or section of this Act so adjudged to be invalid or unconstitutional."

§ 36.02. Definitions

In this chapter, unless the context otherwise requires:

- (1) "Partnership" means a joint venture, general partnership, or limited partnership.
- (2) "Company" means a real estate investment trust, joint-stock company, or any other business, professional, or other association or legal entity that is not incorporated other than a partnership.
- (3) "Corporation" means a domestic or foreign corporation, professional corporation, professional association, other corporation, or any other business, professional, or other association or legal entity that is incorporated.
- (4) "Person" includes an individual, partnership, company, or corporation.

(5) "Representative" means a trustee, administrator, executor, independent executor, guardian, conservator, trustee in bankruptcy, receiver, or any other person appointed by a court or by trust or will to have custody of, take possession of, have title to, or otherwise be empowered to control the person or property of any person.

(6) "Estate" means the property of any person which is administered by a representative.

(7) "Assumed name" means:

(A) in the case of an individual, a name that does not include the surname of the individual;

(B) in the case of a joint venture or general partnership, a name that does not include the surname or other legal name of each joint venturer or general partner;

(C) in the case of an individual, joint venture, or a general partnership, a name, including a surname, that suggests the existence of additional owners by including words such as "Company," "& Company," "& Son," "& Sons," "& Associates," "Brothers," and the like, but not words that merely describe the business or professional service being conducted or rendered;

(D) in the case of a limited partnership, any name other than the name stated in its certificate of limited partnership;

(E) in the case of a company, any name used by the company; and

(F) in the case of a corporation, any name other than the name stated in its articles of incorporation or association or comparable document.

(8) "Registrant" means any person that has filed, or on whose behalf there has been filed, an assumed name certificate under the provisions of this chapter or other law.

(9) "Office" means, in the case of any person that is not an individual or that is a corporation which is not required to or does not maintain a registered office in this state, the principal office of such person and also its principal place of business if not the same as its principal office. In the case of a corporation which is required to maintain a registered office in this state, "office" means the registered office and also its principal office if not the same as its registered office.

(10) "Address" means a post office address and also the street address if not the same as the post office address.

[Added by Acts 1977, 65th Leg., p. 1095, ch. 403, § 1, eff. Aug. 29, 1977.]

§ 36.03. Exclusion of Insurance Companies

The provisions of this chapter shall not apply to any insurance company as defined in Article 1.29 of the Insurance Code which is authorized to do business in this state except as such code shall specifically provide.

[Sections 36.04 to 36.09 reserved for expansion]
[Added by Acts 1977, 65th Leg., p. 1096, ch. 403, § 1, eff. Aug. 29, 1977.]

SUBCHAPTER B. ASSUMED BUSINESS OR PROFESSIONAL NAME CERTIFICATE

§ 36.10. For Unincorporated Business or Profession

(a) Any person who regularly conducts business or renders professional services other than as a corporation in this state under an assumed name shall file in the office of the county clerk in each county in which such person has or will maintain business or professional premises or, if no business or professional premises are or will be maintained in any county, in each county where such person conducts business or renders a professional service, a certificate setting forth:

(1) the assumed name under which such business or professional service is or is to be conducted or rendered;

(2) if the registrant is:

(A) an individual, his full name and residence address;

(B) a partnership, (i) the venture or partnership name, (ii) the venture or partnership office address, and (iii) the full name of each joint venturer or general partner and his residence address if he is an individual or its office address if not an individual;

(C) an estate, (i) the name of the estate, (ii) the estate's office address, if any, and (iii) the full name of each representative of the estate and his residence address if he is an individual or its office address if not an individual;

(D) a real estate investment trust, (i) the name of the trust, (ii) the address of the trust, (iii) the full name of each trustee manager and his residence address if he is an individual and its office address if not an individual; or

(E) a company other than a real estate investment trust, or a corporation, (i) the name of the company or corporation, (ii) the state, country, or other jurisdiction under the laws of which it was organized, incorporated, or associated, and (iii) its office address;

(3) the period, not to exceed 10 years, during which the assumed name will be used; and

(4) a statement specifying that the business or professional service that is or is to be conducted or rendered in the county under such assumed name is being or will be conducted or rendered as a proprietorship, sole practitioner, joint venture, general partnership, limited partnership, real estate investment trust, joint-stock company, or some other form of unincorporated business or professional association or entity, as the case may be.

(b) A certificate filed under Subsection (a) of this section shall be executed and acknowledged by each individual whose name is required to be stated therein or by his representative or attorney in fact, and in the case of any person not an individual the name of which is required to be stated therein, the certificate shall be executed and acknowledged under oath on behalf of such person by its representative or attorney in fact or by a joint venturer, general partner, trustee manager, officer, or anyone having comparable authority, as the case may be, of such person. Any certificate executed and acknowledged by an attorney in fact shall include a statement that such attorney in fact has been duly authorized in writing by his principal to execute and acknowledge the same.

[Added by Acts 1977, 65th Leg., p. 1096, ch. 403, § 1, eff. Aug. 29, 1977.]

§ 36.11. For Incorporated Business or Profession

(a) Any corporation which regularly conducts business or renders professional services in this state under an assumed name, or which may be required by law to use an assumed name in this state to conduct such business or render such services, shall file in the office of the Secretary of State and, (1) if such corporation is required to maintain a registered office in this state, in the office of the county clerk of the county in which such registered office is located and of the county in which its principal office is located if within this state and not the same county where the registered office is located; or (2) if such corporation is not required to or does not maintain a registered office in this state, in the office of the county clerk of the county in which its office within this state is located or if the corporation is not incorporated, organized, or associated under the laws of this state, in the office of the county clerk of the county in which its principal place of business in this state is located if not the same as its office, a certificate setting forth:

(1) the assumed name under which such business or professional service is or is to be conducted or rendered;

(2) the name of the corporation as stated in its articles of incorporation or association or comparable document;

(3) the state, country, or other jurisdiction under the laws of which it was incorporated or associated and address of its registered or similar office in that state, country, or jurisdiction;

(4) the period, not to exceed 10 years, during which the assumed name will be used;

(5) a statement specifying that the corporation is a business corporation, nonprofit corporation, professional corporation, professional association, other type of corporation, or some other type of incorporated business, professional or other association, or legal entity;

(6) if the corporation is required to maintain a registered office in this state, (A) the address of such registered office and the name of its registered agent at such address, and (B) the address of its principal office if not the same as that of its registered office in this state;

(7) if the corporation is not required to or does not maintain a registered office in this state, its office address in this state and if the corporation is not incorporated, organized, or associated under the laws of this state, the address of its place of business in this state and its office address elsewhere, if any; and

(8) the county or counties within the state where business or professional services are being or are to be conducted or rendered under such assumed name.

(b) A certificate filed under Subsection (a) of this section shall be executed and duly acknowledged by an officer, representative, or attorney in fact for the corporation. A certificate executed and acknowledged by an attorney in fact shall include a statement that the attorney in fact has been duly authorized in writing by his principal to execute and acknowledge the same.

(c) Nothing in this chapter shall require a corporation or its shareholders, associates, or members to file an assumed business or professional name certificate in order to conduct business or render a professional service within this state under the name of the corporation as stated in its articles of incorporation, association, or comparable document.

[Added by Acts 1977, 65th Leg., p. 1097, ch. 403, § 1, eff. Aug. 29, 1977.]

§ 36.12. Material Change in Information; New Certificate

(a) Whenever an event occurs that causes the information in a certificate filed pursuant to this chapter by a person conducting business or rendering a professional service under an assumed name in this state to become materially misleading, a new certificate complying with Section 36.10 or Section 36.11 of this chapter, as the case may be, shall be filed in the office of the county clerk and of the Secretary of State, if applicable, in which an original

or renewal certificate was filed. The new certificate shall be filed within 60 days after the occurrence of the events which necessitates its filing.

(b) An event that causes the information contained in a certificate filed under this chapter to become materially misleading includes such matters as:

(1) a change in the name, identity, entity, form of business or professional organization, or location of a registrant;

(2) in the case of a proprietorship or sole practitioner, a change in ownership;

(3) in the case of a partnership, the admission of a new partner or joint venturer or whenever any general partner or joint venturer ceases to be associated with the partnership; or

(4) in the case of a registrant that is required by law to maintain a registered or similar office and a registered or similar agent at such office, a change in the address of such office or identity of such agent.

(c) A new certificate filed under this section shall be effective for a term not to exceed 10 years from the date it is filed.

[Added by Acts 1977, 65th Leg., p. 1098, ch. 403, § 1, eff. Aug. 29, 1977.]

§ 36.13. Duration of Certificate; Renewal; Termination of Existing Certificates

(a) A certificate filed pursuant to this chapter in the office of the county clerk and of the Secretary of State, if applicable, by any person conducting business or rendering a professional service under an assumed name in this state shall be effective for a term not to exceed 10 years from the date the certificate is filed.

(b) At the end of the stated term, not to exceed 10 years, the certificate shall become null and void and of no effect, unless within six months prior to its expiration a renewal certificate complying with the provisions of this chapter for an original certificate shall be filed in the office of the county clerk and of the Secretary of State, if applicable.

(c) A registrant may renew a certificate under this section for any number of successive terms, but each such term shall not exceed 10 years in duration.

(d) Any assumed name certificate that has been filed pursuant to Articles 5924 and 5924.1, Revised Civil Statutes of Texas, 1925, prior to the effective date of this chapter, shall become null and void after December 31, 1978, unless before that date a new certificate complying with the requirements of this chapter has been filed. A new certificate thus filed shall be effective for a term not to exceed 10 years from the date it is filed.

(e) The county clerk of each county shall notify in writing each person that has conducted a business

under an assumed name and for which an assumed name certificate has been filed in the office of that clerk pursuant to Articles 5924 and 5924.1, Revised Civil Statutes of Texas, 1925, prior to the effective date of this chapter, that under the provisions of Subsection (d) of this section the certificate shall become null and void after December 31, 1978, unless a new certificate is filed that complies with the provisions of this chapter. The written notice shall be effective by being deposited with the United States Postal Service, addressed to the name of the business at the office address given in the certificate as last filed.

[Added by Acts 1977, 65th Leg., p. 1099, ch. 403, § 1, eff. Aug. 29, 1977.]

§ 36.14. Abandonment of Use of Assumed Business or Professional Name

(a) A registrant that has filed an assumed business or professional name certificate under this chapter which ceases to transact business or render professional services under the assumed name stated in such certificate in this state may file in the office of the county clerk and of the Secretary of State, if applicable, where such certificate has been filed, a statement of abandonment of use of a business or professional name setting forth:

(1) the assumed business or professional name being abandoned;

(2) the date on which the certificate was filed in the office in which such statement is being filed and any other filing office or offices, if any, where the certificate has been filed; and

(3) the registrant's name and residence or office address as would be required to be stated if the certificate were being presently filed.

(b) A statement filed under Subsection (a) of this section shall be executed and acknowledged in the same manner as would be required if the registrant were filing an assumed business or professional name certificate under this chapter.

[Added by Acts 1977, 65th Leg., p. 1100, ch. 403, § 1, eff. Aug. 29, 1977.]

§ 36.15 Index of Certificates; Filing Fees

Each county clerk and the Secretary of State shall keep an alphabetical index of all assumed names which have been filed in his office pursuant to the provisions of this chapter and of the persons filing the same. The county clerk shall receive a fee of \$2 for indexing and filing each certificate or statement required or permitted to be filed pursuant to this chapter. The Secretary of State shall collect for the use of the state a fee of \$10 for indexing and filing each certificate or statement required or permitted to be filed pursuant to this chapter. A copy of such certificate or statement duly certified to by the county clerk in whose office the same was filed or by

the Secretary of State shall be presumptive evidence in all courts in this state of the facts therein contained.

[Added by Acts 1977, 65th Leg., p. 1100, ch. 403, § 1, eff. Aug. 29, 1977.]

§ 36.16. Prescribed Forms

The Secretary of State may prescribe the forms to be used for filing any assumed business or professional name certificate or statement that complies with this chapter in his office or in the office of any county clerk in this state. The use of such forms, however, shall not be mandatory unless otherwise specifically provided by law.

[Added by Acts 1977, 65th Leg., p. 1100, ch. 403, § 1, eff. Aug. 29, 1977.]

§ 36.17. Effect of Filing

Nothing in this chapter shall be construed to give a registrant of an assumed business or professional name any right to use the name when contrary to the common law or statutory law of unfair competition, unfair trade practices, common law copyright, or similar law. The mere filing of an assumed business or professional name certificate pursuant to this chapter shall not constitute actual use of the assumed name set out therein for purposes of determining priority of rights.

[Added by Acts 1977, 65th Leg., p. 1100, ch. 403, § 1, eff. Aug. 29, 1977.]

[Sections 36.18 to 36.24 reserved for expansion]

SUBCHAPTER C. CIVIL AND CRIMINAL PENALTIES

§ 36.25. Civil Penalties

Failure to comply with the provisions of this chapter by any person shall not impair the validity of any contract or act by such person nor prevent such person from defending any action or proceeding in any court of this state, but such person shall not maintain an action or proceeding in any court of this state arising out of a contract or act in which an assumed name was used until an original, new, or renewed assumed business or professional name certificate has been filed as required by this chapter. In an action or proceeding brought against a person that has not complied with this chapter, the plaintiff or other party bringing the suit or proceeding may recover, if the court shall so determine, expenses incurred, including attorney's fees, in locating and effecting service of process on such person.

[Added by Acts 1977, 65th Leg., p. 1100, ch. 403, § 1, eff. Aug. 29, 1977.]

§ 36.26. Criminal Penalty

A person conducting business or rendering a professional service in this state under an assumed name that violates a provision of this chapter is guilty of a misdemeanor and upon conviction shall be punished by a fine not exceeding \$2,000.

[Added by Acts 1977, 65th Leg., p. 1101, ch. 403, § 1, eff. Aug. 29, 1977.]

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TITLE 1. GENERAL PROVISIONS

CHAPTER 1. TITLE, ORGANIZATION, AND PURPOSE

§ 1.04. Applicability

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

(b) This code shall not apply to those facilities and institutions under the control and direction of the Texas Department of Mental Health and Mental Retardation or to the institutions for delinquent, dependent and neglected children under the control and direction of the Texas Youth Council except as specifically provided in Subchapter E of Chapter 30 of this code.¹

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

appropriate special educational services in cooperation with other educational institutions and other appropriate agencies, institutions, or departments.

(d) Notwithstanding the other provisions of this section, employees of the Texas Youth Council in academic or vocational programs shall be members of the Teacher Retirement System of Texas under Chapter 3 of this code.

[Amended by Acts 1975, 64th Leg., p. 2377, ch. 734, § 1, eff. June 21, 1975; Acts 1977, 65th Leg., p. 369, ch. 181, § 1, eff. May 20, 1977; Acts 1977, 65th Leg., p. 1962, ch. 782, §1, eff. June 16, 1977.]

¹ Section 30.81 et seq.

CHAPTER 3. TEACHER RETIREMENT SYSTEM

SUBCHAPTER B. CREDITABLE SERVICE

Section

3.27. Purchase of Credit for Developmental Leave [NEW].

3.28. Purchase of Credit by Distributive Education Teachers [NEW].

SUBCHAPTER A. GENERAL PROVISIONS

§ 3.02. Definitions and Qualifications of Terms

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

[See Compact Edition, Volume 1 for text of
a(1) and a(2)]

(3) "Employee" means any person employed to render service on a full-time, regular salary basis by the governing board of any school district created under the laws of this state, by any county school board, by the State Board of Trustees of the Retirement System, by the State Board of Education, by the Central Education Agency, by the board of regents of any college or university, or by any other legally constituted board or agency of any public school.

(4) "Employer" means the State of Texas or any of its designated agents or agencies responsible for public education, to include those boards and agencies listed in Subsection (a)(3) of this section.

(5) "Member" means any employee included in the membership of the retirement system in accordance with this chapter.

(6) "State Board of Trustees" means the board established to administer the retirement system under the terms of this chapter.

(7) "Service" means service as an employee as defined in this section.

(8) "Prior service" means service by such person as an employee prior to:

(A) September 1, 1937, as relates to any person who became a member or who at any time on or before August 31, 1949, was eligible for membership in the retirement system; or

(B) September 1, 1949, as relates to any person who for the first time became eligible for membership in the retirement system on or after September 1, 1949.

(9) "Membership service" means service rendered as an employee while a member of the retirement system.

(10) "Creditable service" means the prior service, membership service, developmental leave, out-of-state service, and military duty for which a member of the retirement system is entitled to credit under the provisions of this chapter.

(11) "Accumulated contributions" means the sum of all the amounts deducted from the compensation of a member and credited with the authorized interest to his individual account in the member savings account.

(12) "Annual compensation" means the compensation that is paid or payable to an employee by his employers for service during a school year, except that compensation in excess of \$25,000 for school years after September 1, 1969, and compensation in excess of \$8,400 for school years prior to September 1, 1969, shall not be included as annual compensation.

(13) "Military duty" means active duty in the Armed Forces of the United States, other than as a student in the service academies, which meets one of the following criteria:

(A) the active duty was rendered as a direct result of being inducted into the Armed Forces or of first enlisting for duty on a date when the federal government was actively inducting personnel into the Armed Forces pursuant to federal draft laws;

(B) the active duty was rendered as a reservist or a member of the National Guard who is ordered to duty under the authority of federal law; or

(C) the active duty was rendered during a period when the federal government was actively inducting personnel into the Armed Forces pursuant to federal draft laws.

(14) "Retirement" means withdrawal from service with a retirement benefit granted under the provisions of this chapter.

(15) "Beneficiary" means any person receiving an annuity, retirement benefit, or other benefit provided in this chapter.

(16) "Designated beneficiary" means any person nominated to receive in case of a member's or annuitant's death any benefit payable after such death under the provisions of this chapter.

(17) "Standard annuity" shall have the meaning given such term by the laws in effect on a member's date of retirement for retirement benefits and on a member's date of death for death benefits. For benefits payable by reason of retirement or death on or after May 31, 1977, "standard annuity" means an annuity payable in equal monthly installments aggregating in twelve months and calculated as follows: two percent for each year of prior service credit and membership service credit multiplied by the member's "best-five-years-average compensation."

(18) "Best-five-years-average compensation" means the average annual compensation received by the member as an employee during the 5 years of membership service (whether or not consecutive) in which the member earned the highest annual compensation. Compensation in excess of the limits established in the definition of "annual compensation" shall be excluded in calculating the "best-five-years-average compensation."

(19) "School year" means the year beginning on or about September 1 of any calendar year and ending August 31 of the following calendar year. However, the school year for a member whose contract year begins on or after July 1 and extends after August 31 of the same calendar year shall commence from the beginning date of the contract for the school year, but in no case may the school year include more than twelve months. The employer shall certify annually the beginning date of the member's contract in such form and under such procedures as may be required by the Board of Trustees.

(20) "Actuarial equivalent" of any benefit means a benefit of equal monetary value when computed upon the basis of annuity or mortality tables and on an interest or discount rate adopted by the State Board of Trustees for such purpose from time to time and in force at the time the benefit is originally entered upon.

(21) "Developmental leave" means an absence from service for a school year which is approved

by a member's employer for study, research, travel, or other purpose designed to improve the member's professional competence as determined by the employer.

(b) In case of doubt the State Board of Trustees of the retirement system shall determine whether a person is an employee within the contemplation of this chapter.

(c) In cases where the annual compensation includes maintenance, the retirement system shall fix the value of that part of the compensation not paid in money.

[Amended by Acts 1975, 64th Leg., p. 122, ch. 57, § 1, eff. April 18, 1975; Acts 1975, 64th Leg., p. 2373, ch. 732, § 1, eff. June 21, 1975; Acts 1977, 65th Leg., p. 1013, ch. 377, § 1, eff. June 10, 1977.]

Section 2 of ch. 732 provided:

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

§ 3.03. Membership

(a) All persons who on the effective date of this code were members of the Teacher Retirement System of Texas shall continue as members subject to the provisions of this chapter, except as provided in Subchapter G of Chapter 51 of the Texas Education Code.¹

(b) Every employee in any public school or other branch or unit of the public school system of this State is a member of the retirement system as a condition of his employment. This subsection shall not apply to require membership of any person who

(1) has heretofore, pursuant to authority of former laws, executed and filed a waiver of membership in the retirement system; however, any such person may elect to become a member at the beginning of any school year, but shall not be entitled to credit for prior service unless payments for the waived service are made as provided in Section 3.25 of this code;

(2) was or may be for the first time employed at 60 years of age or older; however, such person may elect to become a member of the retirement system as of the effective date of employment by notifying his employer and the State of Board of Trustees within 90 days from the effective date of employment;

(3) elects to participate in the retirement program provided by Subchapter G of Chapter 51 of the Texas Education Code; or

(4) is solely employed by a public institution of higher education which requires as a condition of employment that the person be enrolled as a student in that institution; such employ-

ment shall be excluded from membership coverage beginning September 1, 1977.

[Amended by Acts 1977, 65th Leg., p. 1015, ch. 377, § 2, eff. June 10, 1977.]

¹ Section 51.351 et seq.

§ 3.05. Reciprocal Service

Any member of the teacher retirement system may claim credit with the teacher retirement system for service rendered as a state employee as provided in Chapter 75, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 6228a-2, Vernon's Texas Civil Statutes).

[Amended by Acts 1977, 65th Leg., p. 1016, ch. 377, § 3, eff. June 10, 1977.]

SUBCHAPTER B. CREDITABLE SERVICE

§ 3.21. Determination

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

(b) Years of service on which the amounts of a benefit is based shall consist of the number of years of creditable service as defined in this chapter to which the member is entitled. Such service credits shall be determined and regulated by Sections 3.22-3.27 of this code.

[Amended by Acts 1977, 65th Leg., p. 1016, ch. 377, § 4, eff. June 10, 1977.]

§ 3.22. Prior Service Credits

(a) Under the rules and regulations adopted by the State Board of Trustees, each person on becoming a member of the retirement system for the first time shall file a detailed statement of all his prior service.

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

(e) Any member who has credit for five years of membership service and who has no unpaid waived, withdrawn, or delinquent service shall be entitled to credit for prior service.

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

[Amended by Acts 1977, 65th Leg., p. 1016, ch. 377, § 5, eff. June 10, 1977.]

§ 3.23. Creditable Service

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

(b) Any member who performed one or more years of military duty while a member of the retire-

ment system shall be permitted to deposit to his individual account in the member savings account for each year of duty an amount equal to his deposits made with the retirement system during the last preceding full year of service as an employee. He shall then be entitled to one year of creditable service for each year of military duty.

(c) Any member who performed one or more years of military duty prior to becoming a member of the retirement system shall be permitted to deposit to his individual account in the member savings account for each year of such military duty an amount equal to his deposits made with the retirement system during the first full year of service as an employee after becoming a member of the retirement system. He shall then be entitled to one year of creditable service for each year of military duty.

(d) In addition to the deposits required for the creditable service authorized in Subsections (b) and (c) of this section, the member shall be required to pay a fee of five percent per annum of such deposits from the date the member became eligible to make the deposit for credit until the date of deposit. Fees shall be credited to the state contribution account.

(e) A member shall not make deposits for military duty until he has credit for 10 years of actual service in the public schools of Texas and shall not be eligible for more than five years of credit for such duty.

[Amended by Acts 1975, 64th Leg., p. 122, ch. 57, § 2, eff. April 18, 1975; Acts 1977, 65th Leg., p. 1016, ch. 377, § 6, eff. June 10, 1977.]

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

§ 3.25. Reinstatement of Service Credits

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

(b) Any member who terminates or has terminated membership in the retirement system by withdrawal of deposits or by absence from service shall have the privilege of reinstating such terminated membership by rendering service during current

membership for two subsequent consecutive creditable years or for a subsequent continuous period equal in duration to the period from the date of the relevant withdrawal to the beginning date of such period of creditable service, whichever is shorter, and by depositing the amount withdrawn plus membership fees for the years during which membership was terminated plus a reinstatement fee of five percent per annum from the date of withdrawal to date of redeposit. The reinstatement fee shall be credited to the state contribution account.

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

(d) The amounts to be deposited shall be determined in each case by the State Board of Trustees and no person shall be granted retirement upon such service credits until the amount so determined is paid in full.

[Amended by Acts 1975, 64th Leg., p. 36, ch. 19, § 1, eff. March 20, 1975; Acts 1977, 65th Leg., p. 1017, ch. 377, § 7, eff. June 10, 1977.]

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

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

"Sec. 11. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

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

(a) Any member of the retirement system who has been employed in any public school system maintained in whole or in part by any other state or

territory of the United States or by the United States for children of United States citizens may purchase equivalent membership service credits under this retirement system for such service. Specifically excluded from out-of-state service credit is service while a member of the Armed Forces rendered at any public school, for which service the member was compensated by the United States.

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

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

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

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

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

(e) All such deposits shall be credited, pending retirement, to the member's individual account in the member's savings account. Fees for deposits made after the member becomes eligible for pur-

chase of this credit shall be credited to the state contribution account.

[Amended by Acts 1975, 64th Leg., p. 37, ch. 19, § 2, eff. March 20, 1975; Acts 1977, 65th Leg., p. 1018, ch. 377, § 8, eff. June 10, 1977.]

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

§ 3.27. Purchase of Credit for Developmental Leave

(a) Any member of the retirement system with five years of service who subsequently takes a developmental leave may purchase equivalent membership service credit for up to two years of such leave, provided the member is rendering service as an employee of a Texas public school at the time of the purchase.

(b) On or before the date a member takes a developmental leave, the member shall file with the retirement system a notice of intent to take developmental leave, and the member's employer shall file a certification that the leave satisfies the requirements of developmental leave as defined in this chapter.

(c) To purchase credit for a developmental leave, the member shall deposit to his individual account with the retirement system an amount equal to

(1) the same percentage of annual compensation as required in this chapter for member contributions, based on the member's annual rate of compensation earned during the last creditable year of service preceding the developmental leave; plus

(2) the amount which the State of Texas would have contributed under this chapter if the member had received such rate of annual compensation for employment during the year in which the leave was taken; plus

(3) the membership fee in effect during the year the developmental leave is taken.

All amounts deposited shall be credited to the member savings account except that membership fees shall be credited to the expense account.

(d) No deposits for purchase of developmental leave credit may be made after the end of the first creditable school year following the developmental leave. Developmental leave credit may not be counted toward any service retirement benefit calculation until the member obtains 10 years of credit for actual service in the public schools of Texas. In the event such credit is not counted the accumulated deposits in the member's individual account attributable to the deposit for developmental leave credit and any fees attributable to such years shall be paid to the member or his beneficiary, if applicable.

[Added by Acts 1977, 65th Leg., p. 1019, ch. 377, § 9, eff. June 10, 1977.]

§ 3.28. Purchase of Credit by Distributive Education Teachers

(a) A person employed as a distributive education teacher by a public school may purchase membership service credit under the retirement system for each year of approved work experience recognized by the Central Education Agency for salary increment purposes.

(b) For each year of membership service credit desired for prior work experience, the member must deposit to the individual account with the retirement system 12 percent of the annual compensation received under the Texas Public Education Compensation Plan¹ during the first year of employment as a teacher in the public schools, plus 5 percent interest on the deposit for each year between the date the work experience was earned and the date the deposit is made.

(c) For each year that deposits are made, the member shall be granted one year's membership service credit. Not more than 10 years' total credit may be purchased under the provisions of this section.

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

[Added by Acts 1977, 65th Leg., p. 1029, ch. 377, § 24, eff. June 10, 1977.]

¹ See § 16.056.

SUBCHAPTER C. BENEFITS

§ 3.31. Service Retirement Benefits

(a) The date of retirement for any eligible member shall be the last day of any month in which he makes written application to the State Board of Trustees, or in which he satisfies the age and service requirements of this subsection, whichever is later. A member who retires after the effective date of this chapter shall be eligible to retire with a standard service retirement benefit consisting of one of the following:

(1) a standard annuity payable in monthly installments during such retired member's life, provided he has completed 10 or more years of creditable service and has attained the age of 65 years;

(2) a standard annuity payable in monthly installments during such retired member's life, provided he has completed 20 or more years of creditable service and has attained the age of 60 years;

(3) a percentage of the standard annuity reduced from age 65 as shown in the following table provided he has at least 10 years of service and has attained the age of 55 years:

YEARS OF SERVICE	AGE AT DATE OF RETIREMENT										
	55	56	57	58	59	60	61	62	63	64	65
10-19	47%	51%	55%	59%	63%	67%	73%	80%	87%	93%	100%

(4) a percentage of the standard annuity reduced as shown in the following table provided he has at least 20 years of creditable service and has attained the age of 55 years:

YEARS OF SERVICE	AGE AT DATE OF RETIREMENT					
	55	56	57	58	59	60
20-24	70%	76%	82%	88%	94%	100%
25-29	75%	80%	82%	88%	94%	100%
30	80%	82%	84%	88%	94%	100%
31	82%	84%	86%	88%	94%	100%
32	84%	86%	88%	90%	94%	100%
33	86%	88%	90%	92%	94%	100%
34	88%	90%	92%	94%	96%	100%
35	90%	92%	94%	96%	98%	100%
36	92%	94%	96%	98%	100%	100%
37	94%	96%	98%	100%	100%	100%
38	96%	98%	100%	100%	100%	100%
39	98%	100%	100%	100%	100%	100%
40 or more	100%	100%	100%	100%	100%	100%

(5) a percentage of the standard annuity reduced for early retirement as shown in the table included in Subsection (a)(4) of this section at any age provided he has completed at least 30 years of creditable service. The State Board of Trustees shall extend the table in Subsection (a)(4) of this section to ages earlier than 55 years by decreasing the percentage by two percent for each year of age of the member under 55 years.

(b) The State Board of Trustees may adopt tables which reduce benefits for early retirement by each month of age, but such tables shall be limited to interpolations between the percentages for each year of age provided in this section.

(c) In lieu of any service retirement benefit allowable under Subsection (a) of this section, a member may elect, by giving notice to the State Board of Trustees in writing before the date fixed for retirement, to receive the actuarial equivalent of the benefit in the form of a reduced monthly amount payable throughout his lifetime, with provision for:

(1) Option One: on his death, the same monthly payments shall be made to and continued throughout the life of the person nominated by the member's written designation filed with the State Board of Trustees prior to his retirement; or

(2) Option Two: on his death, one-half of the same monthly payments shall be made to and continued throughout the life of the person nominated by the member's written designation filed with the State Board of Trustees prior to his retirement; or

(3) Option Three: on his death before 60 monthly payments have been made, they shall continue to the designated beneficiary until the remainder of the 60 payments have been made; or

(4) Option Four: on his death before 120 monthly payments have been made, they shall continue to the designated beneficiary until the remainder of the 120 payments have been made.

(d) A member shall in any event be entitled to a minimum benefit of \$6.50 per month for each year of prior service credit and membership service credit or to its actuarial equivalent if the member has selected an option. Such minimum benefit is subject to the appropriate percentage reduction for early retirement, if applicable. A member who retires on or after attaining 65 years of age shall be entitled to such minimum benefit or to \$75 per month, whichever is greater, or to the actuarial equivalent thereof.

(e) No annuity payment authorized under the provisions of this chapter shall be made for any fraction of a month in which the annuitant dies.

(f) At any time before his date of retirement a member by giving written notice to the State Board of Trustees may revoke his application for retirement and may make, revoke, or change his selection of an option as provided in Subsection (c) of this section. Except as specifically provided in this chapter, no person who has retired under the provisions of this chapter may revoke his retirement nor make, revoke, or change his selection of an option under Subsection (c) of this section.

(g) No member may receive a service retirement benefit from the retirement system with less than 10 years of credit for actual service in the public schools except as provided in Chapter 573, Acts of the 63rd Legislature, Regular Session, 1973, as amended (Article 6228i, Vernon's Texas Civil Statutes), and Chapter 75, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 6228a-2, Vernon's Texas Civil Statutes).

[Amended by Acts 1975, 64th Leg., p. 7, ch. 6, § 1, eff. Feb. 13, 1975; Acts 1977, 65th Leg., p. 1019, ch. 377, § 10, eff. June 10, 1977.]

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

See, also, note under Section 3.38.

Section 29 of the 1977 amendatory act provided:

"Should this Act become effective at a date later than May 31, 1977, the retirement benefits payable on or after such later effective date to persons who retired on May 31, 1977, or thereafter shall be recalculated as if the member had retired under the provisions of Chapter 3 of the Texas Education Code as amended by this Act. Should this Act become effective on a date later than June 30, 1977, the increases in monthly benefits provided for persons in Section 16 of this Act shall become effective with the first monthly payment due on or after such effective date."

§ 3.32. Disability Benefits

(a) A member or the legal representative of a member may apply for the disability benefits provided in this section. The member shall make applica-

tion for disability benefits and shall submit the results of a medical examination on forms prescribed by the retirement system and shall submit such additional information relating to the disability as the retirement system may by rule prescribe or as the medical board may require in an individual case. The member shall be retired on the applicable disability benefit upon the certification by the medical board that the member is mentally or physically disabled from the further performance of duty and that such disability is probably permanent.

The date of retirement on a disability for a member shall be the last day of the month in which the member made application or terminated employment, whichever is later. However, the member shall have 30 days following the certification of disability by the medical board in which to make deposits for any withdrawn account, waiver, out-of-state service, military duty, transferred state service, or other special service.

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

(c) If the member has 10 or more years of creditable service, but is not eligible for service retirement without reduction, he shall receive for the duration of his disability the standard annuity calculated on the basis of his creditable service to date of retirement, or \$6.50 per month for each year of service, whichever is greater. In the event the disability retirement occurs after or continues until he attains 60 years of age, his disability shall be conclusively presumed continuous for the remainder of his life.

(d) Once each year during the first five years following disability retirement and once every three years thereafter, the State Board of Trustees may require any member who retired on a disability benefit and who has not yet attained age 60 to undergo a medical examination by a physician or physicians designated by the medical board. Should he refuse to submit to at least one such medical examination during any authorized examination period, his benefit shall be discontinued until he consents to an examination.

(e) If a person under 60 years of age who is receiving a disability retirement benefit is restored to active service, if such person refuses to submit to a required medical examination for more than one year, or if the medical board certifies to the State Board of Trustees that he is no longer physically or mentally disabled from further performance of duty and the State Board of Trustees concurs, his benefit shall be discontinued, he shall again become a member of the retirement system and the sum in his account before disability retirement, less all disability benefits paid to him, shall be transferred from the retired reserve account to his individual account in the member savings account. On restoration to membership, any creditable service used to compute a member's benefit when he retired shall be restored to full force and effect.

(f) If a person receiving a disability retirement benefit is gainfully employed, his benefit shall be suspended or reduced to an amount by which his salary earned during his last year of creditable service exceeds his present earnings. Should his earnings later change, his benefit may be further modified, but shall never exceed his original benefit. To enforce the provisions of this subsection the State Board of Trustees shall adopt rules for reporting of income by each such person.

(g) No member eligible for service retirement without reduction shall be allowed to retire on a disability benefit.

(h) The medical board may rule on an application for disability in a regular or special meeting or by mail, telephone, telegraph, or other suitable means of communication.

[Amended by Acts 1977, 65th Leg., p. 1021, ch. 377, § 11, eff. June 10, 1977.]

§ 3.33. Beneficiary Designation

(a) Any member or annuitant may name one or more persons as his designated beneficiary to receive the benefits payable under this chapter in the event of his death, except in the case of an Option One or Option Two retirement benefit for which only one person may be designated as beneficiary. The designation of beneficiary must be in writing on a form prescribed by and filed with the retirement system. In like manner the member or annuitant may change or revoke a designation previously made, except that the beneficiary designations for Option One and Option Two retirement annuities may not be changed or revoked after the date of retirement. Unless the written designation of the retired member clearly indicates an intention to the contrary or the provisions of law require otherwise, the latest effective beneficiary designation shall be presumed to apply to all benefits payable upon the death of a member or retired member. The retirement system may provide for the designation of alternate beneficiaries.

(b) In the event a member or annuitant fails to designate a beneficiary, or a designated beneficiary does not survive the member or annuitant, or a designated beneficiary files with the retirement system a written waiver of any claim to amounts payable upon the death of the member or annuitant on a form satisfactory to the retirement system, benefits payable upon the death of the member or annuitant, other than payment under retirement Option One and Option Two, and election rights to survivor benefits, if applicable, shall be made available to one of the following classes of persons in the following order of precedence:

- (1) any surviving joint designated beneficiaries;
- (2) if none of the above, any alternate beneficiaries;

(3) if none of the above, the surviving spouse of the deceased;

(4) if none of the above, the children of the deceased or their descendants by representation;

(5) if none of the above, the parent or parents of the deceased in equal portions;

(6) if none of the above, the duly appointed executor or administrator of the estate of the member or annuitant;

(7) if none of the above, to such persons as are entitled to the distribution of the estate of the deceased member or annuitant under the laws of his domicile at the date of death.

(c) If, within one year of death, no claim for payment of benefits has been received by the retirement system from a person entitled under the designation or order of precedence provided in this section, payment of benefits, except for benefits under retirement Option One and Option Two, may be made in the order of precedence as if the person had predeceased the deceased member or annuitant. Payment under this subsection bars recovery by any other person. If, within four years after death, payment has not been made under this chapter and no claim for such payment is pending, the accumulated contributions of the deceased member or the balance of the reserve for the retired annuitant escheat to the benefit of the fund and shall be transferred to the state contribution account.

(d) No benefit payable upon the death of a member or other annuitant under this chapter shall be paid to a person convicted of intentionally causing that death but shall instead be paid to the person or persons who would be entitled to the benefit had the convicted killer predeceased his victim. Any person who becomes eligible under this subsection to elect among death or survivor benefit options provided by this chapter shall be entitled to select among options available as if such person were the designated beneficiary. Any annuity calculated in part on the life of the convicted killer shall be reduced to a lump sum equal to the present value of the remainder of the annuity, and such sum shall be paid to the person authorized under this section to receive the death or survivor benefit. The retirement system shall not be responsible for the payment of benefits pursuant to the provisions of this subsection unless it receives actual notice of the conviction of the beneficiary; however, the retirement system may delay payment of any benefit due upon the death of a member or annuitant pending the results of a criminal investigation and of legal proceedings against the beneficiary for causing that death.

(e) A trust may be named as a beneficiary under the provisions of this chapter. For purposes of the calculation of, eligibility for, and duration of benefits, the beneficiary of the trust shall be considered as the designated beneficiary of the member. The

trustee shall exercise any election rights to benefit options and name any subsequent beneficiaries. A trust with multiple beneficiaries may not receive benefits to which multiple designated beneficiaries are not entitled.

[Amended by Acts 1975, 64th Leg., p. 38, ch. 19, § 3, March 20, 1975; Acts 1977, 65th Leg., p. 1022, ch. 377, § 12, eff. June 10, 1977.]

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

§ 3.34. Death Benefits

(a) If a member dies before retirement and during any school year in which he is in service, his eligible designated beneficiary shall be paid, at the beneficiary's election, the greatest of the following amounts in the manner the State Board of Trustees by rule may prescribe:

(1) the annual compensation of the member for the preceding school year not to exceed \$25,000; or

(2) the rate of annual compensation of the member for the current school year not to exceed \$25,000; or

(3) 60 monthly payments equal to the monthly installments of a standard annuity (calculated as provided in Section 3.02(a)(17) of this code); or

(4) an annuity payable for the designated beneficiary's life with payments equal to those under Option One in Section 3.31(c)(1) of this code had the member retired at the end of the month preceding his death; or

(5) the accumulated contributions of the member's member savings account.

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

(1) the same benefits payable upon the member's death in active service if the absence of the member from service was due to sickness, accident, or other cause which the State Board of Trustees determines to be involuntary or in furtherance of the objectives or welfare of the public school system, or during a period when he was eligible to retire or would become eligible without further service to retire within five years of his last covered employment; or

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

(c) Death benefit annuities shall only be available when the deceased member has sufficient creditable service to receive service retirement benefits under the provisions of this chapter upon reaching retirement age. Multiple beneficiaries shall not be eligible to elect the life annuity death benefit. For the

purpose of determining the life annuity for death benefits the State Board of Trustees shall extend the table in Section 3.31(a)(3) to ages earlier than age 55 by decreasing the percentage to the actuarial equivalent of the age 55 benefit and shall extend the table in Section 3.31(a)(4) to ages earlier than the earliest retirement age provided by law to the actuarial equivalent of the benefit at the earliest retirement age.

[Amended by Acts 1975, 64th Leg., p. 38, ch. 19, § 4, eff. March 20, 1975; Acts 1977, 65th Leg., p. 1024, ch. 377, § 13, eff. June 10, 1977.]

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

§ 3.35. Survivor Benefits

(a) If a member dies before retirement, his designated beneficiary (if entitled to a death benefit other than the accumulated contributions of the member) may elect, in lieu of the applicable death benefit authorized under Section 3.34 of this code, to receive a lump sum payment of \$500 plus the following applicable survivor benefits:

(1) if the designated beneficiary is the spouse or dependent parent of the deceased member, he may elect to receive for life a monthly benefit of \$75 commencing at age 65 or immediately if the beneficiary has already attained that age; or

(2) if the designated beneficiary is the spouse of the deceased and has one or more children under 18 years of age or has the custody of one or more children of the deceased under 18 years of age, he may elect to receive a monthly benefit of \$150 until the youngest child attains the age of 18 years, and at that time all payments shall cease until the beneficiary attains age 65 when he shall receive for life a monthly benefit of \$75; or

(3) if the designated beneficiary or beneficiaries are the deceased's dependent children under the age of 18 years, they may, on election of their guardian, receive a total monthly benefit of \$150 so long as there are two or more such children under 18 years of age; thereafter, when there is only one child remaining under 18 years of age, he may receive \$75 per month until attaining 18 years.

(b) If the designated beneficiary is a spouse or dependent parent of the deceased, the benefits payable under Subsection (a)(1) and (2) of this section shall cease upon the beneficiary's death or remarriage; in that event, however, payment of the benefits provided in Subsection (a)(3) of this section will commence if applicable.

[Amended by Acts 1977, 65th Leg., p. 1025, ch. 377, § 14, eff. June 10, 1977.]

§ 3.36. Benefits Payable Upon Death After Retirement

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

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

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

(f) Upon the death of a retired member receiving service retirement benefits under Subsection (a) of Section 3.31 or service retirement benefits under Subsection (c)(1) or (2) of Section 3.31 of this chapter when the retired member's designated beneficiary predeceases him, there shall be paid to the designated beneficiary, or to those provided in Subsection (b) of Section 3.33 of this chapter if there is no designated beneficiary in existence at the time of the retired member's death, an amount equal to the retired member's accumulated contributions less the total amount of service retirement benefits paid pursuant to Section 3.31 of this chapter to the retired member.

(g) Upon the death of a retired member's designated beneficiary who is receiving an annuity under Option One or Option Two as provided by Subsection (c) of Section 3.31 of this chapter the estate or the heirs of the beneficiary shall be refunded an amount equal to the accumulated contributions of the retired member less the total amount of service retirement benefits paid pursuant to Section 3.31 of this chapter to the retired member and his designated beneficiary.

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

[Amended by Acts 1975, 64th Leg., p. 39, ch. 19, § 5, eff. March 20, 1975; Acts 1977, 65th Leg., p. 1025, ch. 377, § 15, eff. June 10, 1977.]

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

§ 3.37. Employment After Retirement

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

(1) on a part-time day-to-day basis only not to exceed 120 school days in any one school year as a substitute for an employee who is absent from duty;

(2) as a substitute in a vacant position until such position can be filled, but not to exceed 45 days, but any substitute employment in a vacant position shall be deducted from the 120 days permitted as a substitute for an absent employee; or

(3) on as much as a one-third time basis if the retired member is over age 60.

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

(d) A person receiving a service retirement benefit from the retirement system who is employed in any position in the public schools of Texas except as provided in this section, shall forfeit all retirement benefits for any month in which such employment occurs. Employment which begins as substituting may become permanent employment. A person who substitutes on a day-to-day basis in a regular position for an absent employee for more than 120 school days or for more than 45 school days in a vacant position and then continues in the same position shall be considered to have been a regular employee since the first day of employment and forfeits his retirement benefits for all months of employment in that position.

[Amended by Acts 1975, 64th Leg., p. 39, ch. 19, § 6, eff. March 20, 1975; Acts 1977, 65th Leg., p. 1894, ch. 755, § 1, eff. Aug. 29, 1977.]

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

§ 3.38. Limited Adjustment of Benefits in Effect

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

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

(g) Upon the conditions hereinafter stated, the monthly benefits other than survivor benefits payable to retired members or their beneficiaries, to members retired on a disability with 10 or more years of membership service, or to beneficiaries of deceased members each of whose respective date of retirement or death occurred before May 31, 1977, shall be increased effective with the June, 1977, benefit payment. The amount of the increase shall

be computed by multiplying each year of the member's creditable service by the sum of 75 cents plus two cents for each year between the accrual of the benefit and August 31, 1977. The reduction factors for early age retirement and for retirement under an option shall be applicable to the increases provided in this section. Any person also eligible for an increase by the application of Subsection (h) of this section to the June, 1977, benefit payment shall be entitled to the greater of the two increases only. The increase in benefits provided in this subsection shall become effective upon the appropriation and payment of \$60,851,000 to the Teacher Retirement System of Texas to finance the increase. The increase shall continue in effect only until funds in the Benefit Increase Reserve Account attributable to this appropriation are exhausted, or if an additional amount of \$60,851,000 is appropriated and paid to the Teacher Retirement System of Texas before the end of September, 1979, the increase shall continue for the duration of the benefit on which the increase is based pursuant to existing or future laws. Such appropriations shall be in addition to the state contribution provided by Section 3.58 of this chapter.

(h) Effective with the June, 1977, benefit payment, the monthly service retirement benefits of all retired members or their beneficiaries and of all members who have qualified for disability benefits shall equal at least the minimum benefits payable to a person whose retirement or qualification for disability benefits is effective at the end of that month. Effective with the June, 1977, benefit payment, death benefits based upon the retirement benefit minimums to which the deceased member would have been entitled and survivor benefits shall be increased to the amounts which would have been payable had the deceased member died at the end of that month. The reduction factors provided for early age retirement and for retirement under an option shall be applicable to minimum benefits payable under this section.

[Amended by Acts 1975, 64th Leg., p. 7, ch. 6, § 3, eff. Feb. 13, 1975; Acts 1977, 65th Leg., p. 1026, ch. 377, § 16, eff. June 10, 1977.]

Sections 4 to 7 of the 1975 amendatory act provided:

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

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

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

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

SUBCHAPTER D. ADMINISTRATION AND ORGANIZATION

§ 3.51. Establishment of Accounts

According to the purpose for which they are held, all assets of the retirement system shall be credited to one of six accounts: the member savings account, the state contribution account, the retired reserve account, the benefit increase reserve account, the interest account, and the expense account.

[Amended by Acts 1977, 65th Leg., p. 1026, ch. 377, § 17, eff. June 10, 1977.]

§ 3.52. Member Savings Account

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

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

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

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

§ 3.53. State Contribution Account

In the state contribution account shall be accumulated all contributions hereafter made to the retirement system by the State of Texas as provided in Section 3.58 of this code, interest as provided in Section 3.55(b)(5) of this code, the retirement annuities forfeited by members who return to employment under the provisions of Section 3.37(d) of this code, and reinstatement fees and interest as provided in Section 3.25 of this code.

[Amended by Acts 1977, 65th Leg., p. 1026, ch. 377, § 18, eff. June 10, 1977.]

§ 3.54. Retired Reserve and Benefit Increase Reserve Accounts

(a) In the retired reserve account shall be held all reserves for benefits heretofore or hereafter granted except such reserves as may be required to fund postretirement benefit adjustments allowed after January 31, 1975; and all retirement annuities and

all death or survivor benefits shall be paid from this account. This account shall consist of transfers previously authorized by law and of future transfers made.

(b) In the benefit increase reserve account shall be held all reserves for postretirement increases or other adjustments of initial benefit payments authorized by law on or after January 31, 1975, and such increases shall be paid from this account.

(c) To the retired reserve account shall be transferred:

(1) the accumulated contributions in the member's individual account in the member savings account on his retirement or approval for payment of any benefit authorized under this chapter at the time of the member's retirement or death and all benefit increases prior to January 31, 1975 (except for the return of his accumulated contributions); plus, additional reserves from the state contribution account which are certified by the actuary as necessary to provide for the payment of the approved benefit as it becomes due;

(2) interest as specified in Section 3.55(b)(2) of this code; and

(3) accounts as specified in Section 3.52(d) of this code.

(d) To the benefit increase reserve account shall be transferred:

(1) assets appropriated to pay postretirement benefit increases authorized by the legislature on or after January 31, 1975; and

(2) interest as specified in Section 3.55(b)(4) of this code.

[Amended by Acts 1977, 65th Leg., p. 1027, ch. 377, § 19, eff. June 10, 1977.]

§ 3.55. Interest Account

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

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

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

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

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

(4) to the benefit increase reserve account an amount sufficient to credit the average annual balance of the account with interest at a rate

recommended by the actuary and approved by the State Board of Trustees as representing a reasonable anticipation of earnings from the investments of assets accrued to the benefit increase reserve account; and

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

[See Compact Edition, Volume 1 for text of (c)]
[Amended by Acts 1975, 64th Leg., p. 40, ch. 19, § 8, eff. March 20, 1975; Acts 1977, 65th Leg., p. 1027, ch. 377, § 20, eff. June 10, 1977.]

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

§ 3.57. Member Contributions

(a) "Member Contributions": The rate of contributions required of each member of the retirement system shall be five percent of his annual compensation or \$180, whichever is the lesser, for service rendered between September 1, 1937, and September 1, 1957, and for any member six percent of the first \$8,400 of his annual compensation for service rendered on or after September 1, 1957, to September 1, 1969. The rate of contribution required of each member after September 1, 1969, but before the school year beginning on or about September 1, 1977, shall be six percent of his annual compensation and with the school year beginning on or about September 1, 1977, and thereafter shall be 6.65 percent of his annual compensation. Every member shall also pay for operation of the system, an annual membership fee of \$5 which shall be credited to the expense account.

(b) Each employer shall deduct from the salary of each member 6.65 percent of his compensation for each payroll period.

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

(d) Each employer or his designated disbursing officer shall send all deductions and a certification of earnings of the member to the executive secretary, at such time and in such form as the retirement system may prescribe. All deductions received shall be deposited with the state treasurer whereupon they shall be deemed appropriated for use according to the provisions of this chapter.

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

(g) If deductions which should have been made from any member's salary were not in fact made, the member must pay these deductions, plus a five percent per annum fee on the unpaid amount from the end of the school year such deductions were due until the date of payment, on terms prescribed by the State Board of Trustees. The member shall thereupon receive credit for the prior service to which he may be entitled under this chapter. Fees shall be credited to the state contribution account.

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

(i) Any member who was employed in a position at a public institution of higher education for which enrollment as a student in that institution was a condition of employment shall be entitled to credit for service in such a position if the service was rendered before the effective date of legislation excluding such employment from membership in the retirement system, if the member deposits or has deposited before September 1, 1978, the amounts, including fees, required by this chapter for service, and if such deposits are continuously maintained with the retirement system until the member qualifies for the payment of benefits under this chapter. [Amended by Acts 1975, 64th Leg., p. 40, ch. 19, § 9, eff. March 20, 1975; Acts 1977, 65th Leg., p. 1028, ch. 377, § 21, eff. June 10, 1977.]

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

Section 28 of the 1977 amendatory act provided:

"Employees of The University of Texas System who the State Board of Trustees of the Teacher Retirement System of Texas ruled eligible for membership in the Teacher Retirement System of Texas but whom The University of Texas System ruled ineligible for such membership shall be required, beginning September 1, 1979, to pay the fees provided in Section 3.57 of the Texas Education Code, as amended, for any resulting late payment of deposits."

§ 3.58. State Contributions

(a) "State Contributions": The State of Texas shall contribute during each year an amount equal to seven and one-half percent of the aggregate annual compensation of all members of the retirement system during that same year. All assets heretofore contributed by the state to the retirement system, together with the contributions hereafter made, shall be held, credited, transferred, and expended for payment of authorized benefits as provided in this chapter.

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

[Amended by Acts 1977, 65th Leg., p. 1029, ch. 377, § 22, eff. June 10, 1977.]

Section 27 of the 1977 amendatory act provided:

"In addition to the amounts provided in Section 3.58 of the Texas Education Code, there is hereby authorized an appropriation to the Teacher Retirement System of Texas of the total sum of \$121,702,000 to fund the increase in benefits provided in Section 16 of this Act. There is hereby appropriated from the general revenue fund to the Teacher Retirement System of Texas \$60,851,000 in addition to the amounts required in Section 3.58 of the Texas Education Code. The state comptroller of public accounts on adoption of this Act shall transfer this amount to the Teacher Retirement System of Texas for deposit in the system's benefit increase account."

§ 3.59. General Administration

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

(d) Four members shall be appointed by the governor, with the advice and consent of the senate, subject to the following requirements:

(1) Three such members shall each be appointed from a slate of three members of the retirement system nominated by written ballot by the membership of the retirement system at an election conducted under the rules and regulations adopted by the State Board of Trustees, one member to hold office for a term ending August 31, 1973, one member to hold office for

a term ending August 31, 1975, and one member to hold office for a term ending August 31, 1977.

(2) One such member shall be appointed from a slate of three former members who have retired and are receiving benefits under the provisions of this chapter or of previous laws governing the Teacher Retirement System of Texas and who have been nominated by written ballot by those persons who have retired and are receiving benefits under the provisions of this chapter or of previous laws governing the Teacher Retirement System of Texas at an election conducted under the rules and regulations adopted by the State Board of Trustees. The retired member shall hold office for a term of two years ending August 31, 1975. The State Board of Trustees shall send directly to all retired members notice of deadlines for filing as a candidate for nomination, information on procedures to follow in filing as such candidate, and written ballots.

(d-1) The State Board of Trustees of the Teacher Retirement System of Texas is subject to the Texas Sunset Act,¹ but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1989 and of every 12th year after 1989 are reviewed.

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

[Amended by Acts 1977, 65th Leg., p. 1029, ch. 377, § 25, eff. June 10, 1977; Acts 1977, 65th Leg., p. 1856, ch. 735, § 2.174, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

§ 3.60. Management and Investment of Funds

(a) The State Board of Trustees shall be the trustee of all funds, securities, money, and other assets of the retirement system with full power to invest and reinvest them, as authorized by Article XVI, Section 67, of the Texas Constitution.

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

[Amended by Acts 1977, 65th Leg., p. 1032, ch. 377, § 26, eff. June 10, 1977.]

CHAPTER 4. PENAL PROVISIONS

§ 4.25. Thwarting Compulsory Attendance Law

(a) If any parent or person standing in parental relation to a child, within the compulsory school attendance ages and not lawfully exempt or properly excused from school attendance, fails to require such child to attend school for such periods as required by law, it shall be the duty of the proper

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

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

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

TITLE 2. PUBLIC SCHOOLS

CHAPTER 11. CENTRAL EDUCATION AGENCY

SUBCHAPTER A. GENERAL PROVISIONS

Section

- 11.011. Application of Sunset Act [NEW].
- 11.052. Education for the Visually Handicapped [NEW].
- 11.061. Management and Supervision of the Texas School for the Blind [NEW].
- 11.062. Repealed.
- 11.063. Staffing and Funding of School for the Blind [NEW].
- 11.071. Travel and Clothing Expenses for Certain Blind Students [NEW].
- 11.091. Diagnostic and Evaluation Center [NEW].
- 11.102. Supplemental Allowances for Exceptional Expenses of Blind Education [NEW].
- 11.103. Coordination of Services to Handicapped Children [NEW].
- 11.161. Educational Programs for Blind Adults [NEW].
- 11.19. Educational Programs for Gifted and Talented Students [NEW].

SUBCHAPTER B. STATE BOARD OF EDUCATION

- 11.211. Application of Sunset Act [NEW].

SUBCHAPTER F. SCHOOL DISTRICT TAX ASSESSMENT PRACTICES BOARD [NEW]

- 11.71. Purpose.
- 11.72. School Tax Assessment Practices Board.
- 11.73. Board Personnel.
- 11.74. Powers and Duties Generally.
- 11.75. Training and Education of Appraisers and Assessors.
- 11.76. Training Schedule for School Appraisers and Assessors.
- 11.77. Appraisal Manuals and Other Materials.
- 11.78. Sanction for Noncompliance.
- 11.79. Determination of Noncompliance.
- 11.80. School District Withdrawal from Noncompliance Tax Office.
- 11.81. Contract with Complying Office.
- 11.82. Reports of School District Values.
- 11.83. Explanation of Taxpayer Remedies.

- 11.84. Property Tax Forms and Records Systems.
- 11.85. Professional and Technical Assistance.
- 11.86. Determination of School District Index Values.
- 11.87. Confidentiality.
- 11.88. Funding.

SUBCHAPTER A. GENERAL PROVISIONS

§ 11.01. Composition and Purpose

The State Board of Education, the State Board for Vocational Education, the state commissioner of education, the School Tax Assessment Practices Board, and the State Department of Education shall comprise the Central Education Agency. It shall carry out such educational functions as may be assigned to it by the legislature, but all educational functions not specifically delegated to the Central Education Agency shall be performed by county boards of education or district boards of trustees.

[Amended by Acts 1977, 65th Leg., 1st C.S., p. 35, ch. 1, § 18, eff. Sept. 1, 1977.]

§ 11.011. Application of Sunset Act

The Central Education Agency is subject to the Texas Sunset Act¹; and unless continued in existence as provided by that Act the agency is abolished effective September 1, 1989.

[Added by Acts 1977, 65th Leg., p. 1853, ch. 735, § 2.149, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

§ 11.052. Education for the Visually Handicapped

(a) The Central Education Agency shall develop and administer a comprehensive statewide plan for the education of the visually handicapped which will ensure that visually handicapped children have an opportunity for achievement equal to the opportunities afforded their peers with normal vision.

(b) The Central Education Agency shall be responsible for:

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

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

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

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

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

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

(c) The minimum components of the comprehensive statewide plan for the education of the visually handicapped shall include but not be limited to the following:

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

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

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

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

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

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

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

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

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

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

(F) any combination of the foregoing;

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

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

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

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

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

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

[Added by Acts 1975, 64th Leg., p. 2397, ch. 734, § 23, eff. June 21, 1975. Amended by Acts 1977, 65th Leg., 1st C.S., p. 36, ch. 1, § 20, eff. Sept. 1, 1977.]

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The chief administrative officer of the Texas School for the Blind shall be its superintendent, who is empowered to take all necessary and appropriate action to carry out the functions and purposes of the Texas School for the Blind, pursuant to such general policies as the Board of the Texas School for the Blind might from time to time prescribe, and subject only to a requirement of reporting not less than quarterly to the Board of the Texas School for the Blind as to his activities, progress in the implementation of general policies prescribed by the board, matters of programmatic exceptionality, general statistical summaries of services provided by the Texas School for the Blind during the period covered by the report, budget matters of major consequence or concern, and such additional matters as the Board of the Texas School for the Blind might from time to time request to be specifically covered in the superintendent's reports.

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

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

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

(f) There shall be a consumers advisory committee, consisting of the parents of two students attending the Texas School for the Blind, the parents of two blind children enrolled in public school programs, one former graduate of the Texas School for

the Blind employed in a profession other than education, and one former student of the Texas School for the Blind successfully engaged in a vocation not normally requiring college training.

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

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

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

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

§ 11.062. Repealed by Acts 1977, 65th Leg., 1st C.S., p. 48, ch. 1, § 35, eff. Sept. 1, 1977

The repealed section, establishing a business office on the campus of the Texas School for the Blind, was added by Acts 1975, 64th Leg., p. 2394, ch. 734, § 20.

§ 11.063. Staffing and Funding of School for the Blind

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

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

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

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

(3) budgets developed through contracts and agreements;

(4) amounts received through gifts and bequests; and

(5) payments from local school districts in an amount equivalent to the amount of ad valorem tax collections which would have been expended on each child sent to the Texas School for the Blind from within its geographical boundaries

had the child been enrolled in a program of special education offered by the local independent school district.

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

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

§ 11.071. Travel and Clothing Expenses for Certain Blind Students

Economically deprived children attending the Texas School for the Blind shall be entitled to the same clothing and travel benefits as are allowed under Section 11.051 of this code for economically deprived children attending the Texas School for the Deaf.

[Added by Acts 1975, 64th Leg., p. 2397, ch. 734, § 22, eff. June 21, 1975.]

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

Appropriate ophthalmological or optometric services shall be provided to examine and treat all students at the Texas School for the Blind in relation to their ophthalmic needs. Other specialty medical and psychological services shall be provided as needed.

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

§ 11.091. Diagnostic and Evaluation Center

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

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

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

(1) to provide thorough diagnostic studies of multiply handicapped blind children and youth, to determine the nature and scope of special education and related services needed by the individuals, which studies shall at the minimum consist of a comprehensive evaluation of pertinent medical, psychological, social, cultural, en-

vironmental, and related factors which bear on the individual's ability to benefit from educational programs and which bear on the types of special services the individual needs in order to obtain maximum benefits from educational services;

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

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

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

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

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

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

(1) shall be developed following adequate diagnosis and evaluation of all pertinent medical, psychological, social, cultural, environmental, and related factors which bear on the individual's ability to benefit from educational programs;

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

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

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

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

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

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

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

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

(10) reflects that the individualized written service plan has been reviewed as frequently as necessary, but in no event less than once annually, by competent educational authorities, representatives of cooperating organizations, the individual and his parent or guardian, and that the plan has been modified, refined, or redeveloped in a manner consistent with determinations made through such review;

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

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

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

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

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

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

(4) until such time as when the individual whose written plan of services has been terminated attains the age of 21 years and is referred for consideration for vocational rehabilitation services, there shall be at least an annual review of the individual's case, during which the individual and his parent or guardian will be afforded clear opportunity for full consultation in the reconsideration of the determination that the individual is incapable of benefitting from educational services, except in situations where a periodic review is precluded because the individual has refused services or has refused a periodic review, or is no longer present in the state or cannot be located, or has a medical condition that is rapidly progressive or terminal.

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

§ 11.10. Special Day Schools for the Deaf

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

(o) To carry out legislative intent and the objectives of subsections (n) and the following subsections of this Section 11.10, the Central Education Agency shall develop and administer a comprehensive statewide plan for deaf education services including continuing diagnosis and evaluation, counseling and teaching, and designed to accomplish the following objectives:

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

(4) Enrolling children in the Texas School for the Deaf at Austin or any other educational facility for the deaf only those children whose needs can best be met in that institution, designating the Texas School for the Deaf as the principal regional school for the central region of the state; and

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

(6) Recognizing the need for development of oral communications abilities in deaf children and the ability of many to achieve high educational excellence through that method, but also recognizing the inability of some to gain their education successfully by this means, the comprehensive plan developed by the Central Education Agency will call for the use of methods of communication which will best meet the needs of each individual deaf child in this state, with each child to be examined thoroughly so as to ascertain his potential for communications through oral means. The Central Education Agency may establish separate programs to accommodate diverse communication methodologies.

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

(q) It is the intent of the legislature that local resources be utilized to the fullest practicable extent in the establishment and operation of the regional day school programs for the deaf. The Central Education Agency is authorized and expected to contract with any qualified public or private organization or qualified individuals for diagnostic, evaluation and instructional services or any other services incidental to the education of deaf children, including transportation and/or maintenance.

The Central Education Agency shall employ educational and other personnel, may purchase or lease real or personal property, may accept gifts or grants of real or personal property or services from any source, public or private, including independent school districts and any institution of higher learning in this state, for the purpose of establishing and operating regional day school programs for the deaf.

The Central Education Agency may provide by rule or regulation that upon establishment of each regional school the countywide school(s) in that region shall become a part of the regional school operation and that all equipment, classroom supplies, and other personal property owned by the countywide schools shall become the property of the regional day school. When any such programs are combined, the directors and employees of the former countywide schools shall be employed in appropriate, substantially similar capacities within the regional day school program for that region.

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

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

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

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

(t) To assure effective implementation of this Act the Central Education Agency shall upon the passage of this Act institute planning and research designed to accomplish the intent and objectives set forth herein including employment of personnel con-

sidered essential to meet the operational date specified for this Act.

[See Compact Edition, Volume 1 for text of (u)]
 [Amended by Acts 1975, 64th Leg., p. 1401, ch. 542, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., 1st C.S., p. 38, ch. 1, § 21, eff. Sept. 1, 1977.]

§ 11.102. Supplemental Allowances for Exceptional Expenses of Blind Education

From the Foundation School Fund there shall be made available a special supplemental allowance for each blind student or for each student with a serious visual handicap and another medically diagnosed handicap of a significantly limiting nature, who is receiving special education services through any approved program whatsoever. The amount of the special supplemental allowance for each blind student or for each such multiply handicapped student shall be equivalent to the special allocation for deaf students enrolled in regional day school programs, as authorized by Paragraph (1), Subsection (s), Section 11.10 of this code. The supplemental allowances may be expended only for special services uniquely required by the nature of the student's handicap and may not be used in lieu of educational funds otherwise available under this code and through state or local appropriations.

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

§ 11.103. Coordination of Services to Handicapped Children

(a) In this section "handicapped children" has the meaning defined in Section 16.104(b) of this code.

(b) The commissioner of education, with the approval of the State Board of Education, shall develop and implement a plan for the coordination of services to handicapped children within each geographical area served by a regional education service center. The plan shall include, but may not be limited to, procedures for:

(1) identifying existing public or private educational and related services for handicapped children in each region;

(2) identifying and referring handicapped children who cannot be appropriately served by the school district in which they reside to other appropriate programs;

(3) assisting school districts individually and cooperatively to develop programs to identify and provide appropriate services for handicapped children;

(4) expanding and coordinating services provided by regional education service centers which are related to programs for handicapped children; and

(5) providing for special services such as special seats, books, instructional media, and other supplemental supplies and services required for quality instruction.

(c) The commissioner may allocate appropriated funds to regional education service centers and may otherwise expend those funds, as necessary, to implement the provisions of this section.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 36, ch. 1, § 19, eff. Sept. 1, 1977.]

§ 11.161. Educational Programs for Blind Adults

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

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

§ 11.18. Adult Education

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

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

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

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

(b) The Central Education Agency shall:

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

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

(3) develop the mechanism and guidelines for coordination of comprehensive adult education and related skill training services for adults with other agencies, both public and private, in planning, developing, and implementing related programs, including community education programs;

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

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

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

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

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

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

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

§ 11.19. Educational Programs for Gifted and Talented Students

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

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

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

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

(2) the development and intraagency coordination of instructional programs and techniques

designed to meet the individual needs of gifted and talented students in all educational fields;

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

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

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

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

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

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

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

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

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

SUBCHAPTER B. STATE BOARD OF EDUCATION

§ 11.211. Application of Sunset Act

The State Board of Education is subject to the Texas Sunset Act,¹ but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1989 and every 12th year after 1989 are reviewed.

[Added by Acts 1977, 65th Leg., p. 1852, ch. 735, § 2.148, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

§ 11.24. General Powers and Duties

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

[See Compact Edition, Volume 1 for text of (b)]
[Amended by Acts 1975, 64th Leg., p. 2057, ch. 676, § 4, eff. June 20, 1975.]

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

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

(1) "totally deaf and blind person" means a person having such defects of hearing and sight that in the opinion of the board he may not be

cared for, treated, or educated in the manner provided elsewhere in this code for the deaf or blind;

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

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

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

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

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

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

§ 11.32. Regional Education Service Centers

(a) The State Board of Education shall provide, by rules and regulations, for the establishment and operation of Regional Education Service Centers to provide educational services to the school districts and to coordinate educational planning in the region.

(b) Regional centers shall be located throughout the state so that each school district has the opportunity to be served and to participate in an approved center, on a voluntary basis. No center shall be approved unless it serves an area having 50,000 or more eligible scholastics in average daily attendance for the next preceding school year, except that the State Board of Education may make an exception for sparsely populated areas.

(c) Each center shall be governed by a seven-member board. The State Board of Education shall adopt uniform rules and regulations to provide for the local selection, appointment, and continuity of membership for regional boards of directors. Vacancies shall be filled by appointment by the remaining members of the regional board for the unexpired term. All members shall serve without compensation.

(d) The Regional Board of Directors is authorized to employ an executive director for its respective center and such other personnel, professional and clerical, as it deems necessary to carry out the functions of the center, and to do and perform all things which it deems proper for the successful operation thereof, and to pay for all operating expenses by warrants drawn on proper funds available for such purpose.

(e) The Regional Board of Directors of each Regional Education Service Center, under rules of the State Board of Education, may enter into contracts for grants from both public and private organizations and to expend such funds for the specific purposes in accordance with the terms of the contract with the contracting agency.

(f) Basic costs for the provision of regional education services to school districts and coordination of educational planning in the region and for administrative costs necessary to support these services shall be paid from the Foundation School Fund. Each Regional Education Service Center shall receive an annual allotment of \$200,000, with the remainder of the funds available under the provisions of this subsection to be allocated to the Regional Education Service Centers on the basis of the average daily attendance within the area of operation for each Regional Education Service Center as determined for the next preceding school year. The allotment amounts here authorized to be granted by the State Board of Education shall not exceed in any year a sum equal to .45 percent multiplied by the following specified elements of cost contained in the Foundation School Program for the current school year: salaries, maintenance and operation, vocational operating costs, transportation-regular, transportation-special education, transportation-vocational education, agency administration, other special education programs, vocational contract services, bilingual education, preschool non-English speaking, preschool deaf, compensatory education, driver education, and minimum aid.

(g) Each Regional Education Service Center, within each five-year period shall:

(1) perform a self-study of the effectiveness of its services to school districts;

(2) invite a panel of distinguished personnel from other service centers, public school administrators, and other persons deemed appropriate

by the service center board to evaluate the practices and services provided by the service center; and

(3) be subject to a management and service audit conducted by the Central Education Agency.

[Amended by Acts 1975, 64th Leg., p. 897, ch. 334, § 7, eff. Sept. 1, 1975; Acts 1977, 65th Leg., 1st C.S., p. 40, ch. 1, § 22, eff. Sept. 1, 1977.]

§ 11.33. General Powers and Duties of Regional Education Service Centers

(a)(1) Regional Education Media Centers shall be established and operated by Regional Education Service Centers under rules of the State Board of Education in order to furnish participating school districts with education media materials, equipment and maintenance, and educational services.

(2) Centers approved by the State Board of Education as meeting their requirements shall develop, provide, and make available to participating school districts education media services.

(3) A Regional Education Media Center is an area center, composed of one or more Texas school districts, that is approved to house, circulate, and service educational media for the public schools of the participating districts.

(4) Any school district which is a participant member of a Regional Education Media Center may elect to withdraw its membership in the center for a succeeding scholastic year, electing not to support nor to receive its services for any succeeding year. Title to and all educational media and property purchased by the center shall remain with and in the center.

(5) The cost incident to setting up the centers, their operation, and the purchase of education media supplies and equipment shall be borne by the state and each participating district to the extent and in the manner provided in this subsection.

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

(7) School districts as participant members in the center shall provide and pay to the proper center a proportionate amount determined on the basis of the average daily student attendance for the next preceding school year matching the amount provided by the state. The matching funds provided by the participant districts, including any donated or other

local funds, may be used to pay for costs of administration of or servicing by the center and to purchase supplemental educational media. A center shall not enter into obligations which shall exceed funds available or reasonably anticipated as receivable for the current school year.

(8) Annually, pursuant to such rules and procedure as may be prescribed by the State Board of Education, the governing board of each center shall determine the rate per pupil based on average daily student attendance the next preceding school year, not to exceed the \$1 limit prescribed in this subsection, which shall constitute the basis for determination of total amount to be transmitted by participant districts to the center and as matching funds from the state's contribution to this program.

(9) The state's share of the cost in the regional media centers program shall be paid from the Foundation School Fund, and this cost will be considered by the Foundation Program Committee in estimating the funds needed for foundation program purposes. Nothing in this subsection shall be construed to prohibit a center from receiving and utilizing matching funds in any amount for which it may be eligible from federal sources.

(b)(1) A program of financial assistance for computer services to school districts of the state through Regional Education Service Centers shall be developed by the State Board of Education to encourage a planned statewide network or system of computer services designed to meet public school educational and informational needs. Toward achievement of maximum efficiency and to insure a practicable uniformity in services, the State Board of Education, by rules and regulations, shall adopt eligibility requirements for data processing computer services to receive the state financial assistance authorized herein.

(2) Only computer services that are provided by or through a Regional Education Service Center to make available computer services required to meet the needs of the school districts of one or more Education Service Center regions shall be eligible for financial assistance hereunder.

(3) The State Board of Education annually shall approve a state assistance allotment for computer services to be paid to eligible Regional Education Service Centers that qualify, and in an amount to be determined under rules and regulations adopted by the State Board of Education for that purpose; provided that the allotment amounts here authorized to be granted by the State Board of Education shall not exceed in any year a sum equal to \$1 multiplied by the average daily attendance in the public schools of Texas as determined for the next preceding school year.

(4) The state's share of the cost of this program authorized by this subsection shall be paid from the Foundation School Fund, and this cost shall be con-

sidered by the Foundation School Fund Budget Committee in estimating the funds needed for Foundation School Program purposes.

(c)(1) The State Board of Education shall promulgate rules, in compliance with the approved statewide design for special education, to provide for a plan for the coordination of services to handicapped children within each geographical area served by a Regional Education Service Center. Regional Education Service Centers, under the procedures set forth in this plan, may provide supplementary or technical assistance to school districts for:

(A) identification of existing public or private educational and related services for handicapped children in each region;

(B) identification and referral of handicapped children who cannot be appropriately served by the school district in which they reside to other appropriate programs;

(C) assistance to school districts individually and cooperatively to develop programs to identify and provide appropriate services for handicapped children;

(D) expansion and coordination of services provided by Regional Education Service Centers which are related to programs for handicapped children; and

(E) provision for special services such as special seats, books, instructional media, and other supplemental supplies and services required for quality instruction.

(2) The responsibility for carrying out the provisions of this subsection rests with the commissioner of education, who may allocate funds to regional service centers for the provision of support services for the functions described in this subsection.

(d) Regional Education Service Centers may provide other services to school districts under rules and regulations adopted by the State Board of Education.

[Amended by Acts 1975, 64th Leg., p. 897, ch. 334, § 8, eff. Sept. 1, 1975; Acts 1977, 65th Leg., 1st C.S., p. 41, ch. 1, § 23, eff. Sept. 1, 1977.]

SUBCHAPTER F. SCHOOL DISTRICT TAX ASSESSMENT PRACTICES BOARD [NEW]

§ 11.71. Purpose

It is the policy of this state to ensure equity among taxpayers in the burden of school district taxes and among school districts in the payment of state financial aid to schools. The purpose of this subchapter is to promote that equity by providing for uniformity in the tax appraisal and assessment practices and procedures of school district tax offices, for improvement in the administration and operation of school district tax offices, and for

¹ West's Tex.Stats. & Codes '77 Supp.—7

greater competence among persons appraising and assessing school districts' taxes.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 29, ch. 1, § 16, eff. July 22, 1977.]

§ 11.72. School Tax Assessment Practices Board

(a) The school tax assessment practices board is established. The board consists of six members appointed by the governor with the advice and consent of the senate. A vacancy on the board is filled in the same manner for the unexpired portion of the term.

(b) Members of the board hold office for terms of six years, with the terms of two members expiring on March 1 of each odd-numbered year. In making the initial appointments, the governor shall designate two members for terms expiring on March 1, 1979, two members for terms expiring on March 1, 1981, and two members for terms expiring on March 1, 1983.

(c) To be eligible to serve on the board, a person must have been a resident of this state for at least five years.

(d) After March 1, 1983, at least two members shall be certified by the Board of Tax Assessor Examiners pursuant to Section 18 of the Texas Assessors Registration and Professional Certification Act.¹

(e) A majority of the board constitutes a quorum.

(f) The governor shall designate one of the members of the board to serve as chairman for a term, in that capacity, of two years expiring on March 1 of each odd-numbered year.

(g) The board shall maintain a principal office in Austin.

(h) The board shall meet at least once in each calendar quarter and may meet at other times at the call of the chairman or as provided by the rules of the board. Within 30 days after appointment of the members, the governor shall call an organizational meeting of the board.

(i) A member of the board may not receive compensation for his service on the board but is entitled to reimbursement for actual and necessary expenses, as provided by legislative appropriation, incurred while on travel status in the performance of official duties.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 29, ch. 1, § 16, eff. July 22, 1977.]

¹ Civil Statutes, art. 7244b.

§ 11.73. Board Personnel

(a) The board shall employ an executive director who shall administer board operations as directed by the board.

(b) The director may employ professional, clerical, and other personnel to assist him in the performance of his duties.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 29, ch. 1, § 16, eff. July 22, 1977.]

§ 11.74. Powers and Duties Generally

(a) The board shall adopt rules establishing minimum standards for the administration and operation of an office engaged in appraising and assessing property for school taxation. The minimum standards for a tax office may vary according to the number of parcels and the kinds of property the office is responsible for appraising and assessing.

(b) The board may require from each office engaged in appraising and assessing property for school taxation an annual report, on a form prescribed by the board, on the administration and operation of the office.

(c) The board may contract with consultants to assist in performance of the duties imposed by this subchapter.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 30, ch. 1, § 16, eff. July 22, 1977.]

§ 11.75. Training and Education of Appraisers and Assessors

(a) The board shall conduct, sponsor, or approve courses of instruction and inservice and intern training programs on the technical, legal, and administrative aspects of property taxation.

(b) The board shall cooperate in developing curricula with other public agencies, with educational institutions, and with private organizations interested in training and educating appraisers or assessors, and the board may cooperate with them in conducting or sponsoring courses of instruction and training programs.

(c) A school district shall reimburse the chief administrator of an office responsible for appraising and assessing property for school taxation for all actual and necessary expenses, tuition and other fees, and costs of materials incurred in attending, with approval of the superintendent for the district, a course or training program that is required by Section 11.76 of this code.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 30, ch. 1, § 16, eff. July 22, 1977.]

§ 11.76. Training Schedule for School Appraisers and Assessors

The board shall establish by rule a minimum annual number of hours of education and training for a chief administrator of an office appraising and assessing property for school taxes who does not hold a certificate issued by the Board of Tax Assessor Examiners pursuant to Section 18 of the Texas Assessors Registration and Professional Certification Act.¹

[Added by Acts 1977, 65th Leg., 1st C.S., p. 30, ch. 1, § 16, eff. July 22, 1977.]

¹ Civil Statutes, art. 7244b.

§ 11.77. Appraisal Manuals and Other Materials

(a) The board shall prepare and issue:

- (1) a general appraisal manual;
- (2) special appraisal manuals;
- (3) cost, price, and depreciation schedules, with provision for inserting local market index factors and with a standard procedure for determining local market index factors;
- (4) news and reference bulletins;
- (5) annotated digests of all laws relating to property taxation; and
- (6) a handbook of all rules promulgated by the board relating to the property tax and its administration.

(b) The board shall revise or supplement all materials periodically, as necessary, to keep them current.

(c) The board shall provide without charge all materials to officials of offices engaged in appraising and assessing property for school taxation. It shall make the materials available to members of the public but may charge a reasonable fee to offset the costs of printing and distributing the materials.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 30, ch. 1, § 16, eff. July 22, 1977.]

§ 11.78. Sanction for Noncompliance

(a) After December 31, 1982, the board shall recommend to the State Board of Education that a school district be declared ineligible for state financial aid if the office appraising and assessing property for the district's tax purposes:

- (1) does not comply with the minimum standards for administration and operation of the office established pursuant to Section 11.74 of this code; or
- (2) is not administered by a person in compliance with Section 11.76 of this code.

(b) After September 1, 1979, and before January 1, 1983, the board shall recommend to the State Board of Education that a school district be declared ineligible for state financial aid if the chief administrator of the office appraising and assessing property for the district's tax purposes:

- (1) does not hold a certificate issued by the Board of Tax Assessor Examiners as provided by Section 18 of the Texas Assessors Registration and Professional Certification Act;¹
- (2) has held the position for more than one year; and
- (3) has failed to complete successfully the minimum amount of education and training required under Section 11.76 of this code.

(c) After January 1, 1978, the board shall recommend to the State Board of Education that a school district be declared ineligible for state financial aid if the district has unreasonably failed to file a com-

pleted report required by the board under Section 11.82 of this code.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 31, ch. 1, § 16, eff. July 22, 1977.]

¹ Civil Statutes, art. 7244b.

§ 11.79. Determination of Noncompliance

(a) If the board recommends to the State Board of Education that a school district be declared ineligible for state financial aid under Section 11.78 of this code, the board shall notify the presiding officer of the district's board of trustees, the district's superintendent, and the chief administrator of the office appraising and assessing property for the district of its recommendation. The notice shall be delivered by certified mail, return receipt requested, and shall state the grounds for the board's recommendation.

(b) A district is entitled to petition the State Board of Education for a hearing within 60 days after delivery of the notice to contest the recommendation or to show that it has substantially remedied the cause stated as grounds for the recommendation.

(c) If after opportunity for a hearing the State Board of Education finds that the district is ineligible for state financial aid under Section 11.78 of this code, the board shall certify its finding to the commissioner of education.

(d) At any time after a school district has been found ineligible for state aid by the State Board of Education, the district may submit evidence that it has substantially remedied the cause of its ineligibility. Within 30 days after receipt of a submission under this subsection, the board shall hold a hearing to determine whether the district has become eligible for state financial aid. The board may find that a district has become eligible for state financial aid without a hearing. If the board finds that a district has become eligible for state financial aid, it shall certify its finding to the commissioner of education and to the School Tax Assessment Practices Board.

(e) After receipt of a certification that a school district is ineligible for state financial aid, the commissioner of education may not approve payment of aid to the district until he receives a certification that the district has become eligible. If a district becomes eligible for state financial aid during a fiscal year, the commissioner of education may approve payment of all aid to which the district is entitled for that year, but the commissioner may not approve payments of state aid for a prior fiscal year in which a district was found ineligible for state aid.

(f) A decision by the State Board of Education under this section may be appealed as provided in Section 19, Administrative Procedure and Texas Register Act.¹

[Added by Acts 1977, 65th Leg., 1st C.S., p. 31, ch. 1, § 16, eff. July 22, 1977.]

¹ Civil Statutes, art. 6252-13a.

§ 11.80. School District Withdrawal from Non-complying Tax Office

(a) A school district that is required by law or contract to impose property taxes on the basis of values determined by the assessor and board of equalization for a county or any other taxing unit other than the district may contract with some other taxing unit to appraise and assess property for its tax purposes if, because the office appraising and assessing property for the district's taxes refuses to comply or is unreasonably delaying compliance with the requirements of this subchapter, the district will lose its eligibility for state financial aid.

(b) A school district seeking to withdraw from a tax office pursuant to Subsection (a) of this section may petition the board for a determination of its eligibility to do so if the board has not yet found that the tax office is not in compliance with this subchapter. On receipt of the petition the board shall notify the office from which the district seeks to withdraw and hold a hearing. The board shall make a final determination within 90 days after the date the petition is filed.

(c) If the board has found a district's tax office is not in compliance with this subchapter, the district may withdraw from a tax office pursuant to Subsection (a) of this section without a board determination.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 32, ch. 1, § 16, eff. July 22, 1977.]

§ 11.81. Contract with Complying Office

If a school district that operates its own tax office is found ineligible for state financial aid under this subchapter, the district may contract with any other tax office that is in compliance with this subchapter to appraise and assess property for the district's tax purposes.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 32, ch. 1, § 16, eff. July 22, 1977.]

§ 11.82. Reports of School District Values

(a) Each office assessing property for school district taxes shall file an annual report listing the total market value and the total assessed value of taxable property in the district and other information required by the board.

(b) The report shall be on a form prescribed by the board and shall be delivered to the board before a date prescribed by the board.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 32, ch. 1, § 16, eff. July 22, 1977.]

§ 11.83. Explanation of Taxpayer Remedies

The board shall prepare and publish a pamphlet explaining the remedies available to dissatisfied taxpayers and the procedures to be followed in seeking remedial action. It shall include in the pamphlet advice on preparing and presenting a protest.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 32, ch. 1, § 16, eff. July 22, 1977.]

§ 11.84. Property Tax Forms and Records Systems

(a) The board shall prescribe the contents of all forms necessary for the administration of the property tax system for offices engaged in appraising and assessing property for school district tax purposes and, on request, shall furnish sufficient copies of model forms of each type to the appropriate local officials. The board may require reimbursement from the office appraising and assessing property for school district purposes or from the school district for the costs of printing and distributing the forms.

(b) The board shall make the contents of the forms uniform to the extent practicable but may prescribe or approve additional or substitute forms for special circumstances.

(c) The board shall also prescribe a uniform record system to be used by all offices appraising or assessing property for school district tax purposes.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 32, ch. 1, § 16, eff. July 22, 1977.]

§ 11.85. Professional and Technical Assistance

(a) The board may provide professional and technical assistance, at the request of a chief administrator or the governing body of a school district, in appraising property, installing or updating tax maps, purchasing equipment, developing recordkeeping systems, or performing other appraisal activities. The board may also provide professional and technical assistance, on request, to a board of equalization reviewing values assigned for school district tax purposes. The board shall require reimbursement for the costs of providing the assistance.

(b) The board may provide information to and consult with persons actively engaged in appraising and assessing property for school district tax purposes about any matter relating to property taxation for school districts without charge.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 33, ch. 1, § 16, eff. July 22, 1977.]

§ 11.86. Determination of School District Index Values

(a) The board shall conduct a biennial study using comparable sales and other generally accepted techniques to determine the total market value and index value of all property, both real and personal, and both tangible and intangible, in each school district. The study shall determine the market value of all property and of each class of property within the district and the productivity value of all open-space land generally available for the production of farm crops or forest products and for the raising of livestock within each district. In addition, the board shall estimate the productivity value of open-space land exclusively devoted to or developed

for agricultural purposes, as defined by the board. In conducting the studies, the board shall use appropriate standard valuation, statistical compilation, and analysis techniques to compute the total market value and productivity value. For the purposes of this section, "index value" means total market value less:

(1) the total dollar amount of any exemptions of part but not all of the value of taxable property required by the constitution or a statute that a district lawfully granted in the year that is the subject of the study; and

(2) the difference between the market value and the productivity value of open-space land as determined by the board. In no event shall the productivity value exceed the fair market value of the land.

(b) The study shall determine the values as of January 1 of each odd-numbered year.

(c) The board shall publish preliminary findings, listing values by district, before September 1 of each even-numbered year and on that date it shall certify its findings to the commissioner of education.

(d) A school district may protest the board's findings within 30 days after the date on which the findings are certified to the commissioner by filing a petition with the board specifying the grounds for its objection. After receipt of a petition, the board shall hold a hearing. If after a hearing the board concludes that its findings should be changed, the board shall order the changes it finds appropriate and shall certify the changes to the commissioner of education. The board shall complete all protest hearings and certify all changes before January 1 of each odd-numbered year.

(e) A school district may appeal a determination of a protest by the board to the state district court within whose jurisdiction a majority of the area making up the school district is located.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 33, ch. 1, § 16, eff. July 22, 1977.]

§ 11.87. Confidentiality

(a) All information the board obtains from a person, other than a government or governmental subdivision or agency, under an assurance that the information will be kept confidential, in the course of conducting a study of school district values is confidential and may not be disclosed except as provided in Subsection (b) of this section.

(b) Information made confidential by this section may be disclosed:

(1) in a judicial or administrative proceeding pursuant to a lawful subpoena;

(2) to the person who gave the information to the board; or

(3) for statistical purposes if in a form that does not identify specific property or a specific property owner.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 34, ch. 1, § 16, eff. July 22, 1977.]

§ 11.88. Funding

In order to carry out the provisions of this subchapter, the legislature shall appropriate funds, not to exceed \$4 million for the biennium ending August 31, 1979, to the board for the administration of the board.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 34, ch. 1, § 16, eff. July 22, 1977.]

CHAPTER 12. TEXTBOOKS

SUBCHAPTER A. GENERAL PROVISIONS

§ 12.01. Free Textbooks

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

(c) Except as otherwise specifically defined in this chapter, "textbooks" or "books" as used herein shall mean books, systems of instructional materials, or combinations of books and supplementary instructional materials which convey information to the pupil or otherwise contribute to the learning process.

(d) No provision of this chapter is intended to limit the selection of instructional materials purchased by a local board of education with local funds, provided such selection procedures are not in conflict with State Board of Education policies.

[Amended by Acts 1977, 65th Leg., 1st C.S., p. 43, ch. 1, § 25, eff. Sept. 1, 1977.]

Section 30 of the 1977 amendatory act provided:
 "The provisions of Sections 25, 26, 27, and 28 of this Act [amending this section and §§ 12.14, 12.15, and 12.18(e)] may not affect the selection of textbooks for the 1977-78 school year. For the 1978-79 school year, they may affect the selection of textbooks and other instructional materials only in the subject of reading. The provisions of these sections may be fully implemented beginning with materials selected for the 1979-80 school year."

SUBCHAPTER B. STATE ADOPTION PURCHASE ACQUISITION, AND CUSTODY

§ 12.11. State Textbook Committee

(a) The commissioner of education, annually at a meeting of the State Board of Education held on or before the first Monday in May, shall recommend the names of 15 persons, no two of whom shall live in the same congressional district, for appointment to the textbook committee for a one-year term.

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

(g) The State Textbook Committee is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the committee is abolished effective September 1, 1989.

[Amended by Acts 1977, 65th Leg., p. 1271, ch. 493, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1853, ch. 735, § 2.153, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

§ 12.14. Multiple List for Elementary Grades

(a) As used in this section:

(1) "Textbooks" shall be consistent with the definition in legal use prior to the adoption of this section.

(2) "Learning systems" means a coordinated system of instructional materials, in one or more media, that conveys to the pupil information on a subject comparable to that contained in the approved textbooks.

(3) "Supplementary materials" means instructional materials, in any medium, that are used as an adjunct to a specific adopted textbook.

(4) "Cost per pupil served" means the cost of a textbook, learning system, or combination of text and supplementary materials, divided by the number of students that it may reasonably be used by and by the number of years it may be expected to be in use. The cost per pupil served for each item of instructional material shall be calculated by the commissioner of education. In calculating this cost, the commissioner may take into consideration the cost figures certified by the publisher and shall consult with the appropriate curriculum departments. No district may utilize a textbook, learning system, or combination of text and supplementary materials at a higher cost per pupil served than that specified by the commissioner.

(b) The State Board of Education shall select and adopt a multiple list of textbooks for use in the elementary grades of the public schools of Texas.

(c) The multiple list shall consist of not less than three nor more than five textbooks on the following subjects: spelling, reading (basal and supplementary), English language and grammar, geography, arithmetic, physiology-hygiene, civil government, driver education and safety, vocal music, elementary science, history of the United States (in which the Confederacy shall be fairly represented), history of Texas, agriculture, a system of writing books, and a system of drawing books.

(d) The board may also select and adopt textbooks for any additional subjects approved by the State Department of Education for teaching in the elementary schools, including but not limited to the foreign languages of German, Bohemian, Spanish, French, Latin, or Greek.

(e) The board may, if deemed necessary, adopt as textbooks a geography of Texas and a civil government of Texas.

(f) The board may select and adopt supplementary materials to be used in conjunction with approved textbooks. To qualify, the cost per pupil served of the material together with the cost per pupil served of its corresponding text must not exceed the cost

per pupil served of the most expensive textbook on the textbook multiple list.

(g) The board may select and adopt a multiple list of not less than two nor more than three learning systems in those subject areas it deems appropriate. To qualify for the list, a system must have a cost per pupil served no higher than the cost per pupil served of the most expensive textbook on the textbook multiple list.

(h) No book adopted shall contain anything of a partisan or sectarian character.

[Amended by Acts 1977, 65th Leg., 1st C.S., p. 43, ch. 1, § 26, eff. Sept. 1, 1977.]

§ 12.15. Multiple List for High Schools

(a) As used in this section:

(1) "Textbooks" shall be consistent with the definition in legal use prior to the adoption of this section.

(2) "Learning systems" means a coordinated system of instructional materials, in one or more media, that conveys to the pupil information on a subject comparable to that contained in the approved textbooks.

(3) "Supplementary materials" means instructional materials, in any medium, that are used as an adjunct to a specific adopted textbook.

(4) "Cost per pupil served" means the cost of a textbook, learning system, or combination of text and supplementary materials, divided by the number of students that it may reasonably be used by and by the number of years it may be expected to be in use. The cost per pupil served for each item of instructional material shall be calculated by the commissioner of education. In calculating this cost, the commissioner may take into consideration the cost figures certified by the publisher and shall consult with the appropriate curriculum departments. No district may utilize a textbook, learning system, or combination of text and supplementary materials at a higher cost per pupil served than that specified by the commissioner.

(b) The State Board of Education shall adopt a multiple list of books for use in the high schools of Texas.

(c) The multiple list shall include not fewer than three nor more than five textbooks on the following subjects: algebra, plane geometry, solid geometry, general science, biology, physics, chemistry, a one-year world history, American history, homemaking, physical geography, driver education and safety, vocal music, English composition, literature (including American literature and English literature), shop courses, physiology, agriculture, civil government, commercial arithmetic, bookkeeping, typewriting, shorthand, journalism, and the Latin, Spanish, German, Czech, and French languages.

(d) Free textbooks may also be adopted and provided for any additional courses or subjects approved

by the Central Education Agency and accredited by the state accrediting committee.

(e) The board may select and adopt supplementary materials to be used in conjunction with approved textbooks. To qualify, the cost per pupil served of the material together with the cost per pupil served of its corresponding text must not exceed the cost per pupil served of the most expensive textbook on the textbook multiple list.

(f) The board may select and adopt a multiple list of not less than two nor more than three learning systems in those subject areas it deems appropriate. To qualify for the list, a system must have a cost per pupil served no higher than the cost per pupil served of the most expensive textbook on the textbook multiple list.

[Amended by Acts 1977, 65th Leg., 1st C.S., p. 44, ch. 1, § 27, eff. Sept. 1, 1977.]

§ 12.18. Filing of Bids and Sample Copies

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

(e) Information which shall also be printed, stamped, or pasted in each copy of each book filed with the commissioner of education shall be:

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

(2) a statement of the publisher's catalogue price of the book or special editions, together with trade discounts and the conditions under which, and the purchasers to whom, such discounts are allowed, and the place of delivery;

(3) a statement of the minimum wholesale price at which the book or special editions are sold f. o. b. the shipping point of the publisher and the name of the shipping point;

(4) a statement of the cost per pupil served as calculated according to the specifications contained in Section 12.14 or 12.15 of this code;

(5) a statement of the number of pupils served and the expected length of use; and

(6) a warranty certifying the expected length of use.

[Amended by Acts 1977, 65th Leg., 1st C.S., p. 45, ch. 1, § 28, eff. Sept. 1, 1977.]

§ 12.34. Continuing or Discontinuing Textbook

(a) It shall be the duty of the State Board of Education to meet annually at a date to be specified in the public notice required by Section 12.17, Texas Education Code, and at such other times as it may deem necessary for the purpose of considering the advisability of continuing or discontinuing, at the expiration of each current contract, any or all of the state-adopted textbooks in the public schools of Texas and for making such adoptions as are provided for in this chapter.

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

[Amended by Acts 1977, 65th Leg., p. 1271, ch. 493, § 2, eff. Aug. 29, 1977.]

SUBCHAPTER C. LOCAL OPERATIONS

§ 12.63. Title, Custody, and Disposition

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

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

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

CHAPTER 13. TEACHERS

SUBCHAPTER D. TEACHERS' PROFESSIONAL PRACTICES

Section

13.2031. Application of Sunset Act [NEW].

§ 13.031. State Board of Examiners for Teacher Education

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

(c) The Board of Examiners for Teacher Education is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1989.

[Amended by Acts 1977, 65th Leg., p. 1853, ch. 735, § 2.152, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

SUBCHAPTER B. CERTIFICATION OF TEACHERS

§ 13.032. Rules and Regulations

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

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

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

§ 13.039. Certificate Areas of Specialization

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

(b) The specialization areas shall be in:

[See Compact Edition, Volume 1 for text of (b)(1), (2)]

(3) high schools, including grades 6 to 12 inclusive;

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

[Amended by Acts 1977, 65th Leg., p. 5, ch. 4, § 1, eff. Feb. 24, 1977.]

SUBCHAPTER D. TEACHERS' PROFESSIONAL PRACTICES

§ 13.2031. Application of Sunset Act

The Teachers' Professional Practices Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1989.

[Added by Acts 1977, 65th Leg., p. 1854, ch. 735, § 2.156, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

CHAPTER 14. SCHOLASTIC CENSUS
[REPEALED]

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

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

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

CHAPTER 15. STATE FUNDS FOR THE
SUPPORT OF PUBLIC SCHOOLS

§ 15.02. Investment of Permanent School Fund

(a) In compliance with provisions of this section, the State Board of Education is authorized and empowered to invest the permanent school fund in the types of securities, which must be carefully examined by the State Board of Education and be found to be safe and proper investments for the fund as specified below:

[See Compact Edition, Volume 1 for text of (a)(1) and (2)]

(3) corporate bonds, debentures, or obligations, of United States corporations of at least "A" rating;

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

[Amended by Acts 1977, 65th Leg., p. 1957, ch. 779, § 1, eff. June 16, 1977.]

§ 15.03. Sale or Exchange of United States Treasury Bonds and Securities, and Municipal Bonds

(a) The State Board of Education may authorize the sale or exchange of any United States Treasury bonds, notes, certificates of indebtedness, or other securities issued by the United States Treasury, and may authorize the sale of any municipal bonds issued by any county, city, precinct, district, or other political subdivision at any time held by the state treasurer for the account of the permanent school fund.

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

[Amended by Acts 1977, 65th Leg., p. 1958, ch. 779, § 2, eff. June 16, 1977.]

§ 15.12. Use of Available School Fund

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

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

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

¹ Section 16.001 et seq.

CHAPTER 16. FOUNDATION SCHOOL PROGRAM

SUBCHAPTER A. GENERAL PROVISIONS

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

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

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

SUBCHAPTER C. PERSONNEL SUPPORT COMPONENT

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

SUBCHAPTER D. CURRENT OPERATING COST COMPONENT

- 16.151. Operating Cost Allotment.
- 16.152. Use of Operating Allotment.

SUBCHAPTER E. CATEGORICAL PROGRAM AID COMPONENT

- 16.176. Support for Educationally Disadvantaged Pupils.
- 16.177. Driver Education.

SUBCHAPTER F. TRANSPORTATION COMPONENT

- 16.201. Transportation Services.
- 16.202. Public School Transportation System.
- 16.203. County and District Transportation Funds.
- 16.204. Use of Buses for Extracurricular Activities, etc.
- 16.205. Approved School Bus Routes.
- 16.206. Calculation of Allotment.
- 16.207. Routes and Systems: Evaluation and Approval.
- 16.208. Use of Transportation Funds for Other Purposes.
- 16.209. Rules of Commissioner.
- 16.210. Appeals.
- 16.211. Purchase of Vehicles.
- 16.212. Repealed.

SUBCHAPTER G. FINANCING THE PROGRAM

- 16.251. Financing; General Rule.
- 16.252. Local Share of Program Cost.
- 16.253. Excess of Local Funds Over Amount Assigned.
- 16.254. Distribution of Foundation School Fund.
- 16.255. Falsification of Records; Report.
- 16.256. Repealed.

SUBCHAPTER H. EQUALIZATION AID FOR PROGRAM ENRICHMENT

- 16.301. District Eligibility.
- 16.302. Determination of Equalization Aid Entitlement.
- 16.303. Required Local Effort.
- 16.304. Payment of State Aid; Limitation.

SUBCHAPTER I. SCHOOL-COMMUNITY GUIDANCE CENTER-PILOT [NEW]

- 16.401. Pilot Programs.
- 16.402. Cooperative Programs.
- 16.403. Guidance Center Personnel Allotments.
- 16.404. Operating Costs.
- 16.405. Cooperation of Governmental Agencies.
- 16.406. Termination Date.

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

DISPOSITION TABLE

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

Former Sections	New Sections	Former Sections	New Sections
16.01	16.002	16.52	16.202
16.02	—	16.53	16.203
16.03	—	16.54	16.204
16.04	16.003	16.55	16.205
	16.102	16.56	16.206
16.07	—	16.57	16.207
16.08	21.913	16.58	16.208
16.11	16.101	16.59	16.209
	16.102	16.60	16.210
16.12	—	16.61	16.211
16.13	16.102(c)	16.62	—
16.14	16.103	16.63	16.212 Rep.
16.15	—	16.71	16.251
16.16	16.104	16.711	—
16.17	—	16.72	—
to	—	to	—
16.19	—	16.76	—
16.21	—	16.77	16.256 Rep.
16.22	—	16.78	16.253
16.301(a)	16.055(a)	16.79(a)	16.005
16.301(b)	—	16.79(b)	—
to	—	to	—
16.301(d)	—	16.79(d)	16.254
16.302	—	16.80	19.246
to	—	16.81	19.247
16.309	—	16.82	—
16.310	16.055(b)	16.85	16.255
16.311	—	16.861	21.008(b)
16.312	16.056(a)	16.862	21.008(a)
	16.056(b)	16.863	21.008(c)
16.313	16.056(c)	16.864	21.008(d)
16.314	—		to
16.315	—		21.008(g)
16.316	16.056(d)	16.971	—
16.45	16.151	to	—
	16.152	16.975	—
16.51	16.201	16.98	—

SUBCHAPTER A. GENERAL PROVISIONS

§ 16.001. State Policy

It is the policy of the State of Texas that the provision of public education is a state responsibility and that a thorough and efficient system be provided and substantially financed through state revenue sources so that each child shall have the opportunity to develop to his/her full potential. It is further the policy of this state that the value assigned to each school district for the purpose of determining the district's local share of its guaranteed entitlement under the Foundation School Program shall be equitably determined, notwithstanding the various types

of wealth within each district, so that no class of property is unfairly treated.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., 1st C.S., p. 11, ch. 1, § 1, eff. Sept. 1, 1977.]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The 1977 Act, which by §§ 1 to 31 amended various sections of this Chapter and made other conforming amendments, provided in §§ 32 to 34:

"Sec. 32. Legislative Commission on Public School Finance. (a) There is hereby established the Legislative Commission on Public School Finance to be comprised of nine members. The membership shall include three members of the house of representatives appointed by the speaker, three members of the senate appointed by the lieutenant governor and three citizen members appointed by the governor. The governor shall designate one of the nine members to be chairman of the commission, and commission members shall serve from date of their respective appointments until August 31, 1979. Members of the commission shall serve without compensation, but each shall receive reimbursement for actual travel expense when on official business of the commission.

"(b) The commission shall explore and develop a revised method for financing state programs of public school education. Consideration shall be given to varying factors of wealth, inclusive of a taxpayer's "ability to pay," and the pronounced diversity of monetary holdings and investments that exist throughout the state.

"(c) In conducting the study, authority is hereby given to the commission to require state agencies and school districts to submit any information deemed relevant to the provisions of this section. The Texas Legislative Council, Central Education Agency, and the Legislative Budget Board and all other state agencies shall cooperate with the commission in the performance of those duties contained in this section.

"(d) There is hereby appropriated to the House of Representatives and the Senate of the State of Texas from the General Revenue Fund for the biennium ending August 31, 1979, the sum of \$100,000 each, to carry out the provisions of this section. All expenditures shall be prorated equally between the house and senate.

"(e) The commission shall report its findings and recommendations to the governor and members of the 65th Legislature not later than January 1, 1979.

"(f) The provisions of this section expire August 31, 1979."

"Sec. 33. (a) Subsections (a) and (b) of Section 20.03, Texas Education Code, as amended by Section 15 of this Act, and Section 16 of this Act, and Subsection (d), Section 16.252, Texas Education Code, as amended by Section 11 of this Act, take effect on the passage of this Act. Subsections (c), (d), (e), and (f) of Section 20.03, Texas Education Code, as amended by Section 15 of this Act, take effect on January 1, 1978. All other sections of this Act take effect on September 1, 1977.

"(b) Records and materials compiled by, transferred to, or in the possession of the governor pursuant to Section 10, Chapter 334, Acts of the 64th Legislature, 1975, are transferred to the School Tax Assessment Practices Board to assist it in performing its duties under this Act.

"(c) There are hereby appropriated out of the Foundation School Fund, or out of the General Revenue Fund as may be necessary from time to time, additional funds which, together with the appropriations made specifically in House Bill No.

510, Acts of the 65th Legislature, Regular Session, 1977, will be sufficient to carry out the purposes of this Act. The appropriations shall include additional funds for the vocational education, comprehensive special education, statewide visually handicapped, regional school for the deaf, bilingual education, and preschool non-English programs which, together with the sums certain appropriated in House Bill No. 510 for those purposes, will be sufficient to provide the salary increases authorized by this Act for personnel employed in vocational education, comprehensive special education, statewide visually handicapped, regional schools for the deaf, bilingual education, and preschool non-English programs.

"In addition, there is hereby appropriated to the Central Education Agency out of the General Revenue Fund an amount, not to exceed \$3,000,000 in the biennium ending August 31, 1979, sufficient to carry out the purposes of Senate Concurrent Resolution No. 29 and Senate Concurrent Resolution No. 30, Acts of the 65th Legislature, Regular Session, 1977.

"There is hereby appropriated to the Central Education Agency out of the Foundation School Fund or the General Revenue Fund an amount not to exceed \$500,000 in the biennium ending August 31, 1979, sufficient funds as may be necessary to finance the purposes of Senate Bill No. 91, Acts of the 65th Legislature, Regular Session, 1977 [Chapter 736, adding §§ 16.401 to 16.406 to this Code].

"(d) There is hereby appropriated out of the General Revenue Fund to the Joint Advisory Committee on Educational Services to the Deaf the sum of \$35,904 for the fiscal year ending August 31, 1978, and the sum of \$28,112 for the fiscal year ending August 31, 1979."

"Sec. 34. If any article, section, sentence, clause, or phrase of this Act is for any reason held to be unconstitutional, such invalid portion shall not affect the validity of the remaining portions of this Act. The legislature hereby declares that it would have passed the valid portions of this Act irrespective of the fact that any one or more portions be declared unconstitutional."

§ 16.002. Purpose of Foundation School Program

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

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

§ 16.003. Student Eligibility

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

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1435, ch. 580, § 1, eff. Aug. 29, 1977.]

§ 16.004. Scope of Program

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

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

§ 16.005. Administration of the Program

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

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

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

[Sections 16.006 to 16.050 reserved for expansion]

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

§ 16.051. Required Compliance

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

§ 16.052. Operation of Schools

(a) Each school district must provide for not less than 175 days of instruction for students and not less than 10 days of inservice training and preparation for teachers for the 1977-1978 school year and not less than 175 days of instruction for students and not less than eight days of inservice training and preparation for teachers for each school year thereafter, except as provided in Subsection (b) of this section.

(b) The commissioner of education may approve the operation of schools for less than the number of days of instruction and inservice training and preparation otherwise required when disasters, floods, extreme weather conditions, fuel curtailments, or other calamities have caused the closing of the school. [Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 100, ch. 46, § 1, eff. April 5, 1977; Acts 1977, 65th Leg., 1st C.S., p. 12, ch. 1, § 2, eff. Sept. 1, 1977.]

§ 16.053. Accreditation

Beginning with the 1977-1978 school year each school district must be accredited by the Central Education Agency.

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

§ 16.054. Student/Teacher Ratios

Each school district must employ a sufficient number of certified teachers to maintain an average ratio of not less than one teacher for each 25 students in average daily attendance.

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

§ 16.055. Compensation of Professional and Paraprofessional Personnel

(a) A school district must pay each employee who is qualified for and employed in a position classified

under the Texas Public Education Compensation Plan set forth in Section 16.056 of this chapter not less than the minimum monthly base salary, plus increments for teaching experience, specified for the position.

(b) Salaries shall be paid on the basis of a minimum of 10 months' service, which must include the number of days of instruction for students and days of inservice training and preparation for personnel required by Section 16.052 of this code. The days of inservice training and preparation required herein shall be conducted by local boards of education under rules and regulations established by the State Board of Education that are consistent with the state accreditation standards for program planning, preparation, and improvement. Personnel employed for more than 10 months shall be paid not less than the minimum monthly base pay plus increments for experience for each month of actual employment. Personnel employed for 11 months must render 210 days of service, and personnel employed for 12 months must render 230 days of service. However, the number of days of service required by this subsection may be reduced by the commissioner under Section 16.052(b) of this code, and the reduction shall not reduce the total salaries of personnel. [Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 100, ch. 46, § 2, eff. April 5, 1977; Acts 1977, 65th Leg., 1st C.S., p. 12, ch. 1, § 3, eff. Sept. 1, 1977.]

§ 16.056. Texas Public Education Compensation Plan

(a) School district personnel who are qualified for and employed in positions authorized in Subsection (d) of this section shall be paid not less than the monthly base salary, plus increments for teaching experience, for the applicable pay grade computed on the basis of the salary index set forth in Subsection (c) of this section. The value of each cell in the salary index shall be determined by multiplying the index factor for the cell by \$940 for the 1977-1978 school year and by \$949 for each school year thereafter.

(b) For the 1977-1978 school year each individual shall be placed in the salary step immediately above the one occupied during the 1976-1977 school year and shall advance one step for each year of experience thereafter until step 10 is reached. For the 1977-1978 school year persons who have served in step 10 for at least two years shall advance to step 11, and for the 1978-1979 school year persons who have served in step 10 or higher for at least four years shall advance to step 12. Thereafter, a person must serve at step 10 for two years before advancing to step 11, at step 11 for two years before advancing to step 12, and at step 12 for two years before advancing to step 13.

(c) Salary index by steps

Pay Grade	Personnel														
	Unit Value	0	1	2	3	4	5	6	7	8	9	10	11	12	13
1	.55	.46	.48	.50	.52	.54	.56	.58	.61	.63	.65	.67	.69	.71	.73
2	.60	.53	.55	.57	.59	.61	.63	.66	.69	.72	.75	.78	.81	.82	.83
3	.75	.63	.65	.67	.70	.73	.76	.79	.82	.83	.84	.85	.86	.87	.88
4	.80	.68	.71	.74	.77	.80	.83	.86	.90	.94	.98	1.02	1.06	1.10	1.14
5	.90	.72	.75	.78	.82	.86	.90	.94	.98	1.03	1.08	1.13	1.18	1.23	1.28
6	.95	.78	.81	.84	.88	.92	.96	1.00	1.05	1.10	1.15	1.20	1.25	1.30	1.35
7	1.00	.90	.93	.96	1.00	1.04	1.08	1.13	1.18	1.23	1.29	1.35	1.41	1.47	1.53
8	1.00	.96	.99	1.03	1.08	1.13	1.18	1.23	1.29	1.35	1.41	1.47	1.53	1.59	1.65
9	1.15	.98	1.02	1.06	1.10	1.15	1.21	1.27	1.33	1.39	1.45	1.52	1.59	1.66	1.73
10	1.20	.99	1.04	1.09	1.14	1.19	1.25	1.31	1.37	1.43	1.49	1.56	1.63	1.70	1.77
11	1.25	1.05	1.09	1.14	1.19	1.25	1.31	1.37	1.43	1.49	1.55	1.61	1.67	1.73	1.79
12	1.30	1.08	1.13	1.18	1.23	1.28	1.33	1.39	1.45	1.52	1.59	1.67	1.75	1.83	1.91
13	1.40	1.16	1.21	1.26	1.31	1.36	1.42	1.48	1.55	1.62	1.69	1.77	1.85	1.93	2.01
14	1.50	1.23	1.28	1.33	1.39	1.45	1.51	1.57	1.64	1.71	1.78	1.87	1.96	2.05	2.14
15	1.75	1.40	1.46	1.52	1.58	1.64	1.70	1.78	1.86	1.94	2.03	2.13	2.23	2.33	2.43
16	2.00	1.56	1.63	1.70	1.77	1.84	1.92	2.00	2.09	2.18	2.28	2.39	2.50	2.61	2.72
17	2.25	1.80	1.85	1.91	1.97	2.05	2.13	2.22	2.32	2.42	2.53	2.65	2.77	2.89	3.01
18	2.50	1.86	1.95	2.04	2.14	2.25	2.36	2.47	2.58	2.69	2.80	2.91	3.02	3.13	3.24

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(d) The positions, pay grades, titles, and number of annual contract months authorized for each position under the Texas Public Education Compensation Plan are as follows:

Pay Grade	No. Months Paid	Class Title
1	10	Educational Aide I
1	10	Educational Secretary I
2	10	Educational Aide II
2	10	Educational Secretary II
3	10	Educational Aide III
3	10	Educational Secretary III
4	10	Teacher Trainee I
5	10	Teacher Trainee II
5	10	Certified Nondegree Teacher
7	10	Nurse, R.N. and/or Bachelor's Degree
7	10	Teacher, Bachelor's Degree
7	10	Vocational Teacher,
	11	Bachelor's Degree and/or
	12	Certified in Field
7	10	Librarian I, Bachelor's Degree
7	10	Visiting Teacher I, Psychological Associate, Bachelor's Degree
8	10	Teacher, Master's Degree
8	10	Vocational Teacher,
	11	Master's Degree
	12	
8	10	Librarian II, Master's Degree
8	10	Physician, M.D.
9	10	Special Duty Teacher, Master's Degree
10	10	Visiting Teacher II, Master's Degree
10	10	Counselor I, Psychologist
10	10	Supervisor I
10	10	Part-time Principal—11 or fewer teachers on campus
10	10	Instructional/Administrative Officer I
11	10	Assistant Principal—20 or more teachers on campus
11	10	Instructional/Administrative Officer II

Pay Grade	No. Months Paid	Class Title
12	11	Principal—19 or fewer teachers on campus
12	10	Instructional/Administrative Officer III
13	11	Principal—20–49 teachers on campus
13	11	Instructional/Administrative Officer IV
14	11	Principal—50–99 teachers on campus
14	12	Principal—100 or more teachers on campus
14	12	Instructional/Administrative Officer V
14	12	Superintendent—District with 400 or less ADA
15	12	Instructional/Administrative Officer VI
15	12	Superintendent—District with 401–3,000 ADA
16	12	Instructional/Administrative Officer VII
16	12	Superintendent—District with 3,001–12,500 ADA
17	12	Instructional/Administrative Officer VIII
17	12	Superintendent—District with 12,501–50,000 ADA
18	12	Superintendent—District with 50,000 or more ADA

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(e) With the approval of the State Board of Education, the commissioner of education may add additional positions and months of service to the Texas Public Education Compensation Plan to reflect curriculum and program changes authorized by law. The pay grade assigned to each new position shall be comparable to the pay grade for authorized personnel with similar academic training, experience, and duties. With the approval of the board, the commissioner shall also develop policies for the implementation and administration of the compensation plan. The policies shall provide for the adjustment of salaries for promotions and demotions within grades and the placement of personnel with prior educational experience into the compensation plan.

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

(g) Each person employed in the public schools of this state who is assigned to a position classified at pay grade 4 or above for purposes of the Foundation School Program must be certified according to the certification requirements and/or standards for each position as established by the Central Education Agency. The board of trustees of each school district shall adopt policies establishing the requirements and specifying the duties of each person employed in a position classified at pay grade 1, 2, or 3.

(h) The State Board of Education shall prescribe above pay grade 3 the duties and required preparation and education for positions listed in Subsection (d) of this section.

(i) Each school district may employ at the central office level instructional/administrative officers, in-

structional officers, or administrative officers listed in Section 16.056(d) of this code at any pay grade for which personnel are authorized and may choose among the contract options provided; however, such personnel must be employed at pay grades above pay grade 9 and below that of the district's superintendent. The personnel authorized by this section may include, but are not limited to, instructional supervisors, instructional specialists, tax assessors, business managers, and personnel officers.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1029, ch. 377, § 23, eff. June 10, 1977; Acts 1977, 65th Leg., 1st C.S., p. 12, ch. 1, § 4, eff. Sept. 1, 1977.]

[Sections 16.057 to 16.100 reserved for expansion]

SUBCHAPTER C. PERSONNEL SUPPORT COMPONENT

§ 16.101. Personnel Support: General Rules

A school district's entitlement for personnel support is equal to the aggregate minimum salaries required by law for personnel units allotted to the district in accordance with the provisions of this subchapter. For the 1975–1976 and 1976–1977 school years, no school district with fewer than 1,000 students in average daily attendance shall receive fewer professional units for its regular education program than it received for the 1974–1975 school year.

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

§ 16.102. Education Program Personnel

(a) Education program personnel units shall be allotted to each school district on the basis of the district's current average daily attendance for the

best five six-week reporting periods of the school term unless exceptions are authorized by other sections of this code.

(b) The attendance of kindergarten students may not be counted for personnel unit allotment purposes for more than one-half of a school day during the full school year or for the full school day for more than one-half of the school year unless the student is educationally handicapped. An educationally handicapped student is a student who cannot speak and comprehend the English language or who is from a family whose income, according to standards promulgated by the State Board of Education, is at or below a subsistence level.

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

(1) one personnel unit for each 18.5 students in average daily attendance in kindergarten and grades 1 through 3;

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

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

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

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

$$[1 + (1000 - ADA) (.000455)] \times PU = APU$$

where PU is the district's personnel units determined in accordance with Subsection (c) of this section; and APU is the district's adjusted personnel units.

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

$$[1 + (1000 - ADA) (.0003)] \times PU = APU$$

where PU is the district's personnel units determined in accordance with Subsection (c) of this section; and APU is the district's adjusted personnel units.

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

(g) A district's total personnel units, as adjusted, shall be reduced by an amount equal to one-half of the sum of the personnel unit values for vocational personnel allocated to the district under the provisions of Section 16.103 of this chapter, and by an amount equal to one-fourth of the sum of the personnel unit values for special education personnel

allocated to the district under the provisions of Section 16.104 of this code.

(h) Under rules of the State Board of Education, the commissioner shall adjust a district's personnel units to take into account cooperative programs and contract services.

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

(j) A district need not employ personnel for the full number of personnel units to which it is entitled.

(k) Notwithstanding the provisions of Subsection (i) of this section, 95 percent of the personnel units, excluding fractional units, earned by a school district as a result of student attendance in kindergarten and grade one pursuant to Subsection (c) of this section shall be used to employ personnel assigned instructional duties in kindergarten or grade one. Eighty percent of the personnel units, excluding fractional units, earned by a school district as a result of student attendance in grades two and three shall be used to employ personnel assigned instructional duties in grade two or three. This section does not prohibit a teacher or aide from performing instructional duties in more than one grade, and, for purposes of determining compliance with the provisions of this subsection, the State Board of Education shall promulgate rules governing the calculation of fractional personnel unit values based on class time to be assigned to personnel who teach at more than one grade level. Regular teachers assigned to classroom teaching duties, special area teachers, educational aides, and librarians assigned to these grades shall be included in these calculations. The commissioner of education may make a limited waiver of the provisions of this subsection for a period not to exceed two years for school districts that demonstrate an inability to assign personnel as required by this subsection because of a lack of classroom space.

(l) A qualified teacher, educational aide, or counselor may perform services in a combination of regular, special, or vocational education programs, and the State Board of Education shall promulgate rules governing the distribution of the personnel units utilized and the salary allocated among the programs involved in proportion to the services performed in each program.

(m) Where a school district is consolidated or contracted with another district, or annexed in whole or part to another district or districts, or where the number of grades taught has been reduced, or where the scholastics are transferred to another district, or where there is an annual fluctuation in the attendance in the district, or where for any reason there is a marked increase or decrease in the attendance of any school district, adjustments in personnel allotments shall be made by the state commissioner of education.

(n) For the 1977-1978 school year and each year thereafter, any school district that needs additional units to meet accreditation standards established by the Central Education Agency may apply for additional personnel units to the commissioner of education. The commissioner shall review these requests and may allocate these units. For purposes of this subsection, the commissioner is hereby allocated 200 personnel units to be distributed annually to qualifying districts based on such requests.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., 1st C.S., p. 17, ch. 1, § 5, eff. Sept. 1, 1977.]

§ 16.103. Vocational Personnel Units

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

(b) Each school district having a four-year accredited high school shall be eligible, under rules and regulations of the State Board of Education, for two vocational teacher units to teach one or more vocational programs provided there is a need thereof, and provided the programs have been approved by the commissioner of education.

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

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

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

(f) Vocational professional unit allotments, except classroom teachers who also served as part-time vocational teachers, shall be made in addition to other professional unit allotments. Notwithstanding anything to the contrary, vocational administrative units shall be approved on a 12-month contract basis, and vocational supervisor and vocational counselor units shall be approved up to an 11-month contract basis, based on program needs. In addition to the regular operating allowance, there shall be an additional allocation of \$400 for each vocational teacher unit.

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

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

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

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., 1st C.S., p. 19, ch. 1, § 6, eff. Sept. 1, 1977.]

§ 16.104. Comprehensive Special Education Program for Handicapped Children

(a) The commissioner of education, with the approval of the State Board of Education, shall develop, and modify as necessary, a statewide design for the delivery of services to handicapped children in Texas which includes rules for the administration and funding of the special education program so that an appropriate public education is available to all handicapped children between the ages of three and 21 by no later than September 1, 1980. The statewide design shall include, but may not be limited to, the provision of services primarily through local school districts and special education cooperatives, supplemented by a regional delivery structure

and special allotments for districts impacted by residential or hospital placements.

(b) As used in this section:

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

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

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

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

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

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

(c)(1) Except as provided in Subdivision (3) of this subsection a school district is allocated 30 special education personnel units for the first 3,000 students in refined average daily attendance and 4.25 special education personnel units for each additional 500 students in refined average daily attendance. The units may be used only for personnel listed in Subsections (d) and (e) of this section.

(2) Activation of personnel units shall be based on the following schedule:

Personnel	Personnel Units
Special Education Teachers	1
Teacher Aides	
Level I	.55
Level II	.6
Level III	.75
Support Personnel	1.2

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(3) If less than 12 percent of the district's students are identified as handicapped children and provided with special services, the number of special education personnel units to which the district is entitled under Subdivision (1) of this subsection shall be reduced to a percent of full allocation based on the percent of students served according to the following schedule:

Percent served	Percent of full allocation
12%	100%
11%	94%
10%	88%
9%	82%
8%	76%
7%	70%
6%	63%
0-5% set by commissioner, not to exceed 56%	

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(4) The percent of students served is determined by dividing the number of identified handicapped children served by the district by the district's refined average daily attendance and rounding the dividend to the nearest 10th. A district that serves less than 12 percent of the students in refined average daily attendance is entitled to an increase in the percent of allocation for a percent of students served specified in the schedule above equal to one percent of full allocation for each additional one-tenth of one percent of the students served but not exceeding the allocation specified on the schedule for the next highest percent of students served.

(5) Any funds which may become available in excess of those required to fully fund the provisions of this section may be used to provide additional special education units which shall be allocated based on an application for the funds by the local district. The application shall include a thorough assessment of the local district's particular needs

which justify the allocation of additional personnel units.

(6) Any personnel units allocated under this subsection but not utilized by the local district may be reallocated by the commissioner in the manner described in Subdivision (5) of this subsection.

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

- (1) handicapped children teachers;
- (2) special education directors;
- (3) special education supervisors;
- (4) special education counselors;

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

(6) psychologists, educational diagnosticians, and other pupil evaluation specialists. The minimum salary for such specialist to be used in computing salary allotment for purposes of this section shall be established by the commissioner of education.

(e) Paraprofessional personnel for the operation and maintenance of a program of special education shall consist of persons engaged as teacher aides, who may or may not hold a teacher certificate. The qualifications and minimum salary levels of paraprofessional personnel for salary allotment purposes of this section shall be established by the commissioner of education. The annual salary for a special education teacher aide engaged in a 10, 11, or 12 months special education program approved by the commissioner of education shall be the approved monthly base salary, plus increments for experience, multiplied by 10, 11, or 12, as applicable.

(f) Any school district, at its expense, may employ any special education personnel in excess of its state allotment and may supplement the minimum salary allotted by the state for any special education personnel, and any district is authorized at local expense to pay for all or part of further or continuing training or education of its special education personnel.

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

(h) Each school district is entitled to an allotment for special materials and consultant and appraisal services of not less than \$500 for each special education teacher employed to fill a personnel unit allocated to the district under Subsection (c) of this section. Funds allocated must be spent in accordance with the guidelines established for at least one of the above-mentioned services as defined by the commissioner. Funds for the purposes stated above may be allocated to regional education service centers for the cooperative use of school districts.

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

(j) The minimum monthly base pay and increments for teaching experience for special education counselors, supervisors, evaluation personnel, and directors engaged in a 10, 11, or 12 months special education program approved by the commissioner of education shall be the same as that of a counselor, supervisor, evaluator, or director as provided in Subchapter B of this chapter; provided that such counselors, supervisors, evaluation personnel, and directors shall have qualifications approved by the commissioner of education. The annual salary of special education counselors, supervisors, evaluation personnel, and directors shall be the monthly base salary, plus increments, multiplied by 10, 11, or 12, as applicable.

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

(l) Under rules and regulations of the State Board of Education, eligible school districts, special education cooperatives, and regional education service centers may contract with nonprofit community mental health or mental retardation centers, public or private, or any other nonprofit organization, institution, or agency approved by the State Board of Education, for the provision of services to handi-

capped children as defined by this section, who reside with their parents or guardians.

(m) The legislature shall set a limit on the amount of funds that may be expended under the provisions of this section each year in the General Appropriations Act. Should the amount of funds required to fully fund the provisions of this section pursuant to the rules and regulations of the State Board of Education exceed the amount set by the legislature, the commissioner, with the approval of the board, shall make such adjustments as are necessary to reduce the total cost of the special education program to the limit set by the legislature. The commissioner shall make further adjustments as necessary to ensure that, for the 1977-1978 school year, no school district which serves less than 12 percent of its students in special education programs, as determined in accordance with the provisions of Subsection (c) of this section, shall receive an allocation of special education personnel units that is smaller than that district's allocation for the 1976-1977 school year, unless that district is serving a smaller percentage of handicapped children in the 1977-1978 school year than it did in the 1976-1977 school year; and that no school district which serves more than 12 percent of its students in special education programs, as determined in accordance with the provisions of Subsection (c) of this section, shall receive an allocation of special education personnel units that is smaller than that district's allocation for the 1976-1977 school year.

(n) The commissioner, with the approval of the State Board of Education, shall adopt rules necessary to ensure that services to handicapped children shall be provided first to handicapped children not receiving an education and then to handicapped children, within each disability, with the most severe handicaps, who are receiving an inadequate education. The State Board of Education shall approve the definitions of levels of severity that the commissioner develops for the purposes of this subsection. The commissioner shall further develop rules necessary to ensure that sufficiently detailed records are kept and reports received to allow meaningful evaluation of the effectiveness of the policies and procedures adopted under this subsection.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1; Acts 1977, 65th Leg., 1st C.S., p. 19, ch. 1, § 7, eff. Sept. 1, 1977.]

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

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

In addition to the meaning of certain terms defined in the foregoing Section 16.16 of this code, when comprehensive special education services are required for children with serious visual or hearing

handicaps or a combination of such handicaps, the following terms, in addition to continuing to have their usual defined meaning to the extent not inconsistent with the language of this chapter, shall have the following meanings:

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

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

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

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

[Sections 16.105 to 16.150 reserved for expansion]

SUBCHAPTER D. CURRENT OPERATING COST COMPONENT

§ 16.151. Operating Cost Allotment

Each school district shall be allotted \$110 for each student in average daily attendance during the 1977-1978 school year and \$115 for each student in average daily attendance each school year thereafter.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., 1st C.S., p. 23, ch. 1, § 8, eff. Sept. 1, 1977.]

§ 16.152. Use of Operating Allotment

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

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

[Sections 16.153 to 16.175 reserved for expansion]

SUBCHAPTER E. CATEGORICAL PROGRAM AID COMPONENT

§ 16.176. Support for Educationally Disadvantaged Pupils

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

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

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

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1655, ch. 651, § 1, eff. June 15, 1977.]

¹ 20 U.S.C.A. § 236 et seq.

§ 16.177. Driver Education

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

(b) With the approval of the State Board of Education, the commissioner of education shall establish standards for the certification of professional and paraprofessional personnel who conduct the programs in the public schools.

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

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

[Sections 16.178 to 16.200 reserved for expansion]

SUBCHAPTER F. TRANSPORTATION COMPONENT

§ 16.201. Transportation Services

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

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

§ 16.202. Public School Transportation System

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

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

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

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

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

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

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

§ 16.203. County and District Transportation Funds

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

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

(1) employ its school bus drivers;

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

(3) receive transportation payments directly from the state.

(c) When the county superintendent reports the authorization to the state commissioner of education, state warrants for transportation funds for which the district is eligible shall be made payable to the district transportation fund, which is hereby created. [Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

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

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

(b) Subject to the rules of the commissioner of education, a school district or county school board governing a countywide transportation system may contract with governmental agencies or nonprofit organizations for the use of school buses for the transportation of senior citizens or handicapped persons.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1884, ch. 750, § 1, eff. June 16, 1977; Acts 1977, 65th Leg., p. 2191, ch. 864, § 1, eff. Aug. 29, 1977.]

§ 16.205. Approved School Bus Routes

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

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

§ 16.206. Calculation of Allotment

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

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

(c) For the 1977-1978 school year, allowable total base costs of maintenance, operation, salaries, depreciation, etc., for each bus shall be:

72 capacity bus	\$5,701 per year
60-71 capacity bus	5,492 per year
49-59 capacity bus	5,283 per year
42-48 capacity bus	5,074 per year
30-41 capacity bus	4,866 per year
20-29 capacity bus	4,657 per year
15-19 capacity bus	3,821 per year
1-14 capacity bus	161 per pupil per year.

For the 1978-1979 school year and thereafter, the allowable total base costs of maintenance, operation, salaries, depreciation, etc., for each bus shall be 105.2 percent multiplied by the allowable total base cost for each bus during the 1977-1978 school year.

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

number of eligible children on the bus at any one time.

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

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

(g) The state commissioner of education may grant not to exceed \$80 per pupil per year in 1977-1978, or \$84 per pupil per year in 1978-1979 and thereafter for private or commercial transportation for eligible pupils from isolated areas. The need for this type of transportation grant shall be determined on an individual basis and the amount granted shall not exceed the actual cost. The grants shall be made only in extreme hardship cases, and no grants shall be made if the pupils live within two miles of an approved school bus route or city public transportation service.

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

(i) A school district that provides special transportation services for exceptional students who would be unable to attend classes without the service is entitled to funds equal to the actual cost of the transportation not exceeding \$278 in 1977-1978 or \$292 in 1978-1979 and thereafter for each exceptional student transported.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., 1st C.S., p. 23, ch. 1, § 9, eff. Sept. 1, 1977.]

Section 10 of the 1977 amendatory act provided:

"(a) Prior to the convening of the 66th Legislature, the commissioner of education shall determine the actual cost for regular transportation services per eligible student mile in each school district. The costs shall include the total base costs for transporting eligible students for maintenance, operation, salaries, depreciation, and all other costs attributable to the transportation of eligible students, including combined state and local expenditures for each school district. The cost per eligible student mile shall be derived by dividing the average actual daily cost by the average number of eligible student miles traveled daily.

"(b) An 'eligible student,' for purposes of this section, is a student who lives two or more miles from the school to which he is assigned.

"(c) For purposes of determining the actual costs in each school district, the commissioner shall designate one day per month on which each school district shall report the actual number of eligible students transported and the total route miles of operation required to transport the students. The average number of eligible students transported daily, divided by the average number of route miles traveled daily, shall determine the classification of school districts into eligible student population categories. The number of the eligible student population categories shall be determined by the commissioner.

"(d) The commissioner shall determine the average actual cost for regular transportation services per eligible student mile, including state and local expenditures, within each student population category for the 1977-1978 and 1978-1979 school years.

"(e) The commissioner may require any reports and information necessary to develop the cost data required by this section and shall establish any additional rules necessary to implement this section.

"(f) The commissioner shall prepare and submit to the 66th Legislature when it convenes in 1979 a recommended plan for funding transportation of eligible students."

§ 16.207. Routes and Systems: Evaluation and Approval

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

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

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

(d) Repealed by Acts 1977, 65th Leg., 1st C.S., p. 48, ch. 1, § 35, eff. Sept. 1, 1977.

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

(f) There shall be no duplication of bus routes and services within sending districts by buses operated by two school districts and/or counties except on approval by the state commissioner of education. [Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., 1st C.S., p. 48, ch. 1, § 35, eff. Sept. 1, 1977.]

§ 16.208. Use of Transportation Funds for Other Purposes

No funds paid to the several transportation units for the operation of transportation systems in this state shall be expended for any other purpose. [Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975.]

§ 16.209. Rules of Commissioner

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

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

§ 16.210. Appeals

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

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

§ 16.211. Purchase of Vehicles

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

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

§ 16.212. Repealed by Acts 1977, 65th Leg., 1st C.S., p. 48, ch.1, § 35, eff. Sept. 1, 1977

The repealed section, authorizing contracts with public transportation companies, was derived from former § 16.63, as amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, as § 16.212.

[Sections 16.213 to 16.250 reserved for expansion]

SUBCHAPTER G. FINANCING THE PROGRAM

§ 16.251. Financing; General Rule

(a) The sum of the approved minimum salaries for personnel, current operating expenses, categorical program aid, and transportation services for each district, computed in accordance with the provisions of this chapter, constitute the total cost of the Foundation School Program.

(b) The program shall be financed by:

(1) ad valorem tax revenue generated by an equalized local school district effort;

(2) state available school funds distributed in accordance with law; and

(3) state funds appropriated for the purposes of public school education and allocated to each district in an amount sufficient to finance the cost of each district's Foundation School Program not covered by other funds specified in this subsection.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., 1st C.S., p. 26, ch. 1, § 12, eff. Sept. 1, 1977.]

§ 16.252. Local Share of Program Cost

(a) For the 1977-1978 school year and each year thereafter, each school district's share of its guaran-

teed entitlement under the Foundation School Program shall be an amount equal to the product of an index rate of .0018 multiplied by the full market value of property in the district or the product of an index rate of .00205 multiplied by the index value of property determined pursuant to Section 11.86 of this code, whichever amount is smaller.

(b) For the 1977-1978 and 1978-1979 school years, the estimates of market values and agricultural use values of open-space land reported in the official compilation of school district property values prepared by the Governor's Office, Education Resources shall be used as the market values and index values for the determination of the local fund assignment. For the 1979-1980 school year and thereafter, the commissioner of education shall utilize the official biennial report of the School Tax Assessment Practices Board estimates of the market value and index value in each school district for determining the local fund assignment. Such estimates of value shall be determined in accordance with Subchapter F, Chapter 11 of this code.¹

(c) For the 1977-1978 school year and each school year thereafter, no district's local fund assignment as determined pursuant to this section shall exceed 125 percent of its prior year's local fund assignment.

(d) The commissioner of education shall adjust the values reported in the official compilation to reflect reductions in taxable value of property resulting from natural or economic disaster since January 1, 1975. The commissioner shall make a preliminary determination of each district's share of its guaranteed entitlement under the Foundation School Program for the 1977-1978 and 1978-1979 school years no later than August 15, 1977 and 1978 respectively. Each district shall have the right to appeal its value based on the 1976 official compilation of school district property values prepared by the Governor's Office, Education Resources. Prior to October 1, 1977, appeals shall be reviewed by the commissioner of education and these appeals to the commissioner shall not be subject to the provisions of the Administrative Procedure and the Texas Register Act.² Appeals thereafter shall be held pursuant to Section 11.86(d) of this code. The decision of the commissioner of education shall be final and shall be completed no later than October 1, 1977. Thereafter, the decision of the School Tax Assessment Practices Board may be appealed pursuant to Section 11.86(e) of this code.

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

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., 1st C.S., p. 25, ch. 1, § 11, eff. Sept. 1, 1977.]

¹ Section 11.71 et seq.

² Civil Statutes, art. 6252-13a.

Section 33(a) of the 1977 amendatory act provides, in part, that subsec. (d) of this section shall take effect on the passage of the Act (July 22, 1977) and that all other sections of the Act take effect on September 1, 1977.

§ 16.253. Excess of Local Funds Over Amount Assigned

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

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

§ 16.254. Distribution of Foundation School Fund

(a) The commissioner of education shall determine annually:

(1) the amount of money necessary to operate a Foundation School Program in each school district;

(2) the amount of local funds assigned to each school district for the support of the program; and

(3) the amount of state available school funds distributed to each school district.

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

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

(d) Notwithstanding the provisions of Subsection (b) of this section, for the 1977-1978 school year and each year of the biennium ending August 31, 1979, no school district shall receive less state aid, plus pay raises exclusive of service increments, for foundation personnel provided by Section 16.055(b) of this code, per student in average daily attendance than it received per student in average daily attendance under the Foundation School Program for the 1976-1977 school year.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., 1st C.S., p. 26, ch. 1, § 13, eff. Sept. 1, 1977.]

§ 16.255. Falsification of Records; Report

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

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

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

§ 16.256. Repealed by Acts 1977, 65th Leg., 1st C.S., p. 48, ch. 1, § 35, eff. Sept. 1, 1977.

The repealed section, relating to duties of tax assessors, was derived from former § 16.77, as amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, as § 16.256.

[Sections 16.257 to 16.300 reserved for expansion]

SUBCHAPTER H. EQUALIZATION AID FOR PROGRAM ENRICHMENT

§ 16.301. District Eligibility

(a) A school district with an average property value per student in average daily attendance which is less than 110 percent of the total statewide average property value per student in average daily attendance in the state is eligible for state equalization aid for the enrichment of its educational program beyond the level guaranteed under the Foundation School Program. The amount of state equalization aid shall not exceed \$185 per student in average daily attendance. Money received by local districts under provisions of this subchapter may be expended for any lawful school purpose.

(b) Each school district whose average property value per student in average daily attendance is less than 50 percent of the total statewide average property value per student in average daily attendance in the state shall be eligible to receive an allotment of \$210 per student in average daily attendance in the district, to be distributed on the same basis as equalization aid under Subsection (a) of this section. [Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., 1st C.S., p. 26, ch. 1, § 14, eff. Sept. 1, 1977.]

§ 16.302. Determination of Equalization Aid Entitlement

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

$$SEA = \left(1 - \frac{DAPV/ADA}{(SAPV/ADA \times 1.10)} \right) \times ADA \times \$185$$

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where

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

DAPV/ADA for districts offering a full K-12 grade instructional program is the average of the district's full market value of property and agricultural use value of property as determined by the Governor's Office, Education Resources for the 1977-1978 and 1978-1979 school years and thereafter as determined pursuant to Section 11.86 of this code divided by the number of students in average daily attendance in the district. "DAPV/ADA" for districts where the full K-12 grade instructional program is not offered shall include the average daily attendance of eligible students transferred to other school districts in grades not taught by the resident district;

"SAPV/ADA" is the average of the total statewide full market value of property and the total statewide agricultural use value of property as determined by the Governor's Office, Education Resources for the 1977-1978 and 1978-1979 school years and thereafter as determined pursuant to Section 11.86 of this code divided by the number of students in average daily attendance in the state; and

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

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., 1st C.S., p. 27, ch. 1, § 14, eff. Sept. 1, 1977.]

§ 16.303. Required Local Effort

In order to receive equalization aid, the district must raise its local fund assignment.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., 1st C.S., p. 27, ch. 1, § 14, eff. Sept. 1, 1977.]

§ 16.304. Payment of State Aid; Limitation

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

(b) If the amount of state aid required by this subchapter exceeds \$135 million per year for the 1977-1978 or 1978-1979 school year, the amount of state equalization aid guaranteed to each district shall be reduced proportionately until the total amount of funds required equals \$135 million.

[Amended by Acts 1975, 64th Leg., p. 877, ch. 334, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., 1st C.S., p. 27, ch. 1, § 14, eff. Sept. 1, 1977.]

[Sections 16.305 to 16.400 reserved for expansion]

SUBCHAPTER I. SCHOOL-COMMUNITY GUIDANCE CENTER PILOT PROGRAMS [NEW]

[Text of Subchapter I effective until September 1, 1981]

§ 16.401. Pilot Programs

(a) With the approval of the commissioner of education, a school district may establish a school-community guidance center pilot program designed to locate and assist children with problems which interfere with their education, including but not limited to juvenile offenders and children with severe behavioral problems or character disorders. The centers shall coordinate the efforts of school district personnel, local police departments, truant officers, and probation officers in working with students, drop-outs, and parents in identifying and correcting factors which adversely affect the education of the children.

(b) The commissioner of education may not approve more than 10 pilot programs for the state. School districts with an average daily attendance of less than 6,000 students may cooperatively apply with other districts of that size for approval of a common center.

[Added by Acts 1977, 65th Leg., p. 1858, ch. 736, § 1, eff. Aug. 29, 1977.]

§ 16.402. Cooperative Programs

The commissioner may authorize the board of trustees of a school district to develop cooperative programs with state youth agencies for children found guilty of delinquent conduct.

[Added by Acts 1977, 65th Leg., p. 1858, ch. 736, § 1, eff. Aug. 29, 1977.]

§ 16.403. Guidance Center Personnel Allotments

(a) Each pilot school-community guidance center is eligible for two guidance center teachers, one attendance consultant, and one teacher aide. Each center is also eligible for one additional guidance center teacher for each 7,500 students in average daily attendance above 6,000 students in the district or cooperating districts. One additional attendance consultant and one additional teacher aide shall be provided for every two additional guidance center teachers.

(b) The commissioner shall determine the qualifications and applicable pay grade under the Texas State Public Education Compensation Plan¹ for the guidance center teachers, attendance consultants, and teacher aides employed at a center.

(c) The commissioner may authorize local boards of trustees to enter into contracts with state youth agencies for funding of personnel involved in cooperative programs.

[Added by Acts 1977, 65th Leg., p. 1858, ch. 736, § 1, eff. Aug. 29, 1977.]

¹ See § 16.056.

§ 16.404. Operating Costs

The cost of operating an approved school-community guidance center pilot program shall be borne by the state and each participating district on the same percentage basis that applies to financing the Foundation School Program within the district. The state's share of the cost shall be paid from the Foundation School Program Fund.

[Added by Acts 1977, 65th Leg., p. 1859, ch. 736, § 1, eff. Aug. 29, 1977.]

§ 16.405. Cooperation of Governmental Agencies

Each governmental agency concerned with children in the school district shall cooperate with the school-community guidance centers on the request of the superintendent of schools and shall designate liaison persons to work with the centers in identifying and correcting problems affecting school-age children in the district.

[Added by Acts 1977, 65th Leg., p. 1859, ch. 736, § 1, eff. Aug. 29, 1977.]

§ 16.406. Termination Date

The commissioner of education shall evaluate the school-community guidance center pilot program and report to the 67th Legislature. Unless continued by law, the pilot program is abolished and this Act expires effective September 1, 1981.

[Added by Acts 1977, 65th Leg., p. 1859, ch. 736, § 1, eff. Aug. 29, 1977.]

CHAPTER 17. COUNTY ADMINISTRATION

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

Section

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

SUBCHAPTER C. COUNTY SUPERINTENDENT

§ 17.64. Abolition of Office

(a) Upon a petition of 10 percent of the qualified voters who cast a vote in the governor's race at the preceding general election in counties of less than 100,000 population according to the last federal census; or upon a petition of 20 percent of the qualified voters who cast a vote in the governor's race at the preceding general election in counties of 100,000 or more population according to the last federal census, the county judge shall within 90 days of the receipt of such petition call an election to determine by majority vote whether the office of county superintendent (or ex officio county superintendent and the

county school board in counties having an ex officio county superintendent) shall be abolished. At such an election all ballots shall have printed to provide for voting for or against the proposition:

“The abolishment of the office of county superintendent” or

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

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

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

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

SUBCHAPTER F. SOCIAL SECURITY FOR EMPLOYEES

§ 17.91. Authority of Governing Board

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

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

¹ 42 U.S.C.A. § 401 et seq.

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

§ 17.94. Termination of State Fiscal Support

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

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

¹ Section 18.01 et seq.

§ 17.95. Abolition of Certain County School Administrative Offices

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

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

¹ Section 18.01 et seq.

§ 17.96. Transfer of Certain Powers and Duties

(a) The powers and duties of abolished offices of county school superintendent and ex officio county superintendents and of abolished county boards of school trustees and county school boards vest in the officials designated in the following subsections of this section, and the officials are not entitled to additional compensation for performing the duties.

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

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

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

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

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

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

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

§ 17.97. Transfer of Records and Funds

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

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

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

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

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

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

§ 17.99. Reclassification of Certain School Districts

On September 1, 1978, all common school districts located in a county and in counties with no common school districts, rural high school districts, or inde-

pendent districts with less than one hundred fifty (150) ADA that do not support county school administration from ad valorem tax revenue generated pursuant to the provisions of Chapter 18 of this code¹ shall be reclassified as independent school districts by the Central Education Agency, and thereafter the districts shall be governed by the provisions of law applicable to independent school districts. Members of the governing boards of a common school district reclassified as an independent school district shall continue to serve as trustees of the district until their respective terms of office expire. Each district shall continue to be governed by the same number of trustees elected for the same terms of office in effect immediately preceding the district's reclassification.

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

¹ Section 18.01 et seq.

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

SUBCHAPTER H. CONSOLIDATION OF SCHOOL DISTRICTS

Section

19.246. Dormant School Districts [NEW].

19.247. Territory Not in School District [NEW].

SUBCHAPTER F. MUNICIPAL SCHOOL DISTRICTS — CREATION, CONVERSION, ETC.

§ 19.161. City May Acquire Control of Schools

(a) Any city or town in this state may acquire the exclusive control of the public free schools within its limits by a majority vote of the property taxpaying voters of the city or town voting at an election held for that purpose as herein provided. However, if the territory to be detached from any existing district by creation of a municipal school district exceeds 10 percent of the total area of the existing district, the proposed detachment must be approved by a majority vote of the residents of each district affected.

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

[Amended by Acts 1977, 65th Leg., p. 1161, ch. 441, § 1, eff. June 15, 1977.]

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

§ 19.201. Qualifications

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

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

- (1) have 165 inhabitants or more;
- (2) have an assessed property valuation of not less than \$3,000,000; and
- (3) not include within its bounds any municipally incorporated town or village which has assumed control of the public free schools within its limits.

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

SUBCHAPTER H. CONSOLIDATION OF SCHOOL DISTRICTS

§ 19.233. Election Order; Notice

Upon the receipt of a petition fulfilling the qualifications of Section 19.232 of this code, each county judge shall:

- (1) issue an order for an election to be held on the same day in each district included in the proposed consolidated district; and
- (2) give notice of the date and purpose of the election by publication of the order in some newspaper published in the county two times at least 20 days prior to the date on which the elections are to be held and by posting a notice of the election in each of the districts.

[Amended by Acts 1977, 65th Leg., p. 1492, ch. 606, § 1, eff. Aug. 29, 1977.]

§ 19.246. Dormant School Districts

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

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

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

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

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

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

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

§ 19.247. Territory Not in School District

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

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

[Sections 19.248 to 19.260 reserved for expansion]

CHAPTER 20. SCHOOL DISTRICT FUNDS

SUBCHAPTER C. MISCELLANEOUS PROVISIONS

Section

20.52. [Blank].

20.53. Authority to Charge Fees [NEW].

SUBCHAPTER A. SCHOOL DISTRICT TAX BONDS AND MAINTENANCE TAXES

§ 20.03. Assessment of Property; Tax Rates

(a) Notwithstanding a provision of general or local law to the contrary, a school district required by law or contract to use the tax office of another taxing unit may adopt its own assessment ratio and tax rate. The district shall use the appraised values determined by the office required by law or contract to assess its taxes, but may impose taxes on the basis of a different proportion of appraised value than that of the taxing unit administering the tax office.

(b) A school district may not levy a tax for the maintenance and operation of its schools which would generate an amount of local maintenance revenues in excess of the amount determined by multiplying an index rate of \$1.40 per \$100 of the total market value of the district's taxable property as determined by the School Tax Assessment Practices Board¹ for the year on which the local fund assignment is based. Provided, however, that for the 1977-1978 and 1978-1979 school years the total market value of the district's taxable property shall be that determined by the Governor's Office, Education Resources.

(c) After a board of equalization approves and certifies a tax roll for a school district's tax purposes, the assessor for the district shall subtract from the total assessed value of all property on the roll the assessed value of property added to the roll since the preceding tax year by annexation of terri-

tory, the assessed value of all improvements made after January 1 of the preceding tax year. The assessor shall then calculate the tax rate that, if applied to the total assessed value remaining after subtracting the assessed value of annexed property and new improvements would impose the same total dollar amount of taxes that the district imposed in the preceding year, shall publicize that rate in a manner reasonably designed to come to the attention of all residents of the district, and shall submit the rate to the board of trustees for the district.

(d) The board of trustees for a school district may not adopt a tax rate that exceeds the rate calculated and announced under Subsection (c) of this section until it has given public notice of its intention to adopt a higher rate in a manner reasonably designed to come to the attention of all residents of the district and has held a public hearing on the proposed tax increase. The hearing may not be before the sixth day after the date notice is given under this subsection.

(e) The assessor for each school district shall prepare and mail a notice to each person in whose name the property is listed on the tax roll, or to his authorized agent, in the event such person's property values are increased as a result of reappraisal. Such tax notice shall contain the following information:

- (1) the prior tax year's appraised value, assessed value, tax rate, and dollar amount of tax;
- (2) the current tax year's appraised value, assessed value, tax rate, and dollar amount of tax.

(f) The assessor for each school district shall prepare and mail a tax bill to each person in whose name the property is listed on the tax roll or to his authorized agent. The assessor shall mail tax bills by October 1 or as soon thereafter as practicable.

(g) The tax bill or a separate statement accompanying the tax bill shall:

- (1) identify the property subject to the tax;
- (2) state the appraised value and assessed value of the property;
- (3) if the property is designated for agricultural use, state the market value and assessed value for purposes of deferred taxation;
- (4) state the assessment ratio for the school district;
- (5) state the type and amount of any partial exemption applicable to the property;
- (6) state the total tax rate for the school district;
- (7) state the amount of tax due and due date; and
- (8) state the rates of penalty and interest imposed for delinquent payment of the tax.

[Amended by Acts 1975, 64th Leg., p. 1308, ch. 491, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., 1st C.S., p. 27, ch. 1, § 15.]

¹ See § 11.71 et seq.
Section 33(a) of the 1977 amendatory act provides, in part, that subsecs. (a) and (b) of this section shall take effect on the passage of the Act (July 22, 1977), that subsecs. (c) to (f) shall take effect on January 1, 1978, and that all other sections of the Act take effect on September 1, 1977.

SUBCHAPTER C. MISCELLANEOUS PROVISIONS

§ 20.52. [Blank]

§ 20.53. Authority to Charge Fees

(a) A school board is authorized to require payment of fees in the following areas:

- (1) in any program where the resultant product in excess of minimum requirements and at the pupil's option becomes the personal property of the pupil, not to exceed cost of materials;
- (2) membership dues in student organizations or clubs and admission fees or charges for attending extracurricular activities when membership or attendance is voluntary;
- (3) a security deposit for the return of materials, supplies, or equipment;
- (4) personal physical education and athletic equipment and apparel, although any pupil may provide his or her own if it meets reasonable requirements and standards relating to health and safety established by the school board;
- (5) items of personal use or products which a student may purchase at his or her own option such as student publications, class rings, annuals, and graduation announcements;
- (6) fees specifically permitted by any other statute;
- (7) any authorized voluntary student health and accident benefit plan;
- (8) a reasonable fee not to exceed the actual annual maintenance cost for the use of musical instruments and uniforms owned or rented by the district;
- (9) items of personal apparel which become the property of the student and which are used in extracurricular activities;
- (10) parking fees and fees for identification cards;
- (11) driver training courses, provided that such fees shall not exceed the difference between the average statewide cost per student in the programs for the prior school year or the actual district cost per student in such programs for the current school year, whichever is less, and the payment per student from state funds for such programs; or
- (12) courses offered for credit where the activity necessitates the use of facilities not available on the school premises, and participation in the course is optional on the part of the student.

(b) A school board is not authorized to charge fees in the following areas:

(1) textbooks, workbooks, laboratory supplies, or other supplies necessary for participation in any instructional course except as authorized under this code;

(2) field trips which are required as a part of a basic education program or course;

(3) any specific form of dress necessary for any required educational program or diplomas;

(4) instructional costs for necessary school personnel employed in any course or educational program required for graduation;

(5) library books required to be utilized for any educational course or program, except that fines may be assessed for lost, damaged, or overdue books;

(6) admission fees, dues, or fees for any activity the pupil is required to attend as a prerequisite to graduation;

(7) any admission or examination cost for any required educational course or program; or

(8) lockers.

(c) The State Board of Education pursuant to administrative procedures and consistent with the general policy of this state shall have the power to specify further authorized and prohibited fees and to adopt rules and regulations for the purposes of such policies.

(d) Students may be required to furnish personal or consumable items including pencils, paper, pens, erasers, and notebooks.

(e) This section does not preclude the operation of a school store wherein pupils may purchase school supplies and materials.

(f) A school district shall adopt reasonable procedures for waiving a deposit or fee if a pupil and his or her parent or guardian is unable to pay it. This policy shall be posted in a central location in each school facility, in the school policy manual, and in the student handbook.

(g) This section shall not be construed to prohibit a school board from charging reasonable fees for goods and services provided in connection with any postsecondary instructional program, including but not limited to vocational-technical, adult, veterans, continuing education, community services, evening school, and general educational development programs.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 34, ch. 1, § 17, eff. Sept. 1, 1977.]

CHAPTER 21. PROVISIONS GENERALLY APPLICABLE TO SCHOOL DISTRICTS

SUBCHAPTER A. GENERAL PROVISIONS

Section

21.008. Quarter System [NEW].

SUBCHAPTER B. ADMISSION AND ATTENDANCE

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

SUBCHAPTER C. TRANSFERS AND SCHOOL ASSIGNMENTS

21.081. Transfer of Children of Employees of Texas Youth Council Facilities [NEW].

SUBCHAPTER D. COURSES OF STUDY

21.120. Economic Education [NEW].

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

21.913. Duties of Public School Principals [NEW].

21.914. Administering of Medication by School District Employees, Immunity From Liability [NEW].

21.914. Breakfast Programs [NEW].

21.915. Financial Support for Instructional Television Services.

SUBCHAPTER A. GENERAL PROVISIONS

§ 21.008. Quarter System

(a) Each school district shall operate on the basis of a quarter system, with its schools being in operation during at least three three-month quarters during each school year and providing the required number of days of instruction for students and inservice education and preparation for teachers, except as provided under Section 16.052(b) of this code.

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

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

(d) A school district may choose to operate all or some of its schools for all four quarters of the school year. This choice shall be approved or disapproved by the district's school board in a regularly scheduled open meeting. If a district so chooses, no credit for student attendance under the Foundation School Program may be given to the district for the attendance of any one student enrolled for more than three quarters during any one school year. The attendance of a student for a fourth quarter must be financed either by the student on a tuition basis or by the district from its own funds, at the option of the district.

(e) A district that operated its schools during all four quarters of the school year shall decide which students are to attend school during each quarter.

Schedules shall be so arranged that all members of a family attending the schools of the district may attend the same three quarters.

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

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

[Added by Acts 1975, 64th Leg., p. 894, ch. 334, § 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 101, ch. 46, § 3, eff. April 5, 1977; Acts 1977, 65th Leg., 1st C.S., p. 43, ch. 1, § 24, eff. Sept. 1, 1977.]

[Sections 21.009 to 21.030 reserved for expansion]

SUBCHAPTER B. ADMISSION AND ATTENDANCE

§ 21.031. Admission

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

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

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

(d) In order for a person under the age of 18 years to establish a residence for the purpose of attending the public free schools separate and apart from his parent, guardian, or other person having lawful control of him under an order of a court, it must be established that his presence in the school district is not for the primary purpose of attending the public free schools. The board of trustees shall be responsible for determining whether an applicant for ad-

mission is a resident of the school district for purposes of attending the public schools.

[Amended by Acts 1975, 64th Leg., p. 896, ch. 334, § 4, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1012, ch. 376, § 1, eff. Aug. 29, 1977.]

§ 21.0311. Tuition for Certain Children From Other States

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

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

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

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

§ 21.033. Exemptions

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

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

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

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

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

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

(4) any child more than 17 years of age who has satisfactorily completed the work of the ninth grade and who presents to the chief administrator of the school which such child would otherwise attend satisfactory evidence showing that his services are needed in support of a parent or other person standing in a parental relation to the child; and

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

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

§ 21.035. Violations of Attendance Requirements

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

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

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

SUBCHAPTER C. TRANSFERS AND SCHOOL ASSIGNMENTS

§ 21.081. Transfer of Children of Employees of Texas Youth Council Facilities

A school age child of an employee of a facility of the Texas Youth Council is entitled to attend school in a school district adjacent to the district in which he resides free of any charge to his parents or guardian. Any tuition charge required by the admitting school district shall be paid by the school district from which the student transfers out of funds allotted to it by the Central Education Agency.

[Added by Acts 1977, 65th Leg., p. 1454, ch. 592, § 1, eff. Aug. 29, 1977.]

SUBCHAPTER D. COURSES OF STUDY

§ 21.120. Economic Education

[Text of section added effective September 1, 1978]

(a) This section shall be known and may be cited as the "Economic Education Act of 1977."

(b) As used in this section, the term "economic education" means citizenship competencies needed by the individual for effectively performing his decision-making roles as a consumer, a worker making career choices, and a voter on personal and societal economic issues.

(c) The purpose of this section is to insure the development of a comprehensive economic education

program for all children in grades 1 through 12 in the public schools of this state. It is the legislative intent that this program shall teach a positive understanding of the American economy, how it functions, and how the individual can function effectively within our economy as a consumer, worker, and voter. While dealing with economic problems and issues, the program shall teach the positive values of a basically private-enterprise economy which underscores the worth and dignity of the individual.

(d) The Central Education Agency shall administer this section pursuant to regulations adopted by the State Board of Education. Support may be provided by the state senior colleges and universities in the pre-service preparation of teachers to carry out the provisions of this section. These institutions of higher education are also encouraged to establish formal economic education centers to assist the public schools with curriculum planning, in-service training, and further work in the development of instructional materials.

(e) In administering this section, the State Board of Education and the Central Education Agency shall:

(1) develop general guidelines and implement in-service education programs for teachers, administrators, and other personnel;

(2) implement provisions of this section in the most expeditious manner possible, commensurate with the availability of teaching personnel;

(3) implement local school system evaluation of the effectiveness of the economic education program prescribed by this section;

(4) recommend programs and short course seminars for the preparation of economic education teaching personnel; and

(5) require all Texas public high schools to give instruction on the essentials and benefits of the American economic system. The effective date for this section shall be September 1, 1978.

(f) The State Board of Education shall adopt regulations to insure the teaching of economic education to all pupils in grades 1 through 12 on a minimum time schedule of grades 10 through 12 by the 1978-79 school year, grades 7 through 9 by the 1979-80 school year, grades 4 through 6 by the 1980-81 school year, and grades 1 through 3 by the 1981-82 school year.

(g) In implementing this section, the State Board of Education shall make every effort to combine funds appropriated for this purpose with funds available from all other appropriate sources, public and private, in order to achieve maximum benefits for improving economic education.

(h) The Central Education Agency, at least 30 days prior to each regular session of the legislature,

shall transmit to the members of the State Board of Education, the lieutenant governor, the speaker of the house of representatives, and the chairmen of the senate and house education committees, a report as to the status of the economic education program together with any recommendations for further improvement, modification, or additional legislation. [Added by Acts 1977, 65th Leg., p. 1004, ch. 371, § 1, eff. Sept. 1, 1978.]

SUBCHAPTER H. RECORDS AND REPORTS

§ 21.256. Annual Audit; Report

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

(d) A copy of the annual audit report, approved by the board of school trustees, shall be filed by the district with the Central Education Agency within 120 days of the close of the fiscal year for which audit was made. Where the board of trustees declines or refuses to approve its auditor's report, it shall nevertheless file with the Central Education Agency a copy of the audit report with its statement detailing reasons for failure to approve same.

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

[Amended by Acts 1977, 65th Leg., p. 1378, ch. 549, § 1, eff. June 15, 1977.]

SUBCHAPTER L. BILINGUAL EDUCATION

§ 21.453. Establishment of Bilingual Programs

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

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

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

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

§ 21.901. Contracts—Competitive Bidding

(a) Except as provided in Subsection (e) of this section, all contracts proposed to be made by any Texas public school board for the purchase of any personal property shall be submitted to competitive bidding, if the average daily attendance during the previous school year in that school district exceeded 3,000 pupils, when said property is valued at \$5,000 or more, and if the average daily attendance during the previous school year in that school district was 3,000 pupils or less, when said property is valued at \$2,000 or more.

(b) Except as provided in Subsection (e) of this section, all contracts proposed to be made by any Texas public school board for the construction, maintenance, repair or renovation of any building or for materials used in said construction, maintenance, repair or renovation, shall be submitted to competitive bidding, if the average daily attendance during the previous school year in that school district exceeded 3,000 pupils, when said contracts are valued at \$5,000 or more, and if the average daily attendance during the previous school year in that school district was 3,000 pupils or less, when said property is valued at \$2,000 or more.

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

(d) Notice of the time when and place where such contracts will be let and bids opened shall be published in the county where the purchasing school is located, once a week for at least two weeks prior to the time set for letting said contract and in two other newspapers that the school board may designate. Provided, however, that on contracts involving less than \$25,000, such advertising may be limited to two successive issues of any newspaper published in the county in which the school is located, and if there is no newspaper in the county in which the school is located, then said advertising shall be for publication in some newspaper in some county nearest the county seat of the county in which the school is located.

(e) If a school building or school equipment is destroyed or severely damaged, and the school board determines that the time delay posed by the competitive bidding process would prevent or substantially impair the conduct of classes or other essential school activities, then contracts for the replacement or repair of such building or equipment may be made without resort to competitive bidding as otherwise required by this section.

[Amended by Acts 1977, 65th Leg., p. 1224, ch. 472, §§ 1, 2, eff. Aug. 29, 1977.]

§ 21.911. Financial Support for Instructional Television Services

[Renumbered as § 21.915]

§ 21.913. Duties of Public School Principals

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

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

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

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

(b) Nothing herein shall be construed as a limitation on the powers, responsibilities, and obligations of the school board as now prescribed by law. [Added by Acts 1975, 64th Leg., p. 896, ch. 334, § 5, eff. Sept. 1, 1975.]

§ 21.914. Administering of Medication by School District Employees; Immunity From Liability

[Text as added by Acts 1977, 65th Leg., p. 1268, ch. 491, § 1]

(a) As used in this section, "employees" means superintendents, principals, classroom teachers, supervisors, counselors, registered nurses, teachers aides, secretaries, or any other classified person employed by a school district.

(b) The board of trustees of each school district shall adopt policies concerning the administering of medication to students by employees of the district.

(c) On the adoption of policies as provided in Subsection (b) of this section, the school district, its board of trustees, and its employees shall have immunity from civil liability from damages or injuries resulting from the administering of medication to a student, if:

(1) the school district has received a written request to administer the medication from the parent, legal guardian, or other person having legal control of the student; and

(2) when administering prescription medication, the school district has received a written request from a licensed physician or dentist to administer the medication.

(d) Nothing herein shall be construed to grant immunity from civil liability for injuries resulting from gross negligence.

[Added by Acts 1977, 65th Leg., p. 1268, ch. 491, § 1, eff. June 15, 1977.]

For text as added by Acts 1977, 65th Leg., p. 2019, ch. 807, § 1, see § 21.914, post

§ 21.914. Breakfast Programs

[Text as added by Acts 1977, 65th Leg., p. 2019, ch. 807, § 1]

If at least 10 percent of the students enrolled in one or more schools in a school district are eligible for free or reduced-price breakfasts under the national school breakfast program provided for by the Child Nutrition Act of 1966 (42 U.S.C. Subsection 1773), the governing board of the district shall participate in the program and make the benefits of the program available to all eligible students in said schools.

[Added by Acts 1977, 65th Leg., p. 2019, ch. 807, § 1, eff. Aug. 29, 1977.]

For text as added by Acts 1977, 65th Leg., p. 1268, ch. 491, § 1, see § 21.914, ante

Section 2 of the 1977 Act provided:

"This Act is effective for the 1978-1979 school year and thereafter for school districts with food service facilities. The effective date of this Act for other school districts shall be the 1981-1982 school year and thereafter."

§ 21.915. Financial Support for Instructional Television Services

(a) Any school district of this state classified common, independent school district or rural high school district whose governing board elects to contract for and utilize instructional television programs and services as an integral part of its classroom instruction with noncommercial FCC licensed stations and other nonprofit originating video communication systems to provide programs and instructional television utilization services shall, upon application and pursuant to regulations prescribed by the Central Education Agency, be reimbursed for such costs from state funds to the extent herein authorized. The regulations shall contain provisions whereby the local board of trustees may, at their option, become the prime fiscal agent and contract with noncommercial FCC licensed stations and other nonprofit originating video communication systems in order to permit development of instructional television programs specifically designed to enhance the local district's instructional program.

(b) The annual cost of such television service programs of the district shall be borne by the state but shall not exceed \$1.50 per pupil determined on the Average Daily Attendance (ADA) of the district for the preceding school year.

(c) The state's cost shall be paid from the foundation school fund, and this cost shall be considered by the Foundation School Fund Budget Committee in estimating the funds needed for foundation school program purposes.

(d) The commissioner of education shall appoint an advisory committee to make recommendations regarding governance, planned needs, criteria for establishing eligibility, and a process for program and fiscal accountability under this section. This advisory committee shall include representation

from each instructional FCC licensed television broadcasting service and representation of educational consumers.

(e) Combined expenditures under this section for each year may not exceed \$1,625,000.

[Renumbered from § 21.911 and amended by Acts 1977, 65th Leg., 1st C.S., p. 45, ch. 1, § 29, eff. Sept. 1, 1977.]

CHAPTER 22. COMMON SCHOOL DISTRICTS

§ 22.11. Taxation

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

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

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

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

CHAPTER 23. INDEPENDENT SCHOOL DISTRICTS

SUBCHAPTER A. BOARD OF TRUSTEES

Section

23.023. Districts With 66,000 or More Scholastics [NEW].

§ 23.023. Districts With 66,000 or More Scholastics

(a) Any independent school district, whether created by special or general law, with 66,000 or more students in average daily attendance for the 1975-1976 school year or thereafter shall be under the management and control of a board of nine trustees elected in accordance with the provisions of this section.

(b) At all elections held after December 31, 1977, seven members of the board of trustees shall be elected by the qualified voters of single-member districts and two members, who shall be the president and vice-president of the board, shall be elected at large.

(c) At least 120 days before the school board election to be held in April, 1978, the board shall divide the school district into seven trustee districts which are compact, contiguous, and contain as nearly as practicable an equal population according to the last preceding federal decennial census.

(d) Except as provided for the initial election under single-member districts, a candidate seeking to represent a trustee district must reside in the district he seeks to represent, and vacates his office if

he ceases to reside in that district. A candidate for president or vice-president may seek election to only one position and shall be designated on the official ballot according to the position for which he seeks election. A candidate for president or vice-president must reside in the school district, and vacates his office if he ceases to reside in the district.

(e) The candidate receiving a majority of the votes cast in each position is elected. If no candidate receives a majority of the votes cast for that position, the board shall order a runoff to be held on the third Saturday in April immediately following the first election, and only the names of the two candidates receiving the highest number of votes in the first election shall be listed on the ballot. The candidate receiving the majority of the votes cast in the runoff election is elected.

(f) A member of the board may resign his position to seek election to the office of president or vice-president.

(g) At least 120 days before an election to be held in the second year following the calendar year in which the federal decennial census is taken, the board shall redivide the district into seven trustee districts if the census data indicate that the population of the most populous district exceeds the population of the least populous district by more than 10 percent.

(h) In districts with seven board members on January 1, 1978, members of the board serving on that date shall serve for the remainder of their terms, except those choosing to resign. At the election held in April, 1978, four members shall be elected—the president, vice-president, and two regular members. The president and vice-president then elected shall serve for a term of two years. The other two members then elected shall draw lots so that one will serve for a term of two years, and one will serve for a term of four years. The five members of the board holding the offices for which there was no election shall draw lots to determine which trustee district they will represent during the remainder of their terms. Thereafter, all members shall be elected to staggered terms of four years.

(i) A school district having 66,000 or more students in average daily attendance for the 1975-1976 school year or thereafter which has previously adopted single-member district representation may continue to operate under that plan.

(j) This section does not apply to a district with 66,000 or more students in average daily attendance for the 1975-1976 school year or thereafter all or part of which is located in a city with a population of between 600,000 and 700,000 according to the 1970 federal census.

(k) A school district with less than 66,000 students in average daily attendance for the 1975-1976 school year that later becomes subject to this section

shall begin electing trustees from single-member districts in accordance with this section no later than the first regular election following the next calendar year in which the federal census is taken. A school district subject to this section whose average daily attendance drops below 66,000 students shall continue to be governed by this section.

[Added by Acts 1977, 65th Leg., p. 2134, ch. 852, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 Act provides:

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

Section 3 of the 1977 Act, the emergency clause, provides in part: "The legislature finds:

"(1) that in the school districts with the largest number of students, the at-large election of all members of the board of trustees increases the number of constituents represented by each trustee and hinders communication between the trustee and the constituents, and therefore makes the representation of those constituents less effective;

"(2) that in the school districts with the largest number of students, the at-large election of all members of the board of trustees may work to dilute the voting power of identifiable ethnic groups;

"(3) that in structuring solutions to the dilution of ethnic group voting power, the federal courts have decided that preference should be given to some form of single-member district representation; and

"(4) that the need for increasing the effectiveness of political representation, preserving the voting power of all ethnic groups, complying with the preference for single-member district representation, and assuring the participation of all people in the political process creates an emergency."

SUBCHAPTER G. INCENTIVE AID PAYMENTS

§ 23.994. Use Restricted

The incentive aid payments shall be used exclusively to retire the existing bonded indebtedness of the school districts which have been consolidated, shall be applied to the cost of constructing new buildings required by the reorganized district, or shall be used for renovation or improvement of existing buildings in the reorganized district.

[Amended by Acts 1977, 65th Leg., 1st C.S., p. 46, ch. 1, § 31, eff. Sept. 1, 1977.]

CHAPTER 25. RURAL HIGH SCHOOL DISTRICTS

§ 25.07. Assessment and Collection of Taxes

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

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

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

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

(3) The county tax assessor-collector shall collect the taxes and shall deposit the funds so collected in the county depository to the credit of the rural high school district, and he shall be compensated at the rate of one-half of one percent for his services for collecting the taxes.

(c) If a rural high school district has an assessed valuation in excess of \$4,000,000 or an average daily attendance of more than 550 students during the preceding year, the board of trustees of the rural high school district may, by majority vote, appoint a collector of taxes for the district who shall perform the duties ordinarily required of a county tax collector who collects taxes for a common school district. He shall receive compensation for his services as the trustees of the district may allow. He shall give bond to be executed by a surety company authorized to do business in the State of Texas, in an amount sufficient adequately to protect the funds of the school district in the hands of the collector. In no event shall the bond be less than twice the largest amount collected at any one time in the preceding fiscal or calendar year, or \$50,000, whichever is smaller, to be determined by the governing body in such school district. The bond shall be payable to and approved by the president of the board of trustees and conditioned that he will faithfully discharge his duties and will pay over to the depository for the rural high school district all funds coming into his hands by virtue of his office. Any premium on the bond shall be payable out of funds of the district.

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

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

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

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

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

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

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

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

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

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

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

CHAPTER 26. REHABILITATION DISTRICTS FOR HANDICAPPED PERSONS

SUBCHAPTER A. GENERAL PROVISIONS

§ 26.01. Definitions

As used in this chapter:

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

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

(3) "Nonhandicapped scholastic" means a scholastic who is eligible for public school education under state law and who is not officially labeled as being handicapped.

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

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

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

SUBCHAPTER B. CREATION OF DISTRICT

§ 26.11. Purpose

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

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

SUBCHAPTER D. POWERS AND DUTIES

§ 26.65. Administrative and Instructional Personnel

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

(b) The basis for establishing, operating, and the formula to be used for determining allocation of said administrative units, instructional units, exceptional

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

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

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

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

§ 26.71. Employment of Trainees

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

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

CHAPTER 30. REHABILITATION OF HANDICAPPED AND DISABLED

SUBCHAPTER B. TEXAS REHABILITATION COMMISSION—CREATION; ADMINISTRATIVE PROVISIONS

Section

30.111. Application of Sunset Act [NEW].

SUBCHAPTER E. RESIDENTIAL CARE FACILITIES [NEW]

30.81. Purpose.

30.82. Definitions.

30.83. Allocation.

SUBCHAPTER B. TEXAS REHABILITATION COMMISSION—CREATION; ADMINISTRATIVE PROVISIONS

§ 30.111. Application of Sunset Act

The Texas Rehabilitation Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this chapter expires effective September 1, 1985.

[Added by Acts 1977, 65th Leg., p. 1848, ch. 735, § 2.116, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

SUBCHAPTER E. RESIDENTIAL CARE FACILITIES [NEW]

§ 30.81. Purpose

The purpose of this subchapter is to provide the necessary means to extend the per capita allocation from the state available fund to wards of the Texas Youth Council residing in state residential facilities for delinquent or dependent and neglected children and to those handicapped persons residing in state residential facilities for the mentally retarded under the control and direction of the Texas Department of Mental Health and Mental Retardation, and for the purpose of providing such state available funds for educational purposes, the educational programs in state residential care facilities for delinquent, dependent or neglected children, and the mentally retarded shall be deemed to be educational services provided by public free schools.

[Added by Acts 1977, 65th Leg., p. 1962, ch. 782, § 2, eff. June 16, 1977.]

§ 30.82. Definitions

In this subchapter "mentally retarded" means that condition in which a person is described as having significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior.

[Added by Acts 1977, 65th Leg., p. 1962, ch. 782, § 2, eff. June 16, 1977.]

§ 30.83. Allocation

(a) Each residential care facility for delinquent or dependent and neglected children under the control and direction of the Texas Youth Council or residential care facility for the mentally retarded under the control and direction of the Texas Department of Mental Health and Mental Retardation shall be entitled to receive the state available per capita allocation based on the facility's average daily attendance in educational programs, of students ages three through 21.

(b) Personnel authorized under the Foundation School Program employed in the state facilities pursuant to this section shall receive as a minimum salary the monthly salary rate specified in Chapter 16 of the Texas Education Code, as amended; provided, however, such personnel may be paid, from funds appropriated to the respective state facilities for delinquent or dependent and neglected children or the mentally retarded, salary rates in excess of the minimum amounts specified in Chapter 16 of the Texas Education Code, as amended, but such salary rates shall never exceed the rates of pay for like positions in the public schools of the adjacent school district or districts.

[Added by Acts 1977, 65th Leg., p. 1963, ch. 782, § 2, eff. June 16, 1977.]

CHAPTER 31. TECHNICAL-VOCATIONAL EDUCATION ACT OF 1969

SUBCHAPTER A. GENERAL PROVISIONS

§ 31.02. Purpose

The purpose of this chapter is to provide the necessary legal basis to establish a state educational system which will develop trained personnel in the area of technical and vocational skills, and to accommodate the social and economic needs of the people of the State of Texas. Further, it is the purpose of this chapter to comply in all respects with the Vocational Education Act of 1963, as amended,¹ and related state and federal acts, including those advisory functions therein specified. It is further the purpose of this chapter to establish as a part of the total educational system of the State of Texas, one council responsible for the development of a program to train manpower, through education, to further industrial and economic development in the State of Texas.

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

¹ See 20 U.S.C.A. § 1241 et seq.

§ 31.03. Definitions

In this chapter:

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

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

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

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

SUBCHAPTER B. ADVISORY COUNCIL—CREATION; ADMINISTRATIVE PROVISIONS

§ 31.12. Membership

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

(b) The membership will be constituted as follows:

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

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

(3) one member representing state industrial and economic development agencies;

(4) one member representing community or junior colleges;

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

(6) one member representing and familiar with public programs of vocational education in comprehensive secondary schools;

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

(8) one member who is currently serving as superintendent or other administrator of a local educational agency;

(9) one member who is currently serving on a local school board;

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

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

(12) one member representing the State Manpower Services Council established pursuant to Section 107 of the Comprehensive Employment and Training Act of 1973;¹

(13) one member representing school systems with large concentrations of persons who have special academic, social, economic, and cultural needs and of persons who have limited English-speaking ability;

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

(15) one member representative of and knowledgeable about the poor and disadvantaged;

(16) one member representing and familiar with the vocational needs and problems of agriculture in the state;

(17) one member representing the general public;

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

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

(20) one member representing and familiar with vocational guidance and counseling services;

(21) one member representing and familiar with nonprofit private schools;

(22) one member representing state correctional institutions;

(23) one member who is a vocational education teacher presently teaching in a local educational agency; and

(24) one member who is a woman with a background and experience in employment and training programs, and who is knowledgeable with respect to the special experiences and problems of sex discrimination in job training and

employment, of sex stereotyping in vocational education, and of discrimination in job training and employment against women who are members of minority groups.

[Amended by Acts 1975, 64th Leg., p. 2160, ch. 694, § 3, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 336, ch. 165, § 1, eff. Aug. 29, 1977.]

¹ 29 U.S.C.A. § 817.

Sections 6 and 7 of the 1975 amendatory act provided:

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

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

§ 31.13. Terms

Except for the initial appointees, members of the council hold office for staggered terms of three years. Initial appointment of the council shall be made on or immediately following September 1, 1977. Eight appointments will be made for the term which shall expire August 31, 1978; eight appointments will be made for the term which will expire August 31, 1979; and eight appointments will be made for the term which shall expire August 31, 1980, or at the time their successors are appointed and qualified.

[Amended by Acts 1977, 65th Leg., p. 337, ch. 165, § 2, eff. Aug. 29, 1977.]

SUBCHAPTER C. POWERS AND DUTIES

§ 31.33. Duties

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

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

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

(3) recommend a state plan designating the method and the criteria to be utilized in establishing area technical schools which will be consistent with the Vocational Educational Act of 1963, as amended,¹ the Manpower Development and Training Act of 1962, as amended,² and other federal statutes;

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

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

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

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

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

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

(10) identify, after consultation with the State Manpower Services Council, the vocational education and employment and training needs of the state and assess the extent to which vocational education, employment training, vocational rehabilitation, and other programs represent a consistent, integrated, and coordinated approach to meeting such needs;

(11) comment, at least once annually, on the reports of the State Manpower Services Council, which comments shall be included in the annual report submitted by the state advisory council;

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

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

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

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

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

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

[Amended by Acts 1975, 64th Leg., p. 2161, ch. 694, § 4, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2379, ch. 734, § 4, eff. June 21, 1975; Acts 1977, 65th Leg., p. 338, ch. 165, § 3, eff. Aug. 29, 1977.]

¹ See 20 U.S.C.A. § 1241 et seq.

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

§ 31.34. **Studies; Reports**

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

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

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

§ 31.39. **Status of Recommendations**

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

(d) Each state board, commission, council, or agency which develops policy or administers programs of vocational, technical, or adult education or manpower training shall receive the reports and recommendations of the advisory council and shall respond in accordance with procedures outlined in this section.

[Amended by Acts 1975, 64th Leg., p. 2162, ch. 694, § 5, eff. Sept. 1, 1975.]

§ 31.40. **Allocation of State and Federal Funds**

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

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

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

¹ See 20 U.S.C.A. § 1241 et seq.

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

CHAPTER 32. TEXAS PROPRIETARY SCHOOL ACT

SUBCHAPTER B. GENERAL PROVISIONS

§ 32.12. **Exemptions**

(a) The following schools or educational institutions are specifically exempt from the provisions of this chapter and are not within the definition of "proprietary school."

[See *Compact Edition, Volume 1 for text of (a)(1) to (8)*]

(9) a school which offers intensive review courses designed to prepare students for certified public accountancy tests, public accountancy tests, law school aptitude tests, bar examinations, or medical college admissions tests.

[See *Compact Edition, Volume 1 for text of (b)*]
[Amended by Acts 1977, 65th Leg., p. 1075, ch. 392, § 1, eff. Aug. 29, 1977.]

CHAPTER 33. APPRENTICESHIP SYSTEM OF ADULT VOCATIONAL EDUCATION [NEW]

Section

- 33.01. Definitions.
- 33.02. General Provisions Relating to Apprenticeship Training Programs.
- 33.03. Duties of Apprenticeship Committee.
- 33.04. Notice of Available Funds.

- 33.05. Apprenticeship and Training Advisory Committee.
- 33.06. Duties of Apprenticeship and Training Advisory Committee.
- 33.07. Audit Procedures.
- 33.08. Appropriation and Distribution of Funds.
- 33.09. Rules.
- 33.10. Status of Recommendations.
- 33.11. Applicability.

§ 33.01. Definitions

In this chapter:

(1) "Apprenticeship training program" means a training program that provides on-the-job training, preparatory instruction, supplementary instruction, or related instruction in a trade that has been certified as an apprenticeship occupation by the Bureau of Apprenticeship Training of the United States Department of Labor.

(2) "Preparatory instruction" means a course of instruction lasting six months or less that teaches the basic skills required for an individual to comply with the terms of his or her apprenticeship agreement as required by Section 33.02(d) of this code.

(3) "Supplementary instruction" means a course of instruction for persons employed as journeymen craftsmen in apprenticeship trades that is designed to provide new skills or upgrade current skills.

(4) "Related instruction" means organized, off-the-job instruction in theoretical or technical subjects required for the completion of an apprenticeship program for a particular apprenticeship trade.

(5) "Advisory committee" means the Apprenticeship and Training Advisory Committee to the State Board of Vocational Education.

(6) "BAT" means the Bureau of Apprenticeship Training of the United States Department of Labor.

(7) "CEA" means the Central Education Agency.

[Added by Acts 1977, 65th Leg., p. 621, ch. 230, § 1, eff. Aug. 29, 1977.]

§ 33.02. General Provisions Relating to Apprenticeship Training Programs

(a) Pursuant to the provisions of this chapter, the commissioner of education may allocate state funds for the support of apprenticeship training programs that meet the criteria set forth in this chapter.

(b) A program must be sponsored by a public school district or a state postsecondary institution pursuant to a contract between the district or institution and an apprenticeship committee.

(c) A program must be under the direction of an apprenticeship committee whose members are appointed by one or more employers of apprentices, one or more bargaining agents representing mem-

bers of an apprenticeship trade, or a combination of the above, and the committee shall perform the duties set forth in Section 33.03 of this code. If an apprenticeship committee is composed of representatives of one or more employers and one or more bargaining agents, the number of committee members designated by the employer or employers shall be equal to the number of committee members designated by the bargaining agent or agents.

(d) Each apprentice participating in a program must be given a written apprenticeship agreement by the apprenticeship committee stating the standards and conditions of his employment and training. The standards must conform substantially with the standards of apprenticeship for the particular trade which have been adopted by BAT.

(e) An apprentice may not be charged tuition or fees by a public school district or state postsecondary institution other than an administrative fee to cover the costs of processing his records which shall not exceed \$5 for each course in which the apprentice is enrolled.

(f) Funding for a program, in addition to any other money available, shall be provided by the apprenticeship committee pursuant to the terms of the contract referred to in Subsection (b) of this section.

(g) Pursuant to the terms of the contract referred to in Subsection (b) of this section, adequate facilities, personnel, and resources to effectively administer the apprenticeship training program in a manner consistent with the public's need for skilled craftsmen and the apprentices' need for marketable skills in apprenticeship occupations must be provided.

(h) A program must be registered with the BAT and approved by the State Board of Vocational Education or the Coordinating Board, Texas College and University System.

[Added by Acts 1977, 65th Leg., p. 622, ch. 230, § 1, eff. Aug. 29, 1977.]

§ 33.03. Duties of Apprenticeship Committee

The apprenticeship committee for each apprenticeship training program shall:

(1) establish standards and goals for preparatory instruction, supplementary instruction, and related instruction for apprentices in the program;

(2) establish rules governing the on-the-job training and other instruction for apprentices in the program;

(3) plan and organize instructional materials designed to provide technical and theoretical knowledge and basic skills required by apprentices in the program;

(4) recommend qualified instructors for the program;

(5) monitor and evaluate the performance and progress of each apprentice in the program and the program as a whole;

(6) interview applicants and select those most qualified for entrance into the program;

(7) provide for the keeping of records of the on-the-job training and progress of each apprentice;

(8) encourage instructors to maintain recommended qualifications; and

(9) perform any other duties which, in the opinion of the apprenticeship committee, promote the goals of individual apprentices and of the program as a whole.

[Added by Acts 1977, 65th Leg., p. 622, ch. 230, § 1, eff. Aug. 29, 1977.]

§ 33.04. Notice of Available Funds

In order to insure that all citizens of Texas have an equal opportunity to benefit from apprenticeship training programs, the State Board of Vocational Education shall provide for statewide publication in a manner recommended by the advisory committee and intended to give actual notice to all potential program sponsors of the amount of funds that will be available to support apprenticeship training programs during the current and following fiscal years, the qualifications required of program sponsors and apprenticeship committees, and the procedures to be followed in applying for state funds. The notice may also include other information recommended by the advisory committee and approved by the State Board of Vocational Education. Notwithstanding the foregoing, the State Board of Vocational Education shall publish any information concerning available funds given to a particular program sponsor in a manner recommended by the advisory committee and intended to give actual notice to all potential program sponsors statewide.

[Added by Acts 1977, 65th Leg., p. 623, ch. 230, § 1, eff. Aug. 29, 1977.]

§ 33.05. Apprenticeship and Training Advisory Committee

(a) The State Board of Vocational Education shall appoint an Apprenticeship and Training Advisory Committee composed of members with the following qualifications:

- (1) five persons representing employers of members of apprenticeable trades;
- (2) five persons representing bargaining agents for members of apprenticeable trades;
- (3) five persons employed as training directors of program administrators by apprenticeship committees;
- (4) five persons employed by public schools or state postsecondary institutions who teach or

immediately supervise preparatory instruction, supplementary instruction, or related instruction courses.

(b) Members of the advisory committee shall serve terms of four years, except that the state board shall designate two members from each of the groups referred to in Subdivisions (1), (2), (3), and (4) of Subsection (a) of this section to serve an initial term of two years. Thereafter all members shall serve four-year terms.

(c) Vacancies shall be filled for the unexpired portion of a term vacated.

(d) Nonvoting members of the advisory committee shall include the following:

(1) one person designated by and representing the State Board of Vocational Education;

(2) one person designated by and representing the Advisory Council for Technical Vocational Education;

(3) one person designated by and representing the Coordinating Board, Texas College and University System;

(4) one person designated by and representing BAT;

(5) one person designated by and representing the Teachers Training Division of the Texas A&M University Engineering Extension Service; and

(6) one person representing the general public who is familiar with the goals and needs of technical vocational education in Texas, and who is not otherwise eligible for service on the advisory committee.

(e) The member representing the general public shall be appointed by the State Board of Vocational Education for a term of four years. All other nonvoting members of the advisory committee shall serve at the pleasure of the agency or institution each respective member represents.

[Added by Acts 1977, 65th Leg., p. 623, ch. 230, § 1, eff. Aug. 29, 1977.]

§ 33.06. Duties of Apprenticeship and Training Advisory Committee

(a) The advisory committee shall recommend and evaluate a statewide plan for the development of a comprehensive program of apprenticeship training which shall include but not be limited to the following:

(1) formulas and administrative procedures to be used in requesting appropriations of state funds for apprenticeship training;

(2) forms, formulas, and administrative procedures to be used in distributing available funds to apprenticeship training programs, with the formulas based on data contained in the biennial update to the Apprenticeship Related Instruc-

tion Cost Study required by Section 33.08 of this code, and the formulas shall be uniform in application to all program sponsors; and

(3) the content and method of the public notice required by this chapter.

(b) The CEA shall furnish the advisory committee with the current data necessary to determine these formulas. All state boards and agencies shall cooperate with the advisory committee and shall furnish information and material on request.

[Added by Acts 1977, 65th Leg., p. 624, ch. 230, § 1, eff. Aug. 29, 1977.]

§ 33.07. Audit Procedures

(a) The CEA shall maintain a clear audit trail of all funds appropriated for the apprenticeship system of adult vocational education. For each course that is funded, the audit trail in the CEA shall include the following records:

(1) the name of the sponsoring public school district or state postsecondary institution;

(2) the name of the instructor;

(3) the number of students enrolled;

(4) the place and schedule of class meetings; and

(5) certification by the BAT for preparatory and related instruction courses that the students enrolled were registered apprentices.

(b) Public school districts or state postsecondary institutions receiving funds shall maintain a clear audit trail which shall include records of receipts for all expenditures relating solely to each particular course. Where an expense is shared by two or more courses, the allocation to that expense from the funds for a particular course shall be supported by a formula based on the comparative benefit derived by each course from the expense. No charges for the depreciation of facilities or the retirement of indebtedness shall be allocated to an apprenticeship course.

(c) Funds appropriated for the apprenticeship system of adult vocational education shall not be commingled with funds appropriated for other purposes.

(d) The State Comptroller of Public Accounts shall perform an annual audit of all state funds appropriated or received pursuant to this chapter.

(e) All records, receipts, working papers, and other components of the audit trail shall be public records.

[Added by Acts 1977, 65th Leg., p. 624, ch. 230, § 1, eff. Aug. 29, 1977.]

§ 33.08. Appropriation and Distribution of Funds

(a) On recommendation of the advisory committee the State Board of Vocational Education shall adopt formulas and administrative procedures to be used in requesting appropriations of state funds as a budgetary line item for the Apprenticeship System of Adult Vocational Education.

(b) The CEA shall prepare an update to the Apprenticeship Related Instruction Cost Study adopted by the State Board of Education on February 10, 1973, prior to each biennial session of the legislature.

(c) On recommendation of the advisory committee the State Board of Vocational Education shall adopt forms, formulas, and administrative procedures for the distribution of available funds to apprenticeship training programs. Distribution formulas must be uniform in application to all local program sponsors.

(d) On recommendation of the advisory committee the State Board of Vocational Education shall reserve until December 1 of each year a percentage of the funds appropriated under the line item described in this section to be used solely for apprenticeship-related instruction programs. This percentage shall be established by the formulas required by this section. Reserved funds that are not obligated on December 1 may be used for preparatory and supplementary instruction programs as well as related instruction programs.

(e) No funds shall be distributed to a public school district or state postsecondary institution until the district or institution has filed all reports required by this chapter and by the State Board of Vocational Education.

[Added by Acts 1977, 65th Leg., p. 625, ch. 230, § 1, eff. Aug. 29, 1977.]

§ 33.09. Rules

The State Board of Vocational Education shall promulgate rules necessary to implement the provisions of this chapter.

[Added by Acts 1977, 65th Leg., p. 625, ch. 230, § 1, eff. Aug. 29, 1977.]

§ 33.10. Status of Recommendations

(a) Recommendations of the advisory committee submitted to the State Board of Vocational Education must be acted on, and either accepted or rejected.

(b) A recommendation which is rejected must be returned immediately to the advisory committee, accompanied by written notice of the reasons for rejecting the recommendation.

[Added by Acts 1977, 65th Leg., p. 625, ch. 230, § 1, eff. Aug. 29, 1977.]

§ 33.11. Applicability

The provisions of this chapter apply only to those apprenticeship training programs which receive state funds pursuant to the provisions of Section 33.02 of this chapter.

[Added by Acts 1977, 65th Leg., p. 625, ch. 230, § 1, eff. Aug. 29, 1977.]

TITLE 3. HIGHER EDUCATION

SUBTITLE A. HIGHER EDUCATION IN GENERAL

CHAPTER 51. PROVISIONS GENERALLY APPLICABLE TO HIGHER EDUCATION

SUBCHAPTER E. PROTECTION OF BUILDINGS AND GROUNDS

Section

51.213. Abandoned Personal Property [NEW].

SUBCHAPTER H. GUIDELINES FOR ACADEMIC WORKLOADS [NEW]

- 51.401. Purpose.
- 51.402. Report of Institutional and Academic Duties.
- 51.403. Reports of Student Enrollment.
- 51.404. Submission of Reports.
- 51.405. Reporting of Noncompliance.

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

- 51.906. Sequential Education Planning for Nursing Education [NEW].
- 51.907. Competitive Bidding on Contracts [NEW].

SUBCHAPTER A. CONTROL OF FUNDS BY CERTAIN INSTITUTIONS

§ 51.001. Institutions to which Applicable

Subject to Section 51.008 of this code, the provisions of this subchapter apply to:

- (1) each institution and branch of The University of Texas System;
- (2) each institution, agency, and service of The Texas A & M University System;
- (3) Texas A & I University;
- (4) Texas Tech University;
- (5) East Texas State University;
- (6) North Texas State University;
- (7) Sam Houston State University;
- (8) Stephen F. Austin State University;
- (9) Southwest Texas State University;
- (10) Sul Ross State University;
- (11) West Texas State University;
- (12) Texas Eastern University; and
- (13) each public junior college to the extent possible.

[Amended by Acts 1975, 64th Leg., p. 813, ch. 317, § 2, eff. Sept. 1, 1975.]

§ 51.005. Reports

(a) True and full accounts shall be kept by the governing board and by the employees of the institution of all funds collected from all sources and of all sums paid out and the persons to whom and the

purposes for which the sums are paid. The governing board shall annually, between September 1 and January 1, print a complete report of all the sums collected, all expenditures, and all sums remaining on hand. The report shall show the true condition of all funds as of the August 31 preceding as well as the collections and expenditures for the preceding year.

(b) The governing board shall furnish one copy of the report each to the governor, comptroller of public accounts, state auditor, Coordinating Board, Texas College and University System, Legislative Budget Board, each member of the House Appropriations Committee, and Legislative Reference Library. The governing board shall retain five copies of the report for distribution to legislators or other state officials on request.

[Amended by Acts 1975, 64th Leg., p. 568, ch. 227, § 1, eff. May 20, 1975; Acts 1977, 65th Leg., p. 1187, ch. 455, § 1, eff. Aug. 29, 1977.]

SUBCHAPTER B. GENERAL PROPERTY DEPOSITS: INVESTMENTS AND USES

§ 51.052. Student Deposit Fund; Composition and Uses

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

(b) The student deposit fund shall be used, at the discretion of the board, for any of the following purposes: making scholarship awards to needy and deserving students, the support of a general student union program, or for the establishment of an institutional loan program for students. Loans made under this subsection shall bear a nominal interest rate, be secured by a promissory note from the student to the loan fund, require no collateral, and be of a duration not more than 12 months. A student obtaining a loan under this subsection may have no more than two such loans outstanding at any time. The board shall administer the scholarship awards for the institution, including the selection of recipients and the amounts and conditions of the awards. The recipients of the scholarships must be residents of the state as defined for tuition purposes. Any use of the funds for the support of student union programs shall be approved as to amount and purpose by the board. The student deposit funds for The University of Texas at Austin, Texas A&M University, and Texas Tech University shall be available for scholarship purposes only. Direct expenses for the administration of the funds shall be paid from the funds.

[Amended by Acts 1977, 65th Leg., p. 1691, ch. 670, § 1, eff. Aug. 29, 1977.]

SUBCHAPTER D. INFORMATION
NETWORK ASSOCIATIONS

§ 51.153. **Western Information Network Association**

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

(e) The Western Information Network Association is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the association is abolished effective September 1, 1989. [Amended by Acts 1977, 65th Leg., p. 1854, ch. 735, § 2.157, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

§ 51.168. **Creation of Additional Associations**

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

(d) An information network association created under this section is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the association is abolished effective September 1, 1989.

[Amended by Acts 1977, 65th Leg., p. 1854, ch. 735, § 2.158, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

SUBCHAPTER E. PROTECTION OF
BUILDINGS AND GROUNDS

§ 51.213. **Abandoned Personal Property**

The governing board of each state institution of higher education, including public junior colleges, is authorized to promulgate rules and regulations providing for the disposition of abandoned and unclaimed personal property coming into the possession of the campus security personnel where the personal property is not being held as evidence to be used in any pending criminal case.

[Added by Acts 1977, 65th Leg., p. 1712, ch. 680, § 1, eff. Aug. 29, 1977.]

SUBCHAPTER H. GUIDELINES FOR ACADEMIC
WORKLOADS [NEW]

§ 51.401. **Purpose**

It is the intent of the legislature that all public higher education institutions of this state shall manage their institutions and institutional resources to achieve maximum effectiveness and to provide the greatest attainable educational benefit from the expenditure of public funds.

[Added by Acts 1977, 65th Leg., p. 1478, ch. 601, § 1, eff. Aug. 29, 1977.]

§ 51.402. **Report of Institutional and Academic Duties**

(a) The Coordinating Board, Texas College and University System, in cooperation with governing boards, institutional officials, and faculty representatives of general academic institutions of higher education, shall develop and recommend general policies and standard reports for academic faculty workloads and services.

(b) The governing board of each institution of higher education in the state shall adopt rules and regulations concerning faculty academic workloads. The established rules and regulations of each institution shall be reported to the coordinating board and included in the operating budgets of each institution.

(c) Within 30 days of the end of each academic year, the institution shall file with its governing board a report, by department, of the academic duties and services performed by each member of the faculty during the nine-month academic year, showing evidence of compliance with requirements established by the governing board. The report of academic duties and services performed by each member of the faculty shall indicate all appointments held by the faculty member in the employing institution, the salary paid to each appointment, the percent of time of each appointment, and the source of funds from which salary payments were made. Teaching responsibilities in each workload standard shall be in proportion to the portion of salary paid from funds appropriated for instructional purposes.

(d) The institutional head of each higher education institution shall designate the officer of his staff who will monitor workloads, prepare and review appropriate workload reports, and submit the reports to the institutional head for his certification or approval and comments as may be appropriate. [Added by Acts 1977, 65th Leg., p. 1478, ch. 601, § 1, eff. Aug. 29, 1977.]

§ 51.403. **Reports of Student Enrollment**

(a) All higher education institutions of this state shall offer only such courses and teach such classes as are economically justified in the considered judgment of the appropriate governing board.

(b) The chief executive officer of each institution shall provide its governing board a report for each fall and spring semester indicating for each instructor the number of students enrolled in each class, the number of semester-credit hours accrued to each course, the course number and title, the department in which the course is offered, and the identity and academic rank of the instructor.

(c) At the close of each fall and spring semester, the chief executive officer of each institution shall provide the appropriate governing board with a semester report comparing student enrollments in each class on the last day with enrollments as set out in Section 51.403(b) of this code.

(d) Each institution shall file with its governing board and the coordinating board a small class report, excluding individual instruction courses, indicating department, course number, title of course, and the name of the instructor. "Small classes," for the purpose of this report, are undergraduate-level courses with less than 10 registrations, and graduate-level courses with less than 5 registrations. No small classes shall be offered in any institution except as authorized by the appropriate governing board. A small class of the same course may not be offered in consecutive semesters or summer terms. No small classes shall be offered in any subject if another class section of the same course is being offered.

[Added by Acts 1977, 65th Leg., p. 1479, ch. 601, § 1, eff. Aug. 29, 1977.]

§ 51.404. Submission of Reports

Each institution shall submit all reports required by this subchapter to the coordinating board. The coordinating board shall furnish such summaries of these reports as the governor's budget office and legislative budget board may request, including an analysis of compliance by each institution of higher education with its adopted rules and regulations as filed with the coordinating board in compliance with Section 51.402(b) of this code. All such reports shall be public information.

[Added by Acts 1977, 65th Leg., p. 1479, ch. 601, § 1, eff. Aug. 29, 1977.]

§ 51.405. Reporting of Noncompliance

Should any institution of higher education fail to comply with its adopted rules and regulations as determined by the coordinating board in Section 51.404 of this code, the coordinating board shall inform the governor's budget office, the legislative budget board, and the chairmen of the house and senate appropriations committees.

[Added by Acts 1977, 65th Leg., p. 1479, ch. 601, § 1, eff. Aug. 29, 1977.]

SUBCHAPTER Z. MISCELLANEOUS PROVISIONS

§ 51.905. State-Owned Museum Buildings

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

(b) Repealed by Acts 1975, 64th Leg., p. 1251, ch. 474, § 1, eff. Sept. 1, 1975.

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

[Amended by Acts 1975, 64th Leg., p. 1251, ch. 474, § 1, eff. Sept. 1, 1975.]

§ 51.906. Sequential Education Planning for Nursing Education

The governing board of each state-supported institution of higher education which provides a nursing

education program shall plan and incorporate into the program standards and sequential procedures which will recognize and grant credit for actual educational and clinical experiences in the nursing field which are equivalent to regular course content. The board may require students to pass examinations demonstrating competence based on educational and clinical experiences before granting academic credit.

[Added by Acts 1975, 64th Leg., p. 1912, ch. 615, § 1, eff. Sept. 1, 1975.]

§ 51.907. Competitive Bidding on Contracts

All contracts for the construction or erection of permanent improvements at an institution of higher education as defined in Section 61.003 of this code are void unless made after advertising for bids thereon in a manner prescribed by its governing board, receiving sealed competitive bids, and awarding of the contract to the lowest responsible bidder by the governing body. If a contract is to be recommended for award to other than the lowest bidder, any bidder making a lower bid than the recommended bid shall be notified of the recommendation for award and shall be allowed an opportunity prior to the award to present evidence to the board or its designated representative as to the responsibility of that bidder.

[Added by Acts 1977, 65th Leg., p. 562, ch. 197, § 1, eff. May 20, 1977.]

CHAPTER 52. STUDENT LOAN PROGRAM

SUBCHAPTER C. STUDENT LOANS

Section

52.40. Cancellation of Certain Loan Repayments [NEW].

SUBCHAPTER C. STUDENT LOANS

§ 52.40. Cancellation of Certain Loan Repayments

(a) The board may cancel the repayment of a loan received by a student who earns a professional doctor of medicine degree or a doctorate of psychology degree and who is employed by the Texas Youth Council, State Department of Public Welfare, Texas Department of Corrections, or Department of Mental Health and Mental Retardation prior to the date on which repayment of the loan is to commence.

(b) A person who wishes to apply for a loan cancellation shall enter into a contract with the board which contains the following provisions:

(1) No payment is due from the person as long as he is employed by one of the designated state agencies.

(2) Half of the total amount of the loan plus interest due is to be cancelled after two years of service with a designated state agency, and the remainder is to be cancelled after two additional years of service.

(3) Repayment of the loan and interest is to commence immediately if the person leaves the designated state agency before the expiration of two years; repayment of one-half of the loan and interest is to commence immediately if the person leaves the designated state agency after completing two years service; upon completion of four years service, the loan, principal and interest, shall be fully cancelled.

(4) Interest continues to accrue until the loan is cancelled or repaid.

(c) The legislature shall appropriate to the Texas Opportunity Plan Fund an amount equal to the loans and interest cancelled pursuant to the provisions of this section.

(d) The board shall publicize the availability of the loan cancellation procedures provided in this section at all institutions of higher education which offer graduate programs in medicine or psychology.

[Added by Acts 1975, 64th Leg., p. 1344, ch. 503, § 1, eff. Sept. 1, 1975.]

[Sections 52.41 to 52.50 reserved for expansion]

CHAPTER 53. HIGHER EDUCATION AUTHORITIES

SUBCHAPTER C. POWERS AND DUTIES

Section

53.47. Bonds for the Purchase of Student Loan Notes [NEW].

SUBCHAPTER C. POWERS AND DUTIES

§ 53.47. Bonds for the Purchase of Student Loan Notes

(a) An authority heretofore created may, upon approval of the city or cities which created the same, issue revenue bonds to obtain funds to purchase student loan notes which are guaranteed under the provisions of the Higher Education Act of 1965 (Public Law 89-329).¹ Revenue bonds issued for such purpose shall be issued in accordance with and with the effect provided in this chapter, except Section 53.36 shall not apply, as said chapter has been modified by Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 717k-2, Vernon's Texas Civil Statutes), and by

Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-3, Vernon's Texas Civil Statutes). Such bonds shall be payable from and secured by a pledge of revenues derived from or by reason of the ownership of student loan notes and investment income after deduction of such expenses or operating the loan program as may be specified by the bond resolution or trust indenture.

(b) The authority, acting through a bank with trust powers, may cause bond proceeds to be expended to purchase for its account student loan notes executed by students who (1) are residents of this state or (2) who have been admitted to attend an accredited institution within this state. An accredited institution shall mean an institution which has been recognized by a recognized accrediting agency, as defined by Section 61.003(12) of the Texas Education Code, and is a public or private institution of higher learning which is not organized for profit.

(c) The authority shall contract with a nonprofit corporation, organized under the laws of this state, whereby such corporation will provide the reports and other information required for continued participation in the federally guaranteed loan program provided by the Higher Education Act of 1965 (Public Law 89-329). The custody of student loan notes, purchased by the bank on behalf of the authority, shall be held by a bank with trust powers located within this state.

(d) The authority, as a municipal corporation of the state, is charged with a portion of the responsibility of the state to provide educational opportunities in keeping with all applicable state and federal laws. Nothing in this section shall be construed as a prohibition against establishing policies to limit the purchase of notes to notes executed by students attending school in a certain geographical area or by students who are residents of the area.

(e) In lieu of establishing an authority under the provisions of this chapter, the governing body of a home-rule city or cities may request a nonprofit corporation heretofore organized to exercise the powers enumerated and provided in this section for and on its behalf. If the corporation agrees to exercise such powers, the directors of such corporation shall thereafter be appointed by and be subject to removal by the governing body of the home-rule city or cities, and except as herein provided, Sections 53.14, 53.15, 53.31, 53.32, 53.38, and 53.41 through 53.43 of the Texas Education Code shall apply to and govern such corporation, its procedures, and bonds. [Added by Acts 1975, 64th Leg., p. 963, ch. 365, § 1, eff. June 19, 1975.]

¹ 20 U.S.C.A. § 1001 et seq.

CHAPTER 54. TUITION AND FEES

SUBCHAPTER A. GENERAL PROVISIONS

Section

54.006. Refund of Tuition and Fees [NEW].

SUBCHAPTER B. TUITION RATES

54.062. Tuition Limit in Cases of Concurrent Enrollment [NEW].

SUBCHAPTER C. TUITION SCHOLARSHIPS [REPEALED]

54.101, 54.102. Repealed.

SUBCHAPTER D. EXEMPTIONS FROM TUITION

54.202. Repealed.

54.206. Repealed.

54.210. Senior Citizens [NEW].

SUBCHAPTER E. OTHER FEES AND DEPOSITS

54.504. Medical Service Fees [NEW].

SUBCHAPTER A. GENERAL PROVISIONS

§ 54.006. Refund of Tuition and Fees

(a) A general academic teaching institution or medical and dental unit shall refund applicable tuition and fees collected for courses from which students drop within the first 12 days of a fall or spring semester or within the first four days of a summer term, provided the student remains enrolled at the institution for that semester or term. Refunds for courses dropped by a student who later in the semester or term withdraws from the institution are calculated according to the percentage schedules in Subsections (b) or (c) of this Act.

(b) A general academic teaching institution or medical and dental unit shall refund a percentage of collected tuition and mandatory fees to students withdrawing from the institution during a fall or spring semester or comparable trimester if such are in effect according to the following withdrawal schedule and subject to the provisions of Subsection (d) below:

- | | |
|---------------------------------------|-------------|
| (1) prior to the first class day | 100 percent |
| (2) during the first five class days | 80 percent |
| (3) during the second five class days | 70 percent |
| (4) during the third five class days | 50 percent |
| (5) during the fourth five class days | 25 percent |
| (6) after the fourth five class days | None |

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Separate withdrawal refund schedules may be established for optional fees such as intercollegiate athletics, cultural entertainment, parking, and year-books.

(c) A general academic teaching institution or medical and dental unit shall refund a percentage of collected tuition and mandatory fees to students withdrawing from the institution during a summer term according to the following withdrawal schedule

and subject to the provisions of Subsection (d) below:

- | | |
|--|-------------|
| (1) prior to the first class day | 100 percent |
| (2) during the first, second, or third class day | 80 percent |
| (3) during the fourth, fifth, or sixth class day | 50 percent |
| (4) seventh day of class and thereafter | None |

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Separate withdrawal refund schedules may be established for optional fees such as intercollegiate athletics, cultural entertainment, parking, and year-books.

(d) A general academic teaching institution or medical and dental unit may assess up to \$15 as a matriculation fee if the student withdraws from the institution before the first day of classes.

(e) A general academic teaching institution or medical and dental unit shall refund tuition and fees paid by a sponsor, donor, or scholarship to the source rather than directly to the student who has withdrawn if the funds were made available through the institution.

(f) A general academic teaching institution or medical and dental unit shall terminate student services and privileges, such as health services, library privileges, facilities usage, and athletic and cultural entertainment tickets, when a student withdraws from the institution.

[Added by Acts 1977, 65th Leg., p. 220, ch. 106, § 1, eff. Aug. 29, 1977.]

SUBCHAPTER B. TUITION RATES

§ 54.051. Tuition Rates

(a) The governing board of each institution of higher education shall cause to be collected from students registering at the institution tuition or registration fees at the rates prescribed in this section.

(b) Tuition for resident students, except as otherwise hereinafter provided, is \$4 per semester credit hour, but the total of such charge shall be not less than \$50 per semester or 12-week summer session, and not less than \$25 per 6-week summer term.

(c) Tuition for nonresident students, except as otherwise hereinafter provided, is \$40 per semester credit hour.

(d) Resident or nonresident students registered for thesis or dissertation credit only, in those instances where such credit is the final credit hour requirement for the degree in progress, shall pay a sum proportionately less than herein prescribed but not more than \$50.

(e) Tuition for resident students registered in a medical or dental branch, school or college is \$400 per academic year of 12 months.

(f) Tuition for nonresident students registered in a medical or dental branch, school or college is \$1,200 per academic year of 12 months.

(g) Resident or nonresident students registered for a course or courses in art, architecture, drama, speech, or music, where individual coaching or instruction is the usual method of instruction, shall pay a fee in addition to the regular tuition, said fee to be designated by the governing board of such institution; but in no event shall such fees be more per course per semester of four and one-half months or per summer session than \$75.

(h) Tuition for students who are citizens of any country other than the United States of America is the same as tuition required of other nonresident students. However, the governing board of an institution of higher education may set a lower fee for a foreign student, based on financial need, as authorized by rules and policies of the Coordinating Board, Texas College and University System. The lower fee in any case shall be not less than \$14 per semester credit hour, and the total of such charge shall be not less than \$200 per semester or 12-week summer session, and not less than \$100 per 6-week summer term. However, if a student is a citizen of a country that charges citizens of the United States tuition at public funded colleges and universities in an amount which is equal to or less than \$200 per semester or 12-week summer session or comparable period, or \$100 per 6-week summer term or comparable period, as determined by the Coordinating Board, Texas College and University System, the student shall be charged \$14 per semester credit hour, but not less than \$200 per semester or 12-week summer session nor less than \$100 per six-week summer term.

(i) Tuition for students who are citizens of any country other than the United States of America registered in a medical or dental branch, school or college is the same as tuition required of other nonresident students. However, the governing board of an institution of higher education may set a lower fee for a foreign student, based on financial need, as authorized by rules and policies for the Coordinating Board, Texas College and University System. The lower fee in any case may not be less than \$800 per academic year of 12 months. However, if a student is a citizen of a country that charges citizens of the United States tuition at a publicly funded medical or dental branch, school, or college in an amount which is equal to or less than \$800 per academic year of 12 months or comparable period, as determined by the Coordinating Board, Texas College and University System, the student shall be charged \$800 per academic year of 12 months.

(j) Tuition for nonresident students registered in a public junior college is as provided in Subsection (b), Section 130.003 of the Texas Education Code.

(k) Tuition for students registered in a school of nursing as a nursing student is \$50 per semester and per 12-week summer session.

(l) Tuition for students registered in a school of nursing as a nursing student for less than 12 semester credit hours of work or for less than a full semester credit hour or term hour load during a summer session shall pay an amount proportionately less than the amount provided in Subsection (k) of this section, but not less than \$20.

(m) Repealed by Acts 1975, 64th Leg., p. 2326, ch. 720, § 2, eff. Sept. 1, 1975.

(n) Notwithstanding the preceding provisions of this section, any nonresident student who is enrolled for the spring semester of 1971 in an institution covered by this section may continue to enroll at the same institution at the same tuition rate that was effective at the time of his original enrollment until one of the following conditions first occurs:

(1) he receives the degree at the degree level (i. e., the baccalaureate, master's, or doctoral degree) toward which he is working during the spring semester of 1971; or

(2) he voluntarily withdraws from the institution or the institution involuntarily withdraws the student for disciplinary reasons or for failing to meet the academic standards of the institution; or

(3) the termination of the spring semester of 1975.

(o) A teaching assistant, research assistant, or other student employee of any institution covered by this section is entitled to register himself, his spouse, and their children in a state institution of higher education by paying the tuition fees and other fees or charges required for Texas residents, without regard to the length of time he has resided in Texas; provided that said student employee is employed at least one-half time in a position which relates to his degree program under rules and regulations established by the employer institution. This exemption shall continue for students employed two consecutive semesters through the summer session following such employment if the institution is unable to provide employment and, as determined under standards established by the institution, if the employee has satisfactorily completed his employment.

(p) A student who holds a competitive scholarship of at least \$200 for the academic year or summer for which he is enrolled and who is either a nonresident or a citizen of a country other than the United States of America is entitled to pay the fees and charges required of Texas residents without regard to the length of time he has resided in Texas, provided that he must compete with other students, including Texas residents, for the scholarship and that the scholarship must be awarded by a scholar-

ship committee officially recognized by the administration of the institution of higher education.

[Amended by Acts 1975, 64th Leg., p. 1358, ch. 515, §§ 1, 2, eff. June 19, 1975; Acts 1975, 64th Leg., p. 2326, ch. 720, § 2, eff. Sept. 1, 1975.]

Section 4 of ch. 515 provided:

"The provisions of this Act apply only to foreign students who enter state colleges and universities for the first time after the effective date of this Act."

§ 54.060. Resident of Bordering State: Tuition

The nonresident tuition fee prescribed in this chapter does not apply to a nonresident student who is a resident of a state situated adjacent to Texas and who registers in any Texas public junior college situated in a county immediately adjacent to the state in which the nonresident student resides. The nonresident junior college student described in this section shall pay an amount equivalent to the amount charged a Texas student registered at a similar school in the state in which the nonresident student resides. The nonresident student described in this section shall pay equivalent fees and charges to those charged Texas students registered at a similar institution in the state in which the nonresident student resides, when such student registers at a Texas public senior upper level (those institutions offering only junior, senior, and graduate level programs) institution of higher education located within the Texas public junior college district from which the nonresident student has graduated or completed 45 semester credit hours.

[Amended by Acts 1975, 64th Leg., p. 280, ch. 122, § 1, eff. May 5, 1975.]

§ 54.062. Tuition Limit in Cases of Concurrent Enrollment

When a student registers at more than one public institution of higher education at the same time, his tuition charges shall be determined in the following manner:

(1) The student shall pay the full tuition charge to the first institution at which he is registered; and in any event he shall pay an amount at least equal to the minimum tuition specified in this code.

(2) If the minimum tuition specified in this code for the first institution at which the student is registered is equal to or greater than the minimum tuition specified in this code for the second institution at which the student is registered concurrently, the student shall not be required to pay the specified minimum tuition charge to the second institution in addition to the tuition charge paid to the first institution, but shall pay only the hourly rates, as provided in this code, to the second institution.

(3) If the minimum tuition specified in this code for the first institution at which the student is registered is less than the specified mini-

imum tuition charge at the second institution (that is, if the second institution has a higher minimum tuition charge specified in this code), then the student shall first register at the institution having the lower minimum tuition and shall pay to the second institution only the amount equal to the difference between his total tuition charge at the second institution and his total tuition charge at the first institution, but in no case shall the student pay to the second institution less than the hourly rates as provided in this code.

(4) If a student is considered to be a Texas resident and therefore qualified to pay Texas resident tuition rates by one institution at which he is registered, that student shall be considered a Texas resident at each of the institutions at which he is concurrently registered for the purposes of determining the proper tuition charges. Nothing in this subsection shall be so construed as to allow a nonresident to pay resident tuition except at institutions covered by Section 54.060 of this code.

[Added by Acts 1977, 65th Leg., p. 21, ch. 7, § 1, eff. March 3, 1977.]

Section 2 of the 1977 Act provided:
 "Should any provision of this Act conflict with, limit, or impair any pledge, covenant, or option made or reserved by any governing board with respect to any bonds outstanding as of the effective date of this Act, this Act is hereby repealed to the extent of the conflict, limitation, or impairment."

**SUBCHAPTER C. TUITION SCHOLARSHIPS
 [REPEALED]**

§§ 54.101, 54.102. Repealed by Acts 1975, 64th Leg., p. 2326, ch. 720, § 2, eff. Sept. 1, 1975

SUBCHAPTER D. EXEMPTIONS FROM TUITION

§ 54.202. Repealed by Acts 1975, 64th Leg., p. 2326, ch. 720, § 2, eff. Sept. 1, 1975

§ 54.204. Children of Disabled Firemen and Peace Officers

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

(b) The governing board of each institution of higher education shall exempt from the payment of all dues, fees, and charges any person whose parent is an eligible employee who has suffered an injury, resulting in death or disability, sustained in the line of duty according to the regulations and criteria then in effect governing the department or agency in which he was employed. The exemption does not apply to general property deposits or to fees or charges for lodging, board, or clothing.

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

[Amended by Acts 1975, 64th Leg., p. 1386, ch. 534, § 1, eff. Sept. 1, 1975.]

§ 54.206. Repealed by Acts 1975, 64th Leg., p. 2326, ch. 720, § 2, eff. Sept. 1, 1975

§ 54.210. Senior Citizens

(a) In this section, "senior citizen" means a person 65 years of age or older.

(b) The governing board of a state-supported institution of higher education may allow a senior citizen to audit any course offered by the institution without the payment of a fee if space is available. [Added by Acts 1975, 64th Leg., p. 265, ch. 111, § 1, eff. Sept. 1, 1975.]

[Sections 54.211 to 54.500 reserved for expansion]

SUBCHAPTER E. OTHER FEES AND DEPOSITS

§ 54.504. Medical Service Fees

(a) The governing board of an institution of higher education may levy and collect from each student registered at the institution medical service fees not to exceed \$15 for each regular semester or each 12 weeks summer session, and not to exceed \$7.50 for each six weeks term of the summer session or any fractional part thereof. Such medical service fees, when levied and collected, shall not be expended for any purpose other than providing medical services for the students of such institutions of higher learning.

(b) Such fees shall, if levied, be in addition to any other fees authorized by law to be levied and collected by such governing boards.

(c) Prior to the levy of a medical services fee at any institution of higher education under the provisions of this section, the governing board shall provide for receiving recommendations from the students, faculty, and administration of such institution as to the type and scope of medical services to be provided.

[Added by Acts 1975, 64th Leg., p. 323, ch. 135, § 1, eff. Sept. 1, 1975.]

CHAPTER 55. FINANCING PERMANENT IMPROVEMENTS

SUBCHAPTER B. REVENUE BONDS AND FACILITIES

§ 55.16. Rentals, Rates, Charges, and Fees

Each board shall be authorized to fix and collect rentals, rates, charges, and/or fees from students and others for the occupancy, services, use, and/or availability of all or any of its property, buildings, structures, activities, operations, or other facilities, in such amounts and in such manner as may be determined by the board; provided, however, that all student use fees shall be fixed and collected in proportion to the number of semester credit hours for which a student registers, and shall not exceed

\$6 per semester hour, except that those schools charging more than \$6 per semester hour as of May 1, 1975, shall not exceed the amount being charged as of that date, and except that the legislature may specifically authorize individual boards to levy fees in excess of the \$6 limit set herein. The board may waive all or any part of any such student use fees in the case of any student for whom the payment of such student use fee would cause an undue economic hardship, except that the number of such students for whom such waivers are granted shall not exceed 5% of the total enrollment; and further provided that nothing in this section shall affect, limit, or impair any pledge, covenant, or option made or reserved by the board with respect to any revenue bonds outstanding as of the 1975 amendment to this section, issued by the board pursuant to this chapter; and provided that hereafter if bonds are issued pursuant to Section 55.17 of this code, to be secured by a pledge of a limited or unlimited use fee, and if, at the time of authorizing the issuance of the bonds, (1) the estimated maximum amount per semester hour of such pledged use fee (based on then current enrollment and conditions) during any future semester necessary to provide for the payment of the principal of and interest on the bonds when due, together with (2) the aggregate amount of all use fees which were levied on a semester hour basis for the then current semester to pay the principal of and interest on all previously issued bonds, do not exceed \$6 per semester hour, then such limited or unlimited use fee shall be levied and collected when and to the extent required by the resolution authorizing the issuance of the bonds in any amount required to provide for the payment of the principal of and interest on the bonds, regardless of any other provision of this section or the limitations contained herein.

[Amended by Acts 1975, 64th Leg., p. 1245, ch. 469, § 1, eff. June 19, 1975.]

CHAPTER 56. STUDENT FINANCIAL ASSISTANCE GRANTS [NEW]

SUBCHAPTER A. GENERAL PROVISIONS [NEW]

Section

- 56.001. Short Title.
- 56.002. Declaration of Policy.
- 56.003. Definitions.

SUBCHAPTER B. TEXAS ASSISTANCE GRANTS [NEW]

- 56.010. Short Title.
- 56.011. Purpose.
- 56.012. Administrative Authority for the Program.
- 56.013. Rules Governing Eligibility of Postsecondary Institutions.
- 56.014. Rules Governing Eligibility of Students.
- 56.015. Awarding of Grants and Their Limitations.
- 56.016. Adoption of Regulations Governing the Program.

SUBCHAPTER C. TEXAS PUBLIC EDUCATIONAL GRANTS

Section

- 56.031. Short Title.
- 56.032. Purpose.
- 56.033. Source of Program Funding.
- 56.034. Guidelines for Determining Eligibility and Awarding Grants.
- 56.035. Type of Grants to be Awarded and Restrictions.
- 56.036. Transfer of Grant Funds for Use as Matching Funds.
- 56.037. Priorities in Awarding Matching Funds.
- 56.038. Restrictions and Return of Transferred Funds.

SUBCHAPTER A. GENERAL PROVISIONS

§ 56.001. Short Title

This Chapter may be cited as the Student Financial Assistance Act of 1975.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.002. Declaration of Policy

The legislature, giving due consideration to the historical and continuing interest of the people of the State of Texas in encouraging deserving and qualified persons to realize their aspirations for education beyond high school finds and declares that postsecondary education for those who desire such an education and are properly qualified therefor is important to the welfare and security of this state and the nation and, consequently, is an important public purpose. The legislature finds and declares that the state can achieve its full economic and social potential only if every individual has the opportunity to contribute to the full extent of his capabilities and only when financial barriers to his economic, social, and educational goals are removed. It is, therefore, the policy of the legislature and the purpose of this Chapter to establish financial assistance programs to enable qualified students to receive a postsecondary education.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.003. Definitions

In this Chapter:

- (1) "Institution of higher education" has the same meaning as is assigned to it by Section 61.003 of this code.
- (2) "Governing board" has the same meaning as is assigned to it by section 61.003 of this code.
- (3) "Postsecondary educational institution" means any institution, public or private, which provides courses of instruction beyond that offered in secondary schools.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

[Sections 56.004 to 56.009 reserved for expansion]

SUBCHAPTER B. TEXAS ASSISTANCE GRANTS

§ 56.010. Short Title

The grant program authorized by this subchapter shall be cited as the Texas Assistance Grants Program, and individual grants awarded pursuant to this program shall be cited as Texas Assistance Grants.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.011. Purpose

The purpose of this subchapter is to provide a program to supply grants of money enabling students to attend postsecondary educational institutions, public or private, of their choice in Texas.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.012. Administrative Authority for the Program

The Coordinating Board, Texas College and University System, is authorized to provide Texas Assistance Grants to students enrolled in any approved postsecondary educational institution, based on student financial need but not to exceed a grant amount of more than that specified in the appropriation by the legislature.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.013. Rules Governing Eligibility of Postsecondary Institutions

(a) The coordinating board shall approve for participation in the Texas Assistance Grants Program only such colleges, universities, associations, agencies, institutions, and facilities as are located within the state, which meet program standards and accreditation as determined by the board.

(b) The coordinating board shall make such regulations as may be necessary to insure compliance with the Civil Rights Act of 1964, Title VI (Public Law 88-352), as amended,¹ and in regard to nondiscrimination in admissions or employment.

(c) Any public postsecondary educational institution receiving any benefit under the provisions of this subchapter, either directly or indirectly, shall be subject to all present or future laws enacted by the legislature.

(d)(1) Postsecondary institutions which request approval for eligibility under this section and are denied such approval shall be provided written reasons for such denial by the coordinating board.

(2) The coordinating board shall adopt reasonable regulations allowing an institution to appeal denial of eligibility.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

¹ 42 U.S.C.A. § 2000d et seq.

§ 56.014. Rules Governing Eligibility of Students

To be eligible for a grant under this subchapter, a person must

(a) be a resident of Texas as defined by the coordinating board, provided, however, the person must meet, at a minimum, the resident requirements as defined by law for Texas resident tuition in fully state-supported institutions of higher education; or be a permanent resident of the United States who is otherwise qualified for an educational grant under this subchapter; no more than 10 percent of the funds awarded to eligible students enrolled at any approved institutions may be allocated to out-of-state students;

(b) be enrolled in an approved postsecondary educational institution in other than a theology or religious degree program;

(c) not be the recipient of an athletic scholarship during the period for which the grant is to be awarded;

(d) establish financial need in accordance with procedures and regulations of the coordinating board; and

(e) have complied with other requirements adopted by the coordinating board under this subchapter.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.015. Awarding of Grants and Their Limitations

(a) On receipt of a student application, enrollment report, and certification of the amount of financial need from an approved institution, the coordinating board shall certify the amount of the Texas Assistance Grant based on financial need but not to exceed a grant amount of more than that specified in the appropriation by the legislature nor

(1) the student's demonstrated financial need as determined by the coordinating board; or

(2) \$1,000 during any one fiscal year.

(b) The proper amount of the Texas Assistance Grant shall be paid to the student through the postsecondary educational institution in which the student is enrolled.

(c)(1) If a student's grant application is denied, the coordinating board shall provide the student with written notification of the reasons for such denial.

(2) The coordinating board shall adopt reasonable regulations allowing a student to appeal denial of the grant.

(d) Financial need shall be the only consideration in establishing guidelines to determine a student's eligibility for a grant except that returning students who are on scholastic probation or all students on

disciplinary probation who have been placed on such probation by their respective institutions may be deemed ineligible by the coordinating board.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.016. Adoption of Regulations Governing the Program

(a) The coordinating board may make reasonable regulations consistent with the purposes and policies of this subchapter to enforce the requirements, conditions, and limitations expressed in this Act.

(b) The coordinating board shall make such regulations as may be necessary to comply with the provisions of Article I, Section 7; Article III, Section 51, and other parts of the Texas Constitution.

(c) The coordinating board shall provide copies of regulations proposed for its adoption to all eligible institutions one month prior to the meeting at which the proposals shall be acted upon.

(d) The coordinating board shall distribute copies of all regulations adopted pursuant to this Act to each eligible institution.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

[Sections 56.017 to 56.030 reserved for expansion]

SUBCHAPTER C. TEXAS PUBLIC
EDUCATIONAL GRANTS

§ 56.031. Short Title

The grant program authorized by this subsection shall be cited as the Texas Public Educational Grants Program and individual grants awarded pursuant to this program shall be cited as Texas Public Educational Grants.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.032. Purpose

The purpose of this subchapter is to provide a program to supply grants of money to students attending institutions of higher education in Texas whose educational costs are not met in whole or in part from other sources and to provide institutions of higher education with funds to supplement and add flexibility to existing financial aid programs.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.033. Source of Program Funding

The governing boards of institutions of higher education shall cause to be set aside for use as Texas Public Educational Grants twenty-five cents out of each hourly charge in Subsection (b), \$1.50 out of each hourly charge in Subsection (c) of Section 54.-

051 of this code, as amended, and six percent of hourly tuition charges for vocational-technical courses at public community and junior colleges. [Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.034. Guidelines for Determining Eligibility and Awarding Grants

(a) The governing boards of institutions of higher education shall establish guidelines to determine eligibility for awarding Texas Public Educational Grants subject to the limitations of this section.

(b) Financial need shall be the only consideration in establishing guidelines to determine a student's eligibility for a grant except that returning students who are on scholastic probation or all students on disciplinary probation may be deemed ineligible at the governing board's discretion.

(c) Guidelines adopted shall be submitted to the coordinating board, which is authorized to review and reject guidelines it determines to be contrary to the purposes of this section.

(1) In reviewing guidelines, the coordinating board shall give consideration to differing needs of each institution and desirability of this program being used to aid students who may have demonstrable financial need but be ineligible for other aid programs.

(2) If the coordinating board rejects guidelines adopted by a governing board, it shall provide a written explanation of such rejection and promulgate regulations allowing governing boards to appeal such rejection.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.035. Type of Grants to be Awarded and Restrictions

(a) Texas Public Educational Grants shall not be awarded for any specific purpose other than meeting all or part of a student's demonstrated financial need.

(b) No more than 10 percent of total grant funds awarded by institutions of higher education in a fiscal year under this subchapter may be allocated to out-of-state students.

(c) No funds may be awarded to alien students nor any money set aside from tuition revenues of alien students for use in this program.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.036. Transfer of Grant Funds for Use as Matching Funds

Each institution of higher education is authorized to transfer any or all of the funds set aside for the Texas Public Educational Grant Program to the coordinating board to be used for matching federal

or other grant funds for awarding to students attending that institution. Said scholarship fund transferred to the coordinating board and all matching funds may be expended by the coordinating board for awarding scholarships as provided herein and in the general appropriation acts of the legislature.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.037. Priorities in Awarding Matching Funds

In awarding matching funds to be used in conjunction with Texas Public Educational Grants, the coordinating board shall give first priority to those institutions and students showing the highest amount of financial need.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

§ 56.038. Restrictions and Return of Transferred Funds

The coordinating board may not use funds transferred to it pursuant to this subchapter from one institution to award grants to students of a different institution. Should matching funds be unavailable for an institution, all funds transferred from that institution to the coordinating board shall be returned to that institution.

[Added by Acts 1975, 64th Leg., p. 2323, ch. 720, § 1, eff. Sept. 1, 1975.]

SUBTITLE B. STATE COORDINATION OF HIGHER EDUCATION

CHAPTER 61. COORDINATING BOARD, TEXAS COLLEGE AND UNIVERSITY SYSTEM

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Section

61.0211. Application of Sunset Act [NEW].

SUBCHAPTER C. POWERS AND DUTIES OF BOARD

61.072. Regulation of Foreign Student Tuition [NEW].

61.073. Allocation of Funds for Tuition and Fee Exemptions [NEW].

61.074. Official Grade Point Average [NEW].

SUBCHAPTER D. CONTRACTS WITH BAYLOR COLLEGE OF MEDICINE AND BAYLOR UNIVERSITY COLLEGE OF DENTISTRY

61.096. Restrictions: Medical School Admissions Policies [NEW]

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61.301. Purpose.

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 61.308. Renewal of Certificate.
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- 61.401. Definitions.
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- 61.501. Definitions.
 61.502. Contracts.
 61.503. Rules and Regulations.
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 61.505. Advisory Committee.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 61.0211. Application of Sunset Act

The Coordinating Board, Texas College and University System, is subject to the Texas Sunset Act,¹ and unless continued in existence as provided by that Act the board is abolished, and this chapter expires effective September 1, 1989.

[Added by Acts 1977, 65th Leg., p. 1853, ch. 735, § 2.151, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

SUBCHAPTER C. POWERS AND DUTIES OF BOARD

§ 61.051. Coordination of Institutions of Public Higher Education

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

(d) The board shall classify and prescribe the role and scope for each public institution of higher education in Texas, shall make such changes in classification or role and scope of each institution as it deems necessary, and shall hear applications from the institutions for changes in classification or role and scope. The board shall make recommendation to the legislature with respect to maximum enrollment limits for each public institution of higher education in the State of Texas and may recommend to the legislature maximum enrollment limits for any department, school, degree program, or certificate program at any such institution.

(e) The board shall review periodically all degree and certificate programs offered by the institutions

of higher education to assure that they meet the present and future needs of the state. The board shall also order the initiation, consolidation, or elimination of degree or certificate programs where that action is in the best interest of the institutions themselves or the general requirements of the State of Texas, or when that action offers hope of achieving excellence by a concentration of available resources. No new department, school, degree program, or certificate program may be added at any institution of higher education except with specific prior approval of the board. Once approved, no department, school, degree program, or certificate program at any institution of higher education may be expanded to include subject matter courses that are outside of approved degree and certificate programs except with specific prior approval of the board.

(f) The board shall encourage and develop in cooperation with the State Board of Vocational Education new certificate programs in technical and vocational education in institutions of higher education as the needs of technology and industry may demand and shall recommend the elimination of certificate programs for which a need no longer exists. The board may contract with the State Board of Education (State Board of Vocational Education) so that the coordinating board may assume the leadership role and administrative responsibilities of the State Board for Vocational Education for state level administration of technical-vocational education programs in Texas public community colleges, public technical institutes, and other eligible public postsecondary institutions.

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

(j) No off-campus courses for credit may be offered by any public college or university without specific prior approval of the board. The board shall establish regulations for the coordination of credit and noncredit activities of adult and continuing education by public colleges and universities.

[Amended by Acts 1975, 64th Leg., p. 2055, ch. 676, §§ 1, 2, eff. June 20, 1975.]

Section 5 of the 1975 Act provided:

"The coordinating board shall have all the previously listed powers in this Act in connection with The University of Texas System and The Texas A & M University System."

§ 61.058. Construction Funds and Development of Physical Plants

To assure efficient use of construction funds and the orderly development of physical plants to accommodate projected college student enrollments, the board shall:

- (1) determine formulas for space utilization in all educational and general buildings and facilities at institutions of higher education;

(2) devise and promulgate methods to assure maximum daily and year-round use of educational and general buildings and facilities, including but not limited to maximum scheduling of day and night classes and maximum summer school enrollment;

(3) consider plans for selective standards of admission when institutions of higher education approach capacity enrollment;

(4) require, and assist the public senior colleges and universities, medical and dental units, and other agencies of higher education in developing, long-range plans for campus development;

(5) endorse, or delay until the next succeeding session of the legislature has the opportunity to approve or disapprove, the proposed purchase of any real property by an institution of higher education, except a public junior college;

(6) develop and publish standards, rules, and regulations to guide the institutions and agencies of higher education in making application for the approval of new construction and major repair and rehabilitation of all buildings and facilities regardless of proposed use;

(7) ascertain that the standards and specifications for new construction, repair, and rehabilitation of all buildings and facilities are in accordance with Chapter 324, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 678(g) Vernon's Texas Civil Statutes); and

(8) approve or disapprove all new construction and repair and rehabilitation of all buildings and facilities at institutions of higher education financed from any source other than ad valorem tax receipts of the public junior colleges, provided that:

(A) the board's consideration and determination shall be limited to the purpose for which the new or remodeled buildings are to be used to assure conformity with approved space utilization standards and the institution's approved programs and role and scope if the cost of the project is not more than \$500,000, but the board may consider cost factors and the financial implications of the project to the state if the total cost is in excess of \$500,000;

(B) the requirement of approval for new construction financed from other than appropriated funds applies only to projects the total cost of which is in excess of \$100,000;

(C) the requirement of approval for major repair and rehabilitation of buildings and facilities applies only to projects the total cost of which is in excess of \$100,000; and

(D) the requirement of approval or disapproval by the board does not apply to any new construction or major repair and rehabilitation project that is specifically approved by the legislature.

[Amended by Acts 1975, 64th Leg., p. 2056, ch. 676, § 3, eff. June 20, 1975; Acts 1977, 65th Leg., p. 1133, ch. 425, § 1, eff. Aug. 29, 1977.]

§ 61.066. Studies and Recommendations; Reports

(a) The board shall make studies and recommendations directed toward the achievement of excellence or toward improved effectiveness and efficiency in any phase of higher education in Texas and shall report on their studies and recommendations to the governor and the legislature. The officials of the institutions of higher education shall comply with requests for reports or information made by the board or the commissioner. To assure that the institutions of higher education timely file various reports with the appropriate agencies, the board shall receive and distribute the reports required by statute to be filed with the governor, the Legislative Budget Board, the state auditor, the state library, and any other state agency.

(b) The board shall prepare biennial reports with reference to new programs in higher education as well as restructuring existing programs to meet the changing needs of the populace of the state. This will include but will not be limited to projected student enrollments at the various institutions, the areas of study which they will enter, and the projected demand for the various professional activities. In addition, the board shall make specific recommendations regarding the physical needs at each campus with the physical, mental, and educational needs of the student population in mind. In order to insure adequate time available for study of the reports, they shall be distributed to the appropriate offices as required by statute no later than the end of the fiscal year prior to the convening of the legislature.

[Amended by Acts 1975, 64th Leg., p. 252, ch. 101, § 1, eff. Sept. 1, 1975.]

§ 61.072. Regulation of Foreign Student Tuition

The board shall adopt rules and policies to be followed by the governing boards of institutions of higher education in fixing foreign student tuition fees pursuant to Subsections (h) and (i), Section 54.051, of this code.

[Added by Acts 1975, 64th Leg., p. 1359, ch. 515, § 3, eff. June 19, 1975.]

§ 61.073. Allocation of Funds for Tuition and Fee Exemptions

(a) Funds shall be appropriated to the Coordinating Board, Texas College and University System, for

allocation to each junior and community college in an amount equal to the total of all tuition and laboratory fees foregone each semester as a result of the tuition and laboratory fee exemptions required by law in Sections 54.201 through 54.209, Texas Education Code.

(b) The governing board of each junior or community college shall report to the coordinating board the number of students enrolled on the 12th class day of each semester who were exempt from the payment of tuition and laboratory fees which would have been collected from the students if they had not been exempt from the payment thereof. The coordinating board shall remit to each junior and community college an amount equal to the tuition and laboratory fees foregone from the funds appropriated for that purpose.

[Added by Acts 1977, 65th Leg., p. 83, ch. 40, § 1, eff. Aug. 29, 1977.]

§ 61.074. Official Grade Point Average

The board shall by rule establish a mandatory uniform method of calculating the official grade point average of a student enrolled in, or seeking admission to a graduate or professional school of, an institution of higher education.

[Added by Acts 1977, 65th Leg., p. 1610, ch. 628, § 1, eff. Aug. 29, 1977.]

[Sections 61.075 to 61.090 reserved for expansion]

SUBCHAPTER D. CONTRACTS WITH BAYLOR COLLEGE OF MEDICINE AND BAYLOR UNIVERSITY COLLEGE OF DENTISTRY

§ 61.096. Restrictions: Medical School Admission Policies

As a restriction of the authority granted to the Coordinating Board by Sections 61.092 and 61.093 of this Code, no contract shall be entered into with the Baylor College of Medicine until the Baylor College of Medicine promulgates appropriate rules and regulations pertaining to the admission of students to medical schools under its jurisdiction which will provide for admission of those students to its entering class each year who are equally or as well qualified as all other students, and who have entered a contract with or received a commitment for a stipend, grant, loan or scholarship from the State Rural Medical Education Board. The State Rural Medical Education Board may contract with medical students providing for such students to engage in a general or family practice of medicine for not less than four years after licensing and a period of medical residency, as determined by the rules and regulations established by the State Rural Medical Education Board, in cities of Texas which have a population of less than 5,000 or in rural areas, as

that term may be defined by the State Rural Medical Education Board, and said Board is hereby given the authority to define and from time to time re-define the term rural area, at the time the medical practice is commenced. This contract shall provide for a monthly stipend of at least \$100 to be granted by the State Rural Medical Education Board to each person under contract with the State while enrolled as a medical school student.

[Added by Acts 1975, 64th Leg., p. 2407, ch. 740, § 1, eff. Sept. 1, 1975.]

Section 5 of the 1975 Act provided:

"If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act or the applications thereof to any person or circumstances shall be held to be invalid or unconstitutional, the remainder of this Act shall nevertheless be valid, and the Legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion, or provision. All of the terms and provisions of this Act are to be liberally construed to effectuate the purposes, powers, rights, functions, and authorities herein set forth."

[Sections 61.097 to 61.200 reserved for expansion]

SUBCHAPTER G. REGULATION OF PRIVATE DEGREE-GRANTING INSTITUTIONS OF HIGHER EDUCATION [NEW]

§ 61.301. Purpose

It is the policy and purpose of the State of Texas to prevent deception of the public resulting from the conferring and use of fraudulent or substandard college and university degrees; it is also the purpose of this subchapter to regulate the use of academic terminology in naming or otherwise designating educational institutions, the advertising, solicitation or representation by educational institutions or their agents, and the maintenance and preservation of essential academic records. Because degrees and equivalent indicators of educational attainment are used by employers in judging the training of prospective employees, by public and private professional groups in determining qualifications for admission to and continuance of practice, and by the general public in assessing the competence of persons engaged in a wide range of activities necessary to the general welfare, regulation by law of the evidences of college and university educational attainment is in the public interest. To the same end the protection of legitimate institutions and of those holding degrees from them is also in the public interest.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.302. Definitions

In this subchapter:

- (1) "Degree" means any title or designation, mark, abbreviation, appellation, or series of letters or words, including associate, bachelor's, master's, doctor's, and their equivalents, which signifies, purports to, or is generally taken to signify satisfactory completion of the require-

ments of all or part of a program of study leading to an associate, bachelor's, master's, or doctor's degree or its equivalent.

(2) "Private institution of higher education" or "institution" means an educational institution which:

(A) is not an institution of higher education as defined by Section 61.003(7) of this code;

(B) is incorporated under the laws of this state, or maintains a place of business in this state, or solicits business in this state; and

(C) furnishes or offers to furnish courses of instruction in person or by correspondence leading to a degree or providing credits alleged to be applicable to a degree.

(3) "Agent" means a person employed by or representing a private institution of higher education who solicits students for enrollment in the institution.

(4) "Commissioner" means the Commissioner of Higher Education.

(5) "Board" means the Coordinating Board, Texas College and University System.

(6) "Person" means any individual, firm, partnership, association, corporation, or other private entity or combination thereof.

(7) "Program of study" means any course or grouping of courses which are alleged to entitle a student to a degree or to credits alleged to be applicable to a degree.

(8) "Recognized accrediting agency" means an agency as defined by Sec. 61.003(12) of this code.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.303. Exemptions

(a) The provisions of this subchapter do not in any way apply to:

(1) an institution which:

(A) is fully accredited by a recognized accrediting agency, or

(B) is a candidate for accreditation by a recognized accrediting agency on the effective date of this Act, so long as the institution maintains candidacy status or subsequently is fully accredited.

(2) an institution whose graduates are subject to licensure by an agency of the State of Texas prior to their engaging in professions directly related to their course of study.

(b) The exemptions provided by Subsection (a)(1) apply only to the extent that an institution is accredited, and if an institution offers to award a

degree for which it is not accredited, the exemption does not apply.

(c) An exempt institution or person may be issued a certificate of authorization to grant degrees.

(d) An exempt institution or person would continue in that status only so long as it maintained accreditation standards acceptable to the board.

(e) The board shall provide for due process and procedures for revoking the exemption status of an institution or person.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.304. Requisite Authority to Grant Degrees and Offer Courses

After the effective date of this subchapter, no person may grant or award a degree on behalf of a private institution of higher education or enroll students for courses unless the institution has been issued a certificate of authority to grant the degree by the board in accordance with the provisions of this subchapter. No person may represent that credits earned or granted by that person or institution are applicable for credit toward a degree to be granted by some other person or institution except under conditions and in a manner specified and approved by the board. The board is empowered to specify and regulate the manner, condition, and language used by an institution or person or agents thereof in making known that the person or institution holds a certificate of authority and the interpretation of the significance of such certificate.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.305. Application for Certificate of Authority

(a) A private institution of higher education may apply to the board for a certificate of authority to grant a degree in a specified program of study on application forms provided by the board.

(b) The application form shall contain the name and address of the institution; purpose of the institution; names of the sponsors or owners of the institution; regulations, rules, constitutions, bylaws, or other regulations established for the government and operation of the institution; the names and addresses of the chief administrative officer, the principal administrators, and each member of the board of trustees or other governing board; the names of members of the faculty who will, in fact, teach in the program of study, with the highest degree held by each; a full description of the degree or degrees to be awarded and the course or courses of study prerequisite thereto; a description of the facilities and equipment utilized by the institution; and any additional information which the board may request.

(c) The application must be accompanied by an initial fee of \$250.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.306. Issuance of Certificate

(a) The board may issue a certificate of authority to grant a degree or degrees and to enroll students for courses which may be applicable toward a degree if it finds that the applicant meets the standards established by the board for certification.

(b) A certificate of authority to grant a degree or degrees is valid for a period of two years from the date of issuance.

(c) An institution in operation on the effective date of this subchapter which has submitted a complete application for a certificate which has not been evaluated or acted on by the board shall be issued a provisional certificate which shall be valid for purposes of compliance with this subchapter until the board has completed its evaluation and has issued or denied a regular certificate.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.307. Amendments to Applications

(a) The chief administrative officers of each institution which has been issued a certificate of authority shall immediately notify the board of any change in administrative personnel, faculty, or facilities at the institution or any other changes of a nature specified by the board.

(b) An institution which wishes to amend an existing program of study to award a new or different degree during the period of time covered by current certificate may file an application for amendment of the certificate with the board. The application shall be accompanied by a fee of \$75 to cover the cost of program evaluation. If the board finds that the new program of study meets the required standards, the board may amend the institution's certificate accordingly.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.308. Renewal of Certificate

(a) A private institution of higher education which desires to renew its certificate of authority shall apply to the board at least 60 days prior to the expiration of the current certificate.

(b) The application for renewal shall be made on forms provided by the board and shall be accompanied by a renewal fee of \$150.

(c) The board shall renew the certificate if it finds that the institution has maintained all requisite standards and has complied with all rules and regulations promulgated by the board.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.309. Revocation of Certificate of Authority

The board may revoke a certificate of authority to grant degrees at any time if it finds that:

(1) any statement contained in an application for a certificate is untrue;

(2) the institution has failed to maintain the faculty, facilities, equipment, and programs of study on the basis of which the certificate was issued;

(3) advertising utilized on behalf of the institution is deceptive or misleading; or

(4) the institution has violated any rule or regulation promulgated by the board under the authority of this subchapter.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.310. Appeal

An institution whose application for an original, amended, or renewal certificate of authority to grant degrees is denied or whose certificate is revoked by the board is entitled to written notice of the reasons assigned by the board for the denial or revocation and may request a hearing before the board. The hearing shall be held within 120 days after written request is made to the board. If after the hearing the board upholds its previous denial or revocation, the institution may challenge the board's action in a suit filed within 30 days in the district court of Travis County. The trial shall be de novo as that term is used in appeals from a justice of the peace court to a county court.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.311. Rules and Regulations

(a) The board shall promulgate standards, rules, and regulations governing the issuance of certificates of authority.

(b) The board may delegate to the commissioner such authority and responsibility conferred on the board by this subchapter as the board deems appropriate for the effective administration of this subchapter.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.312. Honorary Degrees

No person may award an honorary degree on behalf of a private institution of higher education subject to the provisions of this subchapter unless the institution has been issued a certificate of authority to award such a degree. The honorary degree shall plainly state on its face that it is honorary.

[Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.313. Use of the Term "College" or "University"

No person may use the term "college" or "university" in the official name or title of a private institution of higher education established after the effective date of this subchapter and subject to its provisions unless the institution has been issued a certificate of authority to grant a degree or degrees. [Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.314. Advisory Council on Private Degree-Granting Institutions of Higher Education

(a) The board shall appoint an advisory council on private degree-granting institutions of higher education consisting of six members with experience in the field of higher education and representative of private institutions of higher education in the State of Texas which are exempt from the provisions of this subchapter. Council members serve for terms of two years from the date of their appointment and are entitled to reimbursement for actual expenses incurred in carrying out the work of the council.

(b) The council shall advise the board on standards and procedures to be used in carrying out the provisions of this subchapter. [Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.315. Agents and Records

The authorized or certified institutions may be required to furnish a list of their agents to the board, and to maintain records of students enrolled, credits awarded, and degrees awarded in a manner specified by the board. [Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.316. Duty of Prosecuting Attorney

The board shall report any information concerning possible violation of this subchapter to the appropriate prosecuting attorney of the county in which the activity is occurring or has occurred, and he shall make necessary investigations. The appropriate prosecuting attorney shall immediately prosecute or bring suit to enjoin any violation of this subchapter which he discovers. [Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

§ 61.317. Penalties

(a) Any person who confers or offers to confer a degree on behalf of a private institution of higher education subject to the provisions of this subchapter which has not been issued a certificate of authority to grant degrees is guilty of a misdemeanor and upon conviction is subject to a fine of not less than

\$1,000 nor more than \$5,000. Each degree conferred without authority constitutes a separate offense.

(b) Any person who establishes a private institution of higher education after the effective date of this subchapter and uses the term "college" or "university" in the official name of the institution without first having been issued a certificate of authority to grant degrees for the institution is guilty of a misdemeanor and upon conviction is subject to a fine of not less than \$1,000 nor more than \$3,000.

(c) Any agent who solicits students for enrollment in a private institution of higher education subject to the provisions of this subchapter without a certificate of registration is guilty of a misdemeanor and upon conviction is subject to a fine of not less than \$500 nor more than \$1,000.

(d) Any operations which are found after due process to be in fraudulent violation of this Act shall be terminated. [Added by Acts 1975, 64th Leg., p. 1867, ch. 587, § 1, eff. June 19, 1975.]

SUBCHAPTER H. REGULATION OF PUBLIC INSTITUTIONS OF HIGHER EDUCATION ESTABLISHED OUTSIDE THE BOUNDARIES OF THE STATE OF TEXAS [NEW]

§ 61.401. Definitions

In this subchapter:

(1) "Public institution of higher education" includes any senior college, university, community college, technical institute, or junior college or the equivalent which is controlled by a public body organized outside the boundaries of the State of Texas.

(2) "Coordinating Board" means the Coordinating Board, Texas College and University System.

[Added by Acts 1975, 64th Leg., p. 1843, ch. 573, § 1, eff. June 19, 1975.]

§ 61.402. Requisite Approval

Public institutions of higher education established outside the boundaries of the State of Texas must have the approval of the coordinating board before offering a course or a grouping of courses within the State of Texas.

[Added by Acts 1975, 64th Leg., p. 1843, ch. 573, § 1, eff. June 19, 1975.]

§ 61.403. Rules and Regulations

The coordinating board shall prepare rules and regulations which, when properly followed, may qualify a public institution of higher education established outside the boundaries of the State of Texas to offer a course or a grouping of courses within the State of Texas.

[Added by Acts 1975, 64th Leg., p. 1843, ch. 573, § 1, eff. June 19, 1975.]

§ 61.404. Procedures in Case of Violation

If the coordinating board obtains evidence that a public institution of higher education established outside the boundaries of the State of Texas is in apparent violation of this subchapter or of rules and regulations adopted pursuant to this subchapter, the coordinating board shall take appropriate action to terminate its operation within the boundaries of the State of Texas.

[Added by Acts 1975, 64th Leg., p. 1843, ch. 573, § 1, eff. June 19, 1975.]

§ 61.405. Advisory Committees

The coordinating board may appoint such advisory committees as deemed useful for the effective administration of this subchapter.

[Added by Acts 1975, 64th Leg., p. 1843, ch. 573, § 1, eff. June 19, 1975.]

SUBCHAPTER I. CONTRACTS FOR MEDICAL
RESIDENCY PROGRAMS [NEW]

§ 61.501. Definitions

As used in this subchapter:

(1) "Medical school" means the medical school at The University of Texas Health Science Center at Houston, the medical school at The University of Texas Health Science Center at Dallas, the medical school at The University of Texas Health Science Center at San Antonio, The University of Texas Medical Branch at Galveston, the Texas Tech University School of Medicine, the Baylor College of Medicine, the Texas College of Osteopathic Medicine, or the Texas A & M University Medical Program.

(2) "Approved family practice residency training program" means a graduate medical education program operated by a medical school, licensed hospitals, or nonprofit corporations which has been approved for training physicians in family practice and for the receipt of state funds for that purpose by the board after receiving the recommendation of the Family Practice Residency Advisory Committee.

[Added by Acts 1977, 65th Leg., p. 109, ch. 53, § 2, eff. Aug. 29, 1977.]

Purpose. Section 1 of the 1977 Act enacting this Subchapter provided: "It is the intent of the legislature that family practice residency training programs created, maintained, or funded according to the provisions of this Act shall further the purpose of distributing family physicians and improving medical care in underserved urban and rural areas of the state and, insofar as possible and prudent, encourage the permanent location in underserved areas of family physicians trained in these programs in order to better serve the medical needs of the citizens of Texas."

§ 61.502. Contracts

The board may contract with a medical school, licensed hospitals, or nonprofit corporations for the purpose of establishing and operating an approved Family Practice Residency Training Program and may compensate the medical school, licensed hospi-

tals, or nonprofit corporations on a formula approved by the board based upon the number of resident physicians in the training program.

[Added by Acts 1977, 65th Leg., p. 109, ch. 53, § 2, eff. Aug. 29, 1977.]

§ 61.503. Rules and Regulations

The board shall adopt rules and regulations to implement this subchapter, including rules providing for:

(1) prior consultation on the annual budget with the board;

(2) a postaudit in a manner acceptable to the state auditor of expenditures related to the residency training program of a medical school, licensed hospitals, or nonprofit corporations with which the board has contracted; and

(3) distribution of family physicians and improvement of medical care in underserved urban and rural areas of the state and, insofar as possible and prudent, encouraging the permanent location in underserved areas of family physicians trained in these programs.

[Added by Acts 1977, 65th Leg., p. 109, ch. 53, § 2, eff. Aug. 29, 1977.]

§ 61.504. Disbursements

(a) Pursuant to a contract, the board may disburse through the designated project director to a medical school, licensed hospitals, or nonprofit corporations funds for the purpose of the graduate training of physicians in an approved family practice residency training program. The project director shall be the chairman of the Department of Family Practice in a medical school or the program director of an approved family practice residency training program operated by licensed hospitals or nonprofit corporations. The project director shall, in accordance with such rules as the board may adopt, make timely reports directly to the board concerning the development and progress of the family practice training program.

(b) The board may establish by contract the method or manner of the disbursement to the project director.

[Added by Acts 1977, 65th Leg., p. 109, ch. 53, § 2, eff. Aug. 29, 1977.]

§ 61.505. Advisory Committee

(a) The Family Practice Residency Advisory Committee is created and shall consist of 12 members. One member shall be a licensed physician appointed by the Texas Osteopathic Medical Association; two members shall be licensed physicians appointed by the Association of Directors of Family Practice Training Programs; two members shall be administrators of hospitals in which an approved family practice residency training program operates and

shall be appointed by the Texas Hospital Association; one member shall be a licensed physician appointed by the Texas Medical Association; two members shall be licensed physicians appointed by the Texas Academy of Family Physicians; three members of the public shall be appointed to the committee by the governor; and by virtue of his office, the president of the Texas Academy of Family Physicians shall be a member of the committee.

(b) The terms of office of each member, excluding the term of office of the president of the Texas Academy of Family Physicians, shall be for three years, except for the initial term, which shall be designated in a manner approved by the board in such a way, insofar as is possible, that one-third of the members shall serve for one year, one-third for two years, and one-third for three years, and thereafter each member shall serve for a term of three years. Each member shall serve until his replacement has been appointed to the committee.

(c) The members of the committee shall not be compensated for their service, but shall be reimbursed by the board for actual expenses incurred in the performance of duties as members of the committee.

(d) The committee shall meet at least annually and so often as requested by the board or called into meeting by the chairman.

(e) The chairman shall be elected by the members of the committee for one year.

(f) The committee shall review for the board applications for approval and funding of family practice residency training programs, make recommendations to the board relating to the standards and criteria for approval of residency training programs, and perform such other duties as may be directed by the board.

[Added by Acts 1977, 65th Leg., p. 109, ch. 53, § 2, eff. Aug. 29, 1977.]

SUBTITLE C. THE UNIVERSITY OF TEXAS SYSTEM

CHAPTER 65. ADMINISTRATION OF THE UNIVERSITY OF TEXAS SYSTEM

SUBCHAPTER C. POWERS AND DUTIES OF BOARD

Section

65.41. Medical School Admission Policies [NEW].

SUBCHAPTER C. POWERS AND DUTIES OF BOARD

§ 65.34. Contracts

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

(b) Repealed by Acts 1977, 65th Leg., p. 562, ch. 197, § 2, eff. May 20, 1977.

[Amended by Acts 1977, 65th Leg., p. 562, ch. 197, § 2, eff. May 20, 1977.]

§ 65.41. Medical School Admission Policies

The Board of Regents shall promulgate appropriate rules and regulations pertaining to the admission of students to medical schools which will provide for admission of those students to its entering class each year who are equally or as well qualified as all other students and who have entered a contract with or received a commitment for a stipend, grant, loan or scholarship from the State Rural Medical Education Board. The State Rural Medical Education Board may contract with medical students providing for such students to engage in a general or family practice of medicine for not less than four years after licensing and a period of medical residency, as determined by the rules and regulations established by the State Rural Medical Education Board, in cities of Texas which have a population of less than 5,000 or in rural areas, as that term may be defined by the State Rural Medical Education Board, and said Board is hereby given the authority to define and from time to time redefine the term rural area, at the time the medical practice is commenced. This contract shall provide for a monthly stipend of at least \$100 to be granted by the State Rural Medical Education Board to each person under contract with the state while enrolled as a medical school student. [Added by Acts 1975, 64th Leg., p. 2408, ch. 740, § 3, eff. Sept. 1, 1975.]

CHAPTER 66. PERMANENT UNIVERSITY FUND

SUBCHAPTER D. BOARD FOR LEASE OF UNIVERSITY LANDS

§ 66.62. Board for Lease

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

(e) The Board for Lease of University Lands is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1985.

[Amended by Acts 1977, 65th Leg., p. 1845, ch. 735, § 2.096, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

§ 66.64. Placing Oil and Gas on Market; Public Auction; Advertisement

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

(b) The sale of the oil and gas shall be made at public auction held in Austin, or any other location designated by the board, at any hour between 10 a. m. and 5 p. m.

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

[Amended by Acts 1975, 64th Leg., p. 234, ch. 88, § 1, eff. April 30, 1975.]

**CHAPTER 67. THE UNIVERSITY OF
TEXAS AT AUSTIN**

**SUBCHAPTER C. THE UNIVERSITY OF TEXAS
McDONALD OBSERVATORY AT MOUNT LOCKE**

Section
67.53. Visitor Center [NEW].

**SUBCHAPTER C. THE UNIVERSITY OF TEXAS
McDONALD OBSERVATORY AT
MOUNT LOCKE**

§ 67.53. Visitor Center

The board may negotiate and contract with the Texas Highway Department and any other agency, department, or political subdivision of the state or any individual for the construction, maintenance, and operation of a visitor center and related facilities at McDonald Observatory at Mount Locke. [Added by Acts 1975, 64th Leg., p. 370, ch. 161, § 1, eff. May 8, 1975.]

**CHAPTER 68. THE UNIVERSITY OF
TEXAS AT ARLINGTON**

SUBCHAPTER A. GENERAL PROVISIONS

Section
68.04. Student Union Fee [NEW].
68.05. Shuttle Bus Fee [NEW].

SUBCHAPTER A. GENERAL PROVISIONS

§ 68.04. Student Union Fee

(a) The board may levy a student union fee not to exceed \$15 per student for each regular semester and not to exceed \$7.50 per student for each term of the summer session, for the sole purpose of financing, constructing, operating, maintaining, and improving the Student Union Building. The fees herein authorized to be levied are in addition to any use or service fee now or hereafter authorized to be levied.

(b) Such fees shall be deposited to an account known as "The University of Texas at Arlington Student Union Fee Account" and shall be placed under the control of and subject to the order of the Student Union Advisory Committee. The committee shall annually submit to the board of regents a complete and itemized budget to be accompanied by a full and complete report of all activities conducted during the past year and all expenditures made incident thereto. The board of regents shall make such changes in the budget as it deems necessary before approving the budget, and shall then levy the fees, within the limits herein fixed, in such amounts as will be sufficient to meet the budgetary needs of the student union building.

[Added by Acts 1977, 65th Leg., p. 832, ch. 309, § 1, eff. Aug. 29, 1977.]

§ 68.05. Shuttle Bus Fee

(a) The board may levy a shuttle bus fee not to exceed \$10 per student for each regular semester and not to exceed \$5 per student for each term of the summer session, for the sole purpose of financing shuttle bus service for students attending the institution. The fees herein authorized to be levied are in addition to any use fee or service fee now or hereafter authorized to be levied. However, no fee may be levied unless the fee is approved by a majority vote of those students participating in a general election called for that purpose.

(b) Such fees shall be deposited to an account known as "The University of Texas at Arlington Shuttle Bus Fee Account" and shall be expended in accordance with a budget submitted to and approved by the board of regents. The board of regents shall make such changes in the budget as it deems necessary before approving the budget, and shall then levy the fees, within the limits herein fixed, in such amounts as will be sufficient to meet the budget as approved.

[Added by Acts 1977, 65th Leg., p. 833, ch. 309, § 2, eff. Aug. 29, 1977.]

**CHAPTER 70. THE UNIVERSITY OF
TEXAS AT DALLAS**

Section
70.08. Student Union Building Fees [NEW].

§ 70.08. Student Union Building Fees

(a) The board may levy a student union fee, not to exceed \$15 per student for each regular semester and not to exceed \$7.50 per student for each term of the summer session, for the sole purpose of financing, constructing, operating, maintaining, and improving a student union building. The fees herein authorized to be levied are in addition to any use or service fee now or hereafter authorized to be levied.

(b) Such fees shall be deposited to an account known as "The University of Texas at Dallas Student Union Fee Account" and shall be placed under the control of and subject to the order of the Student Union Advisory Committee. The committee shall annually submit to the board of regents a complete and itemized budget to be accompanied by a full and complete report of all activities conducted during the past year and all expenditures made incident thereto. The board of regents shall make such changes in the budget as it deems necessary before approving the budget, and shall then levy the fees, within the limits herein fixed, in such amounts as will be sufficient to meet the budgetary needs of the student union building.

[Added by Acts 1977, 65th Leg., p. 1041, ch. 385, § 1, eff. Aug. 29, 1977.]

SUBTITLE D. THE TEXAS A & M UNIVERSITY SYSTEM

CHAPTER 85. ADMINISTRATION OF THE TEXAS A & M UNIVERSITY SYSTEM

SUBCHAPTER A. GENERAL PROVISIONS

§ 85.01. Definitions

In this chapter:

(1) "System" or "university system" means The Texas A & M University System.

(2) "Board" means the board of regents of The Texas A & M University System.

[Amended by Acts 1975, 64th Leg., p. 598, ch. 247, § 1, eff. Sept. 1, 1975.]

Section 6 of the 1973 amendatory act provided: "Wherever the phrase 'board of directors' appears in other statutes, the phrase 'board of regents' shall not affect any previous authorization and obligation thereunder and, such new name for the governing board shall be substituted."

[Sections 85.02 to 85.10 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 85.11. Board of Regents

The government of the university system is vested in a board of nine regents appointed by the governor with the advice and consent of the senate.

[Amended by Acts 1975, 64th Leg., p. 598, ch. 247, § 2, eff. Sept. 1, 1975.]

§ 85.13. Certificate of Appointment

The secretary of state shall forward a certificate to each regent within 10 days after his appointment, notifying him of the fact of his appointment. If any person so appointed and notified fails for 10 days to give notice to the governor of his acceptance, his appointment shall be deemed void and his place shall be filled as in the case of a vacancy.

[Amended by Acts 1975, 64th Leg., p. 598, ch. 247, § 3, eff. Sept. 1, 1975.]

§ 85.14. Chairman of Board

The board shall elect from its members a chairman of the board, who shall call the board together for the transaction of business whenever he deems it expedient.

[Amended by Acts 1975, 64th Leg., p. 599, ch. 247, § 4, eff. Sept. 1, 1975.]

§ 85.15. Expenses of Regents

The regents shall serve without compensation but are entitled to reimbursement for actual expenses incurred in attending board meetings and in transacting the official business of the board.

[Amended by Acts 1975, 64th Leg., p. 599, ch. 247, § 5, eff. Sept. 1, 1975.]

CHAPTER 86. TEXAS A & M UNIVERSITY

SUBCHAPTER C. REAL ESTATE RESEARCH CENTER

Section

86.511. Application of Sunset Act [NEW].

SUBCHAPTER C. REAL ESTATE RESEARCH CENTER

§ 86.511. Application of Sunset Act

The Real Estate Research Center is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the center is abolished, and this subchapter expires effective September 1, 1981.

[Added by Acts 1977, 65th Leg., p. 1837, ch. 735, § 2.035, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

CHAPTER 87. OTHER ACADEMIC INSTITUTIONS IN THE TEXAS A & M UNIVERSITY SYSTEM

SUBCHAPTER B. PRAIRIE VIEW A & M UNIVERSITY

Section

87.103. Certain Land in Waller County Under Control of Board [NEW].

SUBCHAPTER B. PRAIRIE VIEW A & M UNIVERSITY

§ 87.103. Certain Land in Waller County Under Control of Board

(a) The 110 acres, more or less, of land in Waller County near Prairie View A & M University, but not adjoining its campus, conveyed as a gift to the Governor of the State of Texas when the site for then Prairie View Normal and Industrial College was purchased, is placed under the control and supervision of the Board of Directors of The Texas A & M University System for the use and benefit of Prairie View A & M University.

(b) The land is described in the deed of record in Record Book 3, pages 496, 497, and 498 of the records of the County Clerk of Waller County as being 110 acres of land off a 320-acre survey patented to the heirs of Solomon Smith No. 276, Vol. 11, the said 110 acres lying on the south side of said 320-acre survey and adjoining the Law Survey and is described by metes and bounds in Decree of Partition in District Court of Austin County in Matters Probate between Helen M. Kirby and the estate of Jared E. Kirby, deceased.

(c) The board of directors is authorized to lease the land for oil, gas, sulphur, and other mineral development under existing law applicable to other lands under its control and supervision and to apply the proceeds from such lease to the use and benefit of Prairie View A & M University.

[Added by Acts 1975, 64th Leg., p. 570, ch. 229, § 1, eff. May 20, 1975.]

[Sections 87.104 to 87.200 reserved for expansion]

CHAPTER 88. AGENCIES AND SERVICES OF THE TEXAS A & M UNIVERSITY SYSTEM

SUBCHAPTER A. GENERAL PROVISIONS

Section

- 88.002. Application of Sunset Act to Agricultural Extension Service [NEW].
 88.003. Application of Sunset Act to Engineering Extension Service [NEW].
 88.004. Application of Sunset Act to Engineering Experiment Station [NEW].

SUBCHAPTER B. THE TEXAS FOREST SERVICE

- 88.1011. Application of Sunset Act [NEW].
 88.1101. Land for Seedling Nursery; Eminent Domain [NEW].
 88.1131. Application of Sunset Act [NEW].

SUBCHAPTER C. THE TEXAS AGRICULTURAL EXPERIMENT STATION

- 88.2031. Application of Sunset Act [NEW].

SUBCHAPTER A. GENERAL PROVISIONS

§ 88.002. Application of Sunset Act to Agricultural Extension Service

The Texas Agricultural Extension Service is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the service is abolished effective September 1, 1987.

[Added by Acts 1977, 65th Leg., p. 1849, ch. 735, § 2.122, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

§ 88.003. Application of Sunset Act to Engineering Extension Service

The Texas Engineering Extension Service is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the service is abolished effective September 1, 1987.

[Added by Acts 1977, 65th Leg., p. 1849, ch. 735, § 2.125, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

88.004. Application of Sunset Act to Engineering Experiment Station

The Texas Engineering Experiment Station is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the station is abolished effective September 1, 1987.

[Added by Acts 1977, 65th Leg., p. 1849, ch. 735, § 2.124, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

SUBCHAPTER B. THE TEXAS FOREST SERVICE

§ 88.1011. Application of Sunset Act

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

[Added by Acts 1977, 65th Leg., p. 1844, ch. 735, § 2.088, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

¹ West's Tex.Stats. & Codes '77 Supp.—9

§ 88.103. Enforcement; Appointment of Peace Officers

The state forester may appoint not to exceed 12 employees of the Texas Forest Service who are certified by the Commission on Law Enforcement Officer Standards and Education as qualified to be peace officers to serve as peace officers under his direction in executing the enforcement duties of that agency. The appointments must be approved by the board which shall commission the appointees as peace officers. Any officer commissioned under this section is vested with all the powers, privileges, and immunities of peace officers in the performance of his duties. The officer shall take the oath required of peace officers and shall execute a good and sufficient bond in the sum of \$5,000, payable to the governor and his successors in office, with two or more good and sufficient personal sureties or with one corporate surety authorized to do business in Texas, conditioned that he will fairly, impartially, and faithfully perform all the duties that may be required of him by law. The bond may be sued on in the name of any person injured until the whole amount of the bond is recovered.

[Amended by Acts 1975, 64th Leg., p. 1840, ch. 570, § 1, eff. June 19, 1975.]

§ 88.1101. Land for Seedling Nursery; Eminent Domain

[Text of section added effective until December 31, 1979]

For the use and benefit of the Texas Forest Service, the board may acquire by eminent domain and may improve not more than 150 acres of land suitable for the operation of a forest tree seedling nursery in the reforestation program of the Texas Forest Service and for the production of other forest products.

[Added by Acts 1977, 65th Leg., p. 904, ch. 338, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 Act provides: "This Act expires December 31, 1979."

§ 88.1131. Application of Sunset Act

The office of South Central Interstate Forest Fire Protection Compact Administrator for Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished effective September 1, 1985.

[Added by Acts 1977, 65th Leg., p. 1846, ch. 735, § 2.100, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

SUBCHAPTER C. THE TEXAS AGRICULTURAL EXPERIMENT STATION

§ 88.2031. Application of Sunset Act

The Texas Agricultural Experiment Station is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the

station is abolished, and this subchapter expires effective September 1, 1987.

[Added by Acts 1977, 65th Leg., p. 1849, ch. 735, § 2.121, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

SUBTITLE E. THE TEXAS STATE UNIVERSITY SYSTEM

CHAPTER 95. ADMINISTRATION OF THE TEXAS STATE UNIVERSITY SYSTEM

SUBCHAPTER A. ADMINISTRATION PROVISIONS

§ 95.01. Board of Regents

The organization, control, and management of the state university system is vested in the Board of Regents, Texas State University System.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.03. Board Meetings

The board shall meet each year at Austin, on the first Monday in May, or as soon thereafter as practicable, for the transaction of business pertaining to the affairs of the state university system. The board shall also meet at other times and places deemed necessary for the welfare of the colleges by a majority of the members.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.04. Per Diem; Expenses

Each member of the board shall receive \$10 per day for the time spent attending the meetings of the board, in addition to reimbursement for traveling expenses. Payment shall be made out of the appropriation for the support and maintenance of the state university system as the board may direct.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

SUBCHAPTER B. POWERS AND DUTIES OF BOARD

§ 95.21. General Responsibilities of Board

The board is responsible for the general control and management of the universities in the system and may erect, equip, and repair buildings; purchase libraries, furniture, apparatus, fuel, and other necessary supplies; employ and discharge presidents or principals, teachers, treasurers, and other employees; and fix the salaries of the persons employed. The president of each member institution shall nominate annually to the board the professors, teachers, officials, and assistants who, in his opinion, will promote the best interests of the institution.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.22. Inspection of Universities

The board shall visit each university under its control and management at least once during each scholastic year, inspect its work, and gather information which will enable the board to perform its duties intelligently and effectively.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.24. Admission; Diplomas and Certificates

The board may determine the conditions on which students may be admitted to the universities, the grades of certificates issued, the conditions for the award of certificates and diplomas, and the authority by which certificates and diplomas are signed.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.25. Teaching Certificates

Diplomas and teachers certificates of each of the system universities authorize the holders to teach in the public schools.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.26. Incidental Fees

The board may fix the rate of incidental fees to be paid by students attending the universities and may make rules for the collection of the fees and for the disbursement of the funds collected.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.27. Annual Report to Governor

The board shall make an annual report to the governor showing the general condition of the affairs of each university in the system and making recommendations for its future management and welfare.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.28. Disbursement of Funds

All appropriations made by the legislature for the support and maintenance of the system universities, for the purchase of land or buildings for the universities, for the erection or repair of buildings, for the purchase of apparatus, libraries, or equipment of any kind, or for any other improvement of any kind shall be disbursed under the direction and authority of the board. The board may formulate rules for the general control and management of the universities, for the auditing and approving of accounts, and for the issuance of vouchers and warrants which are necessary for the efficient administration of the universities.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.29. Financial Statements and Recommendations

The board shall file in each house of the legislature at each of its regular biennial sessions a statement of the receipts and expenditures of each of the system universities, showing the amount of salaries paid to the various teachers, contingent expenses, expenditures for improvements, and other items of expense. The board shall also file its recommendations for appropriations for the universities.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 95.30. Eminent Domain

The board has the power of eminent domain to acquire for the use of the system universities the lands necessary and proper for carrying out their purposes, in the manner prescribed in Title 52, Revised Civil Statutes of Texas, 1925, as amended.¹ The taking of the land is for the use of the state. The board shall not be required to deposit a bond or the amount equal to the award of damages by the commissioners as provided in Paragraph 2, Article 3268, Revised Civil Statutes of Texas, 1925, as amended.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

¹ Civil Statutes, Art. 3264 et seq.

§ 95.31. Acquisition of Land; Procedures

(a) The board may acquire land needed for the proper operation of a system university in the county in which the university is located. The acquisition may be by purchase or by condemnation.

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

(c) When the value of the land has been ascertained and the court is satisfied with the valuation, the court shall enter a decree vesting the title of the land in the state for the use and benefit of the university for whose benefit the land is needed. No decree shall be entered until the value of the land as ascertained, together with all reasonable cost and expense of the owner in attending the proceeding, is paid to him or into court for his benefit and subject to his order. The costs and expenses, including reasonable attorneys' fees, shall be ascertained by the court in which the proceeding is held.

[Amended by Acts 1975, 64th Leg., p. 1161, ch. 434, § 4, eff. June 19, 1975.]

§ 95.32. Dormitories

(a) The board may enter into contracts with persons, firms, or corporations for the erection of dormitories at a university, and may purchase or lease lands and other appurtenances for the construction of the dormitories, provided that the state incurs no liability for the buildings or the sites.

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

[Amended by Acts 1975, 64th Leg., p. 1162, ch. 434, § 5, eff. June 19, 1975.]

CHAPTER 96. INSTITUTIONS OF THE TEXAS STATE UNIVERSITY SYSTEM

SUBCHAPTER C. SOUTHWEST TEXAS STATE UNIVERSITY

Section

96.42. Student Fees for Bus Service [NEW].

SUBCHAPTER A. SUL ROSS STATE UNIVERSITY

§ 96.01. Sul Ross State University

Sul Ross State University is a coeducational institution of higher education located in the city of Alpine. It is under the management and control of the Board of Regents, Texas State University System.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

SUBCHAPTER B. ANGELO STATE UNIVERSITY

§ 96.21. Angelo State University

Angelo State University is a coeducational institution of higher education located in the city of San Angelo. It is under the management and control of the Board of Regents, Texas State University System.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

SUBCHAPTER C. SOUTHWEST TEXAS STATE UNIVERSITY

§ 96.41. Southwest Texas State University

Southwest Texas State University is a coeducational institution of higher education located in the city of San Marcos. It is under the management and control of the Board of Regents, Texas State University System.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

§ 96.42. Student Fees for Bus Service

(a) The board of regents may charge each student enrolled at the institution a fee not exceeding \$10 per semester or \$5 per six-week summer term to be used to finance bus service for students attending the institution. However, no fee may be levied unless the fee is approved by a majority vote of those students participating in a general election called for that purpose.

(b) The board may increase the fee authorized in Subsection (a) of this section by an amount not to exceed \$1 per student during any one academic year. The board may not increase this fee to exceed \$10 per semester or \$5 per six-week summer term.

(c) The fee for student bus service shall not be counted in determining the maximum student ser-

vice fees which may be charged pursuant to the provisions of Section 54.503 of this code.

[Added by Acts 1975, 64th Leg., p. 1233, ch. 458, § 1, eff. Sept. 1, 1975.]

[Sections 96.43 to 96.60 reserved for expansion]

SUBCHAPTER D. SAM HOUSTON STATE UNIVERSITY

§ 96.61. Sam Houston State University

Sam Houston State University is a coeducational institution of higher education located in the city of Huntsville. It is under the management and control of the Board of Regents, Texas State University System.

[Amended by Acts 1975, 64th Leg., p. 1160, ch. 434, § 3, eff. June 19, 1975.]

SUBTITLE F. OTHER COLLEGES AND UNIVERSITIES

CHAPTER 100. EAST TEXAS STATE UNIVERSITY

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Section

100.12. Repealed.

100.16. Repealed.

SUBCHAPTER C. POWERS AND DUTIES

100.31. Repealed.

100.37. Student Union Fees [NEW].

SUBCHAPTER A. GENERAL PROVISIONS

§ 100.01. East Texas State University

East Texas State University is a coeducational institution of higher education with its main campus located in the city of Commerce.

[Amended by Acts 1977, 65th Leg., p. 617, ch. 226, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 amendatory act provided:

"No provision of this Act shall be construed to authorize any new or additional college, university, other institution of higher education, branch, or center thereof."

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 100.11. Board of Regents

The organization, control, and management of the university is vested in a board of nine regents appointed by the governor with the advice and consent of the senate, but no regent may be a resident of the county in which the main campus is located, nor shall the Texarkana campus be organized to offer freshman or sophomore programs, and the metroplex commuter program may offer only those programs approved by the Coordinating Board, Texas College and University System and which are non-

duplicative of programs offered in the Dallas educational area. The board of regents may establish different rules for the operation of the facilities and programs in each location. The members hold office for staggered terms of six years, with the terms of three regents expiring on February 15 of each odd-numbered year. The board shall elect a chairman and any other officers from its members to serve at the will of the board. The board has the powers and duties incident to its position and to the same extent as is conferred on the Board of Regents of Texas Woman's University.

[Amended by Acts 1977, 65th Leg., p. 617, ch. 226, § 1, eff. Aug. 29, 1977.]

§ 100.12. Repealed by Acts 1977, 65th Leg., p. 617, ch. 226, § 3, eff. Aug. 29, 1977

See, now, § 100.11.

§§ 100.15, 100.16. Repealed by Acts 1977, 65th Leg., p. 617, ch. 226, § 3, eff. Aug. 29, 1977

See, now, § 100.11.

SUBCHAPTER C. POWERS AND DUTIES

§ 100.31. Repealed by Acts 1977, 65th Leg., p. 617, ch. 226, § 3, eff. Aug. 29, 1977

See, now, § 100.11.

§ 100.37. Student Union Fees

(a) The board may levy a regular fixed student fee not to exceed \$15 per student for each semester of the long session and not to exceed \$7.50 per student for each term of the summer school, or any fractional part thereof, as may in their discretion be just and necessary for the sole purpose of financing, constructing, operating, maintaining, and improving the Union Center Building. The amount of the fee may be changed at any time within the limits specified in order that sufficient funds to support the Union Center Building may be raised, but any increase in the fee must be approved by a majority vote of those students participating in a general election called for that purpose. The fees herein authorized to be levied should be in addition to any use fee and service fee now or hereafter levied in accordance with law. No state funds may be expended for use of the Union Center Building.

(b) The business manager of East Texas State University shall collect the fees provided for in this section and shall credit the money received from the fees to an account known as the Union Center Building Account.

(c) The money collected and placed in the Union Center Building Account shall be used for the purpose of financing, constructing, operating, maintaining, and improving the Union Center Building and shall be placed under the control of and subject to

the order of the board of directors of the Union Center Building, which board of directors shall annually submit a complete itemized budget to be accompanied by a full and complete report of all activities conducted during the year and all expenditures made incident thereto. The board of regents shall make such changes in the budget as it deems necessary before approving it, and shall then levy the student fees under the provisions of this section in such amount as will be sufficient to meet the budgetary needs of the Union Center Building, within the statutory limits herein fixed.

[Added by Acts 1975, 64th Leg., p. 1916, ch. 619, § 1, eff. Sept. 1, 1975.]

CHAPTER 101. STEPHEN F. AUSTIN STATE UNIVERSITY

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Section
101.18. Repealed.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 101.18. Repealed by Acts 1977, 65th Leg., p. 67, ch. 34, § 1, eff. March 29, 1977

CHAPTER 103. MIDWESTERN STATE UNIVERSITY

§ 103.01. *Midwestern State University*

Midwestern State University is a coeducational institution of higher learning located in the city of Wichita Falls.

[Amended by Acts 1975, 64th Leg., p. 1841, ch. 571, §§ 2, 3, eff. Sept. 1, 1975.]

Section 1 of the 1975 Act provided:

"The name of Midwestern University is hereby changed to Midwestern State University. All references to Midwestern University in any law shall hereafter refer to Midwestern State University."

"Section 2 thereof changed the title of Chapter 103 from "Midwestern University" and § 3 provided: "This Act shall take effect September 1, 1975."

CHAPTER 104. THE UNIVERSITY SYSTEM OF SOUTH TEXAS

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Section
104.15. General Powers and Duties [NEW].

SUBCHAPTER A. GENERAL PROVISIONS

§ 104.01. *The University System of South Texas*

The University System of South Texas is established and is composed of:

- (1) Texas A & I University;
- (2) Laredo State University;
- (3) Corpus Christi State University; and

(4) other institutions and entities assigned to the system from time to time by specific legislative act.

[Amended by Acts 1977, 65th Leg., p. 759, ch. 288, § 4, eff. Sept. 1, 1977.]

Sections 1, 2, 5, and 17 of the 1977 amendatory act provided:

"Sec. 1. The purpose of this Act creating the University System of South Texas is to provide an administrative structure which will implement and supervise the policies and long-range plans of the governing board and which will determine the higher education needs of the system, marshal existing resources for appropriate response to those needs, assure the delivery of educational services in an economical and efficient manner, and establish a high level of quality in the conduct of the total educational enterprise."

"Sec. 2. The name of Texas A & I University at Laredo is changed to Laredo State University, and the name of Texas A & I University at Corpus Christi is changed to Corpus Christi State University."

"Sec. 5. The name of the Board of Directors of Texas A & I University is changed to the Board of Directors of the University System of South Texas. Members of the board on the effective date of this Act continue to serve on the board for the terms to which they were appointed."

"Sec. 17. This Act takes effect September 1, 1977."

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 104.11. *Board of Directors*

The university system is under the management and control of a board of nine directors appointed by the governor with the advice and consent of the senate.

[Amended by Acts 1977, 65th Leg., p. 759, ch. 288, § 6, eff. Sept. 1, 1977.]

§ 104.14. *Executive Officer of University System*

The board shall appoint an executive officer of the university system, fix his term of office, set his salary, and define his duties. He shall recommend a plan for the organization of the university system and the appointment of presidents for the system's component institutions. He is responsible to the board for the general management and success of the university system; and he shall have the cooperation of the board.

[Amended by Acts 1977, 65th Leg., p. 759, ch. 288, § 7, eff. Sept. 1, 1977.]

§ 104.15. *General Powers and Duties*

With respect to the management and control of the university system, the board has the same powers and duties that are conferred on the Board of Regents, Texas State University System, with respect to institutions in that system, except as otherwise provided by this chapter.

[Added by Acts 1977, 65th Leg., p. 759, ch. 288, § 8, eff. Sept. 1, 1977.]

SUBCHAPTER C. TEXAS A & I UNIVERSITY

§ 104.21. *Texas A & I University*

Texas A & I University is a coeducational institution of higher education located in the city of Kingsville.

[Amended by Acts 1977, 65th Leg., p. 760, ch. 288, § 10, eff. Sept. 1, 1977.]

SUBCHAPTER D. LAREDO STATE UNIVERSITY

§ 104.41. Establishment; Scope; Discontinuation

The board may establish an upper-level educational center in the city of Laredo, to be known as Laredo State University, to accept junior, senior, and master's level students only. This upper-level educational center may be discontinued by the Coordinating Board, Texas College and University System, at its discretion and shall never be converted to a free-standing, fully state-supported coeducational institution of higher learning until it has complied with all requirements imposed by the coordinating board and until the site for such institution, consisting of at least 200 acres of land, shall have been provided at no cost to the state.

[Amended by Acts 1977, 65th Leg., p. 760, ch. 288, § 12, eff. Sept. 1, 1977.]

SUBCHAPTER E. PURCHASE OF FARMLAND, EQUIPMENT, CROPS, ETC.

§ 104.51. Authorization

The board for the benefit of Texas A & I University may purchase, use, lease as lessor, and operate farmland, may purchase crops and other horticultural and agricultural products growing on or produced or to be produced and harvested from the land, and may purchase any farming machinery, apparatus, and equipment used or useful in connection with it, from any person, firm, or corporation and for the price or prices the board considers reasonable and proper.

[Amended by Acts 1977, 65th Leg., p. 760, ch. 288, § 13, eff. Sept. 1, 1977.]

SUBCHAPTER G. CORPUS CHRISTI STATE UNIVERSITY

§ 104.91. Establishment; Scope

(a) The board is authorized and directed to establish and maintain a fully state-supported coeducational institution of higher learning to be known as Corpus Christi State University. The site for the institution shall consist of at least 200 acres of land and shall be provided for the institution at no cost to the state.

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

[Amended by Acts 1977, 65th Leg., p. 760, ch. 288, § 15, eff. Sept. 1, 1977]

§ 104.93. Gifts and Grants

(a) The board may accept and administer upon terms and conditions satisfactory to it grants or gifts of property, including real estate and/or money that may be tendered to it in aid of the planning, establishment, conduct, and operation of Corpus

Christi State University, and in aid of research and teaching at the university.

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

[Amended by Acts 1977, 65th Leg., p. 761, ch. 288, § 16, eff. Sept. 1, 1977.]

CHAPTER 105. NORTH TEXAS STATE UNIVERSITY

SUBCHAPTER C. POWERS AND DUTIES

Section

105.44. Eminent Domain: Restriction [NEW].

SUBCHAPTER E. TEXAS COLLEGE OF OSTEOPATHIC MEDICINE [NEW]

105.71. Establishment of College of Osteopathic Medicine.

105.72. Location.

105.73. Rules and Regulations; Courses.

105.74. Chief Executive Officer.

105.75. Teaching Hospital; Facilities.

105.76. Joint Appointments.

105.77. Agreements with Other Entities.

105.78. Gifts and Grants.

105.79. Supervision by Coordinating Board.

105.80. Medical School Admission Policies [NEW].

105.81. Acquisition and Disposition of Land [NEW].

SUBCHAPTER C. POWERS AND DUTIES

§ 105.44. Eminent Domain: Restriction

The board may not use the power of eminent domain to acquire land that is dedicated to a public use by another governmental entity.

[Added by Acts 1977, 65th Leg., p. 42, ch. 26, § 1, eff. March 24, 1977.]

SUBCHAPTER E. TEXAS COLLEGE OF OSTEOPATHIC MEDICINE [NEW]

§ 105.71. Establishment of College of Osteopathic Medicine

(a) There is hereby created a college of osteopathic medicine in the city of Fort Worth to be known as the Texas College of Osteopathic Medicine, a separate institution and not a department, school, or branch of North Texas State University, but under the direction, management, and control of the Board of Regents of North Texas State University.

(b) The board shall have the same powers of direction, management, and control over the college of osteopathic medicine that it exercises over the North Texas State University, but the board shall act separately and independently on all matters affecting the college of osteopathic medicine as a separate institution.

[Added by Acts 1975, 64th Leg., p. 685, ch. 285, § 1, eff. May 22, 1975.]

§ 105.72. Location

The board shall select a site for the college in Tarrant County.

[Added by Acts 1975, 64th Leg., p. 685, ch. 285, § 1, eff. May 22, 1975. Amended by Acts 1977, 65th Leg., p. 2071, ch. 822, § 2, eff. Aug. 29, 1977.]

§ 105.73. Rules and Regulations; Courses

(a) The board may make rules and regulations for the direction, control, and management of the medical school which are necessary for it to be a medical school of the highest quality.

(b) The board, with the approval of the Coordinating Board, Texas College and University System, may prescribe courses leading to the customary degrees and certificates granted by osteopathic medical schools.

[Added by Acts 1975, 64th Leg., p. 685, ch. 285, § 1, eff. May 22, 1975.]

§ 105.74. Chief Executive Officer

The chief executive officer of the university shall serve as chief executive officer of the college of osteopathic medicine.

[Added by Acts 1975, 64th Leg., p. 685, ch. 285, § 1, eff. May 22, 1975.]

§ 105.75. Teaching Hospital; Facilities

(a) A complete teaching hospital for the medical school shall be furnished at no cost or expense to the state.

(b) The board shall make provision for adequate physical facilities for use by the medical school in its teaching and research programs.

[Added by Acts 1975, 64th Leg., p. 685, ch. 285, § 1, eff. May 22, 1975.]

§ 105.76. Joint Appointments

The board of regents is specifically authorized to make joint appointments in the university and the Texas College of Osteopathic Medicine under its governance; the salary of any such person who receives such joint appointment to be apportioned to the appointing institution on the basis of services rendered.

[Added by Acts 1975, 64th Leg., p. 685, ch. 285, § 1, eff. May 22, 1975.]

§ 105.77. Agreements with Other Entities

After approval of the Coordinating Board, Texas College and University System, the board of regents may execute and carry out affiliation or coordinating agreements with any other entity, school, or institution in Texas to provide clinical, postgraduate, including internship and residency, or other levels of medical educational work for the medical school.

[Added by Acts 1975, 64th Leg., p. 685, ch. 285, § 1, eff. May 22, 1975.]

§ 105.78. Gifts and Grants

The board may accept and administer grants and gifts from the federal government, and from any foundation, trust fund, corporation, or any individual or organization for the use and benefit of the medical school.

[Added by Acts 1975, 64th Leg., p. 685, ch. 285, § 1, eff. May 22, 1975.]

§ 105.79. Supervision by Coordinating Board

The medical school is subject to the continuing supervision of and to the rules and regulations of the Coordinating Board, Texas College and University System, in accordance with the provisions of Chapter 61 of this code.¹

[Added by Acts 1975, 64th Leg., p. 685, ch. 285, § 1, eff. May 22, 1975.]

¹ Section 61.001 et seq.

§ 105.80. Medical School Admission Policies

The Board of Regents shall promulgate appropriate rules and regulations pertaining to the admission of students to the medical school which will provide for admission of those students to its entering class each year who are equally or as well qualified as all other students and who have entered a contract with or received a commitment for a stipend, grant, loan or scholarship from the State Rural Medical Education Board. The State Rural Medical Education Board may contract with medical students providing for such students to engage in a general or family practice of medicine for not less than four years after licensing and a period of medical residency, as determined by the rules and regulations established by the State Rural Medical Education Board, in cities of Texas which have a population of less than 5,000 or in rural areas, as that term may be defined by the State Rural Medical Education Board, and said Board is hereby given the authority to define and from time to time redefine the term rural area, at the time the medical practice is commenced. This contract shall provide for a monthly stipend of at least \$100 to be granted by the State Rural Medical Education Board to each person under contract with the state while enrolled as a medical school student.

[Added by Acts 1975, 64th Leg., p. 2408, ch. 740, § 2, eff. Sept. 1, 1975.]

§ 105.81. Acquisition and Disposition of Land

The board may acquire by purchase, donation, or otherwise for the use of the school any land or other real property necessary or convenient for carrying out its purposes as a state-supported institution of higher education, and may sell, exchange, lease, or otherwise dispose of any land or other real property owned by or acquired for the school. The power of acquisition and disposition is restricted to area within Tarrant County. The proceeds from any sale of land or other real property shall be added to the capital funds of the school.

[Added by Acts 1977, 65th Leg., p. 2071, ch. 822, § 1, eff. Aug. 29, 1977.]

CHAPTER 106. TEXAS SOUTHERN UNIVERSITY

SUBCHAPTER C. POWERS AND DUTIES

Section

106.37. Student Center Fees [NEW].

SUBCHAPTER C. POWERS AND DUTIES

§ 106.35. Acquisition and Disposition of Land

(a) The board on behalf of the university may acquire by purchase, exchange, or otherwise any tract or parcel of land in Harris County that is contiguous or adjacent to the campus of the university when the board deems the land necessary for campus expansion, and may sell, exchange, or lease one or more of the following tracts of land:

(1) Tract No. 1

All that certain lot, tract or parcel of land lying, situated and being in the City of Houston, Harris County, Texas;

Parts of Lots Six (6) and Seven (7) in Block Sixty-three (63), Riverside Terrace, Seventeenth Section, an addition to the City of Houston, Harris County, Texas, according to plat thereof recorded in Volume 16, page 26 of the Map Records of Harris County, Texas, said property being more particularly described as follows, to-wit:

BEGINNING at a stake in the south line of Roseneath Drive, the same being the front line of Lot Six (6) in Block Sixty-three (63), Riverside Terrace, Seventeenth Section, located in a westerly direction a distance of sixty-four (64) feet measured along the front line of said Lot Six (6) from the northeast corner of Lot 6;

THENCE, in an easterly direction along the front lines of Lots six (6) and Seven (7) in Block 63 with a curve the radius of which is 424.97 feet, a distance of 87 feet to stake for corner in the front line of said Lot Seven (7) located in an easterly direction a distance of Twenty-three (23) feet from the northwest corner of said Lot Seven (7);

THENCE in a southerly direction a distance of 211.82 feet to a stake in the rear line of Lot Seven (7) located in an easterly direction measured along the rear line of said Lot 7, a distance of 41.37 feet from the southwest corner of said lot;

THENCE in a southwesterly direction along the rear lines of Lots six (6) and seven (7) with a curve, the radius of which is 513.5 feet, a distance of 120.43 feet, to stake for corner in the rear line of said Lot six (6), located in an easterly direction measured along the rear line of said Lot six

(6), a distance of 69.88 feet from the southwest corner of said Lot 6;

THENCE in a northerly direction, a distance of 224.08 feet to the Place of Beginning, and being the same property conveyed to Oscar M. Pearce by McGregor Drive Development Company by deed dated January 28, 1946 recorded in Volume 1427, page 417 of the Deed Records of Harris County, Texas, to which reference is hereby made for all purposes.

(2) Tract No. 2

Two tracts composed of all of Lot 8 in Block 78 of Riverside Terrace, 17th Section, as per map or plat recorded in Volume 16, Page 26 Harris County Map Records, described as follows:

Tract 1: A strip 20 feet wide in front and 5 ft. wide in the rear, off of the east side of said Lot 8, as described in Deed filed in Harris County Clerk's File # 535740; and,

Tract 2: The westerly part of Lot 8 in Block 78 of Riverside Terrace, 17th Section and being a tract 80 ft. wide in front and 60 ft. wide in rear, described in Deed under Harris County Clerk's File No. 535740; and,

Tract 3: 16,019 sq. ft. known as Lot 9 in Block 78 of Riverside Terrace 17th Section, lying partly in 24.073 acre tract deeded to McGregor Drive Development Company in Vol. 667, Page 362 Deed Records and partly in 17 ac. tr. deeded to D. L. Anderson in Vol. 1045, Page 716 Deed Records, all out of Lots 9 and 16 of the west ½ of the Luke Moore Survey; tract hereby conveyed being described as follows: BEGINNING at iron stake on west property line of St. Bernard Street, in southerly direction a distance of 212.95 ft. from the southeast corner of Lot 12 in Block 64 of Riverside Terrace 12th Section and said distance being measured along arc of curve whose radius is 532.07 ft.; THENCE continuing in southerly direction along the west line of St. Bernard Street, with curve to right whose radius is 532.07 ft., a distance of 160.35 feet to the end of said curve; THENCE south 19 deg. 54' west, continuing along the west line of St. Bernard Street, 25.96 ft. to iron stake for corner; THENCE south 70 deg. 52' west, a distance of 60 feet to iron stake for corner; THENCE east with curve to right whose radius is 2,017.05 feet a

distance of 95.24 feet to the end of said curve; THENCE north 74 deg. 36' E a distance of 24.76 feet to the beginning. Recorded in Map Records Volume 16, page 26 of Harris County, Texas, and in Deed Records of Harris County, Volume 1125, Page 11, and subject to restrictions, reservations and easements of records in Harris County Deed Records.

(3) Tract No. 3

Tract and parcel of real property located and situated in Hearne, Robertson County, Texas, and being described as follows:

Being Lots Numbered Six (6), Seven (7) and Eight (8) in Block Numbered Four Hundred Twenty One (421) in the City of Hearne, Texas, according to the Map of the said City as the same appears on record in Vol. 1, page 5 of the Map Records of Robertson County, Texas, together with all improvements located and situated thereon, the same being a tract of land 75 feet in width fronting on Second Street and 115 feet in depth, reference being made to the said Map for all purposes.

(b) The proceeds from any sale or lease of land or other real property shall be added to the general funds of the university.

[Amended by Acts 1977, 65th Leg., p. 2204, ch. 869, § 1, eff. Aug. 29, 1977.]

§ 106.37. Student Center Fees

(a) The board may levy and collect a student fee not to exceed \$15 per student for each semester of the long session and not to exceed \$7.50 per student for each term of the summer session, as may in its discretion be necessary and desirable for the purpose of operating, maintaining, and improving the student center and acquiring or constructing additions to the student center. Provided, however, that a student center fee shall be levied only after a student referenda has been called on the issue of an increase in the fee, within the prescribed limits of this section, and that the issue of an increase has been approved by a majority of the students voting in the election. Provided, further, that in its levy and assessment of such fee, the board shall adopt a proportionate fee schedule which takes into consideration the number of semester credit hours for which a student registers.

(b) All fees collected pursuant to Subsection (a) hereof shall be reserved and accounted for in an account or accounts kept separate and apart from educational and general funds of the university. The fees collected shall be placed in a depository bank or banks designated by the board and shall be secured by law.

(c) Expenditures from the accounts provided for in Subsection (b) of this section shall be limited to those purposes specified in Subsection (a) of this section and pursuant to a budget approved by the board.

(d) The fee authorized to be collected pursuant to Subsection (a) of this section shall be in addition to any other fees or charges heretofore authorized by law.

[Added by Acts 1977, 65th Leg., p. 2206, ch. 869, § 2, eff. Aug. 29, 1977.]

CHAPTER 107. TEXAS WOMAN'S UNIVERSITY

SUBCHAPTER C. POWERS AND DUTIES

Section 107.45. Eminent Domain: Restriction [NEW].

SUBCHAPTER C. POWERS AND DUTIES

§ 107.45. Eminent Domain: Restriction

The board may not use the power of eminent domain to acquire land that is dedicated to a public use by another governmental entity.

[Added by Acts 1977, 65th Leg., p. 42, ch. 26, § 2, eff. March 24, 1977.]

CHAPTER 108. LAMAR UNIVERSITY

SUBCHAPTER C. POWERS AND DUTIES

§ 108.36. Educational Centers

(a) The Board may establish educational centers of Lamar University in the counties of Jefferson and Orange, to be known as Lamar University at Port Arthur and Lamar University at Orange, to accept freshman and sophomore level students only. These educational centers may be discontinued by the Coordinating Board, Texas College and University System, at its discretion.

(b) The board may make provision for adequate physical facilities to be provided at no cost to the State of Texas for use by the Lamar University at Port Arthur and Lamar University at Orange and may accept and administer, on terms and conditions satisfactory to the board, grants or gifts of money or property which are tendered by any reason for the use and benefit of the school; provided, however, that any expenditure of funds, other than local funds or any such grants or gifts, for teaching classes not held on the Beaumont Campus, shall be only as specifically authorized in the General Appropriations Act.

(c) The board with approval of the Coordinating Board, Texas College and University System, may

prescribe courses leading to customary degrees, and make other rules and regulations for the operation, control, and management of the Lamar University at Port Arthur and Lamar University at Orange as necessary for the school to be a first-class institution for freshman and sophomore students.

(d) Nothing in this section shall be construed to limit the powers of the board of regents of Lamar University as conferred by law.

[Amended by Acts 1977, 65th Leg., p. 199, ch. 99, § 1, eff. May 3, 1977.]

§ 108.37. Student Center Fees

The board of regents may levy a regular fixed student fee not to exceed \$20 per student for each semester of the long session and not to exceed \$10 per student for each term of the summer session, against each student enrolled in the institution, as in their discretion may be just and necessary for the purpose of operating, maintaining, improving, and equipping the student center and acquiring or constructing additions to the student center.

[Amended by Acts 1977, 65th Leg., p. 2140, ch. 855, § 1, eff. Aug. 29, 1977.]

CHAPTER 109. TEXAS TECH UNIVERSITY

SUBCHAPTER C. POWERS AND DUTIES

Section

- 109.48. Utilities Easements [NEW]
- 109.48. Management of Lands [NEW].
- 109.49. Sale of Crops [NEW].
- 109.50. Student Fees for University Center [NEW].

SUBCHAPTER C. POWERS AND DUTIES

§ 109.48. Utilities Easements

[Text as added by Acts 1975, 64th Leg., p. 362, ch. 155, § 1]

On terms, conditions, stipulations, and compensation as determined by the board, the board may convey, dedicate, or use any other appropriate method of conveyance to grant, convey, or dedicate rights, title, rights-of-way, or easements involving or in connection with the furnishing or providing of electricity, water, sewage disposal, natural gas, telephone, telegraph, or other utility service on, over, or through the campus of Texas Tech University in Lubbock County. The chairman of the board may execute and deliver conveyances or dedications on behalf of Texas Tech University.

[Added by Acts 1975, 64th Leg., p. 362, ch. 155, § 1, eff. May 8, 1975.]

For text as added by Acts 1975, 64th Leg., p. 1248, ch. 471, § 1, see Section 109.48, post.

§ 109.48. Management of Lands

[Text as added by Acts 1975, 64th Leg., p. 1248, ch. 471, § 1]

The board has the sole and exclusive management and control of lands set aside and appropriated to or acquired by the institutions under its governance. The board may lease and otherwise manage, control, and use the lands in any manner and at prices and under terms and conditions the board deems best for the interest of the institutions. No grazing lease shall be made for a period of more than five years.

[Added by Acts 1975, 64th Leg., p. 1248, ch. 471, § 1, eff. Sept. 1, 1975.]

For text as added by Acts 1975, 64th Leg., p. 362, ch. 155, § 1, see Section 109.48, ante.

§ 109.49. Sale of Crops

Proceeds from the sale, barter, or exchange of crops resulting from any agricultural activities at the institution shall be applied to defray the expenses of conducting the agricultural activities.

[Added by Acts 1975, 64th Leg., p. 362, ch. 154, § 1, eff. May 8, 1975.]

§ 109.50. Student Fees for University Center

(a) The board may levy a regular fixed student fee not to exceed \$10 per student for each semester of the long session and not to exceed \$5 per student for each term of the summer session, or any fractional part thereof, as may in their discretion be just and necessary for the sole purpose of operating, maintaining, and improving the University Center. The amount of the fee may be changed at any time within the limits specified in order to provide sufficient funds to support the center, but any increase in the initial fee must be approved by a majority vote of those students participating in a general election called for that purpose.

(b) The director of accounting and finance of the university shall collect the fees provided for in Subsection (a) of this section and shall credit the money received from the fees to an account known as the University Center account.

(c) The funds in the University Center account shall be used for the purpose of operating, maintaining, and improving the center and shall be placed under the control of and subject to the order of the board of directors of the University Center. The board of directors shall annually submit a complete and itemized budget accompanied by a full and complete report of all activities conducted during the year and all expenditures made incident thereto. The board of regents shall make such changes in the budget as it deems necessary before approving it, and shall then levy the student fees in an amount sufficient to meet the budgetary needs of the center within the limits set in Subsection (a) of this section.

[Added by Acts 1975, 64th Leg., p. 461, ch. 196, § 1, eff. May 13, 1975.]

[Sections 109.51 to 109.60 reserved for expansion]

CHAPTER 110. TEXAS TECH UNIVERSITY SCHOOL OF MEDICINE AT LUBBOCK

Section

- 110.11. Utilities Easements [NEW].
110.11. Management of Lands [NEW].
110.11. Medical School Admission Policies [NEW].

§ 110.11. Utilities Easements

[Text as added by Acts 1975, 64th Leg., p. 363, ch. 155, § 2]

On terms, conditions, or stipulations, and compensation as determined by the board, the board may convey, dedicate, or use any other appropriate method of conveyance to grant, convey, or dedicate rights, title, rights-of-way, or easements involving or in connection with the furnishing or providing of electricity, water, sewage disposal, natural gas, telephone, telegraph, or other utility service on, over, or through the campus or properties of Texas Tech University School of Medicine in Lubbock or Potter County to Texas Tech University School of Medicine facilities or activities in those counties. The chairman of the board may execute and deliver conveyances or dedications on behalf of Texas Tech University School of Medicine.

[Added by Acts 1975, 64th Leg., p. 363, ch. 155, § 2, eff. May 8, 1975.]

For text as added by Acts 1975, 64th Leg., p. 1249, ch. 471, § 2 and Acts 1975, 64th Leg., p. 2409, ch. 740, § 4, see Sections 110.11, post.

§ 110.11. Management of Lands

[Text as added by Acts 1975, 64th Leg., p. 1249, ch. 471, § 2]

The board has the sole and exclusive management and control of lands set aside and appropriated to or acquired by the institutions under its governance. The board may lease and otherwise manage, control, and use the lands in any manner and at prices and under terms and conditions the board deems best for the interest of the institutions. No grazing lease shall be made for a period of more than five years. [Added by Acts 1975, 64th Leg., p. 1249, ch. 471, § 2, eff. Sept. 1, 1975.]

For text as added by Acts 1975, 64th Leg., p. 363, ch. 155, § 2 and Acts 1975, 64th Leg., p. 2409, ch. 740, § 4, see Sections 110.11, ante and post.

§ 110.11. Medical School Admission Policies

[Text as added by Acts 1975, 64th Leg., p. 1249, ch. 740, § 4]

The Board of Regents shall promulgate appropriate rules and regulations pertaining to the admission of students to the medical school which will provide for admission of those students to its entering class

each year who are equally or as well qualified as all other students and who have entered a contract with or received a commitment for a stipend, grant, loan or scholarship from the State Rural Medical Education Board. The State Rural Medical Education Board may contract with medical students providing for such students to engage in a general or family practice of medicine for not less than four years after licensing and a period of medical residency, as determined by the rules and regulations established by the State Rural Medical Education Board, in cities of Texas which have a population of less than 5,000 or in rural areas, as that term may be defined by the State Rural Medical Education Board, and said Board is hereby given the authority to define and from time to time redefine the term rural area, at the time the medical practice is commenced. This contract shall provide for a monthly stipend of at least \$100 to be granted by the State Rural Medical Education Board to each person under contract with the State while enrolled as a medical school student. [Added by Acts 1975, 64th Leg., p. 2409, ch. 740, § 4, eff. Sept. 1, 1975.]

For text as added by Acts 1975, 64th Leg., p. 363, ch. 155, § 2 and Acts 1975, 64th Leg., p. 1249, ch. 471, § 2, see Sections 110.11, ante.

CHAPTER 111. THE UNIVERSITY OF HOUSTON

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Section

- 111.20. University of Houston System [NEW].

SUBCHAPTER C. POWERS AND DUTIES

- 111.42. Student Fees for University Centers [NEW].

SUBCHAPTER D-1. INSTITUTE OF LABOR AND INDUSTRIAL RELATIONS [NEW]

- 111.71. Establishment of Institute.
111.72. Purpose.
111.73. Activities.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 111.20. University of Houston System

(a) The University of Houston System hereby created is composed of all those institutions and entities presently under the governance, control, jurisdiction, and management of the Board of Regents of the University of Houston.

(b) The University of Houston System shall also be composed of such other institutions and entities as from time to time may be assigned by specific legislative act to the governance, control, jurisdiction, and management of the University of Houston System.

(c) The governance, control, jurisdiction, organization, and management of the University of Houston

System is hereby vested in the present Board of Regents of the University of Houston, which will hereinafter be known and designated as the Board of Regents of the University of Houston System. [Added by Acts 1977, 65th Leg., p. 263, ch. 124, § 1, eff. Aug. 29, 1977.]

SUBCHAPTER C. POWERS AND DUTIES

§ 111.42. Student Fees for University Centers

(a) The board may levy a student union fee, not to exceed \$15 per student for each regular semester and not to exceed \$7.50 per student for each term of the summer session, for the sole purpose of financing, constructing, operating, maintaining, and improving a Student Union Building. The fees herein authorized to be levied are in addition to any use or service fee now or hereafter authorized to be levied.

(b) Such fees shall be deposited to an account known as "The University of Houston Center Fee Account" and shall be placed under the control of and subject to the order of the Student Service Fee Planning and Allocations Committee. The committee shall annually submit to the board of regents a complete and itemized budget to be accompanied by a full and complete report of all activities conducted during the past year and all expenditures made incident thereto. The board of regents shall make such changes in the budget as it deems necessary before approving the budget but may only levy a student union fee or increase an existing student union fee after a student referendum has been called on the levying or increase in such a fee, and the majority of the students voting in the referendum approve. The board shall then levy the fees, within the limits herein fixed, in such amounts as will be sufficient to meet the budgetary needs of the University Center Building. Expenditures from "The University of Houston Center Fee Account" shall be made solely for the purposes set forth in this section, and in compliance with the budget approved by the board of regents.

[Added by Acts 1977, 65th Leg., p. 1473, ch. 597, § 1, eff. Aug. 29, 1977.]

SUBCHAPTER D-1. INSTITUTE OF LABOR AND INDUSTRIAL RELATIONS [NEW]

§ 111.71. Establishment of Institute

The board of regents shall establish an Institute of Labor and Industrial Relations.

[Added by Acts 1977, 65th Leg., p. 879, ch. 330, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 Act provided:

"The name of the Center for Human Resources at the University of Houston is changed to the Institute of Labor and Industrial Relations, and the functions of the center as renamed shall be continued and expanded in accordance with the provisions of this Act. The budget of the center shall be the budget of the institute."

§ 111.72. Purpose

The purpose of the institute is to contribute to a more meaningful relationship between education and training and the requirements of the Texas labor force and to a positive labor and industrial relations climate.

[Added by Acts 1977, 65th Leg., p. 879, ch. 330, § 1, eff. Aug. 29, 1977.]

§ 111.73. Activities

The institute may sponsor the following activities:

(1) adult education, technical assistance, and informational services for labor, management, and public practitioners concerned with the problems of labor, the labor force, and industrial relations;

(2) research and training related to labor, the labor force, and industrial relations;

(3) special informational services to assist labor, business and industry, government, and educational institutions in relating education and training to labor market requirements;

(4) research, technical assistance, and information related to the impact of special problems on the Texas labor force, such as the energy problem, on employment, unemployment, and labor relations in the state;

(5) degree or certificate programs appropriate to the field, subject to the approval of the board of regents and the Coordinating Board, Texas College and University System; and

(6) a formal program of training, technical assistance, and informational services to the junior and community colleges in the state for the purpose of assisting in the development of labor study programs.

[Added by Acts 1977, 65th Leg., p. 879, ch. 330, § 1, eff. Aug. 29, 1977.]

CHAPTER 112. PAN AMERICAN UNIVERSITY

SUBCHAPTER D. PAN AMERICAN UNIVERSITY AT BROWNSVILLE [NEW]

Section

112.51. Establishment; Scope.

112.52. Facilities; Gifts and Grants.

112.53. Courses and Degrees; Rules and Regulations.

112.54. Effect of Subchapter.

SUBCHAPTER D. PAN AMERICAN UNIVERSITY AT BROWNSVILLE [NEW]

§ 112.51. Establishment; Scope

The Board of Regents of Pan American University may establish an upper-level educational center of Pan American University in the city of Brownsville,

to be known as Pan American University at Brownsville, to accept junior, senior, and master's level students only. This upper-level educational center may be discontinued by the Coordinating Board, Texas College and University System, at its discretion and shall never be converted to a freestanding, fully state-supported coeducational institution of higher learning until it has complied with all requirements imposed by the Coordinating Board and until the site for such institution, consisting of at least 200 acres of land, shall have been provided at no cost to the state.

[Added by Acts 1977, 65th Leg., p. 726, ch. 271, § 1, eff. Aug. 29, 1977.]

§ 112.52. Facilities; Gifts and Grants

The board of regents shall make provisions for adequate physical facilities for use by Pan American University at Brownsville and may accept and administer, on terms and conditions satisfactory to the board, grants or gifts of money or property which are tendered by any person for the use and benefit of the school.

[Added by Acts 1977, 65th Leg., p. 726, ch. 271, § 1, eff. Aug. 29, 1977.]

§ 112.53. Courses and Degrees; Rules and Regulations

The board of regents, with the approval of the Coordinating Board, Texas College and University System, may prescribe courses leading to customary degrees and make other rules and regulations for the operation, control, and management of the university at Brownsville as necessary for the school to be a first-class upper division institution of higher learning. It is the intent of the legislature that degrees be offered only by and in the name of Pan American University and that they include only bachelor's and master's degrees and their equivalents.

[Added by Acts 1977, 65th Leg., p. 726, ch. 271, § 1, eff. Aug. 29, 1977.]

§ 112.54. Effect of Subchapter

Nothing in this subchapter shall be construed to limit the powers of the Board of Regents of Pan American University as conferred by law.

[Added by Acts 1977, 65th Leg., p. 726, ch. 271, § 1, eff. Aug. 29, 1977.]

CHAPTER 113. TEXAS EASTERN UNIVERSITY

Acts 1975, 64th Leg., p. 813, ch. 317, § 3, provided:

"The title of Chapter 113 of the Texas Education Code is changed from TYLER STATE COLLEGE to TEXAS EASTERN UNIVERSITY."

SUBCHAPTER A. GENERAL PROVISIONS

§ 113.01. Texas Eastern University

There is created and established in the city of Tyler a coeducational institution of higher education to be known as Texas Eastern University. The college shall be organized to accept only junior-, senior-, and graduate-level students.

[Amended by Acts 1975, 64th Leg., p. 813, ch. 317, § 2, eff. Sept. 1, 1975.]

Section 1 of the 1975 amendatory act provided: "The name of Tyler State College is hereby changed to Texas Eastern University. All references to and appropriations for Tyler State College apply to Texas Eastern University."

§ 113.03. Applicability of General Laws

Texas Eastern University is subject to the obligations and entitled to the benefits of all general laws of Texas applicable to all other state institutions of higher education, including Chapter 55 of this code,¹ except where the general laws are in conflict with this chapter, and in the event of conflict this chapter prevails to the extent of the conflict.

[Amended by Acts 1975, 64th Leg., p. 813, ch. 317, § 2, eff. Sept. 1, 1975.]

¹ Section 55.01 et seq.

SUBTITLE G. NON-BACCALAUREATE SYSTEM

CHAPTER 130. JUNIOR COLLEGE DISTRICTS

SUBCHAPTER E. BOARDS OF TRUSTEES OF JUNIOR COLLEGE DISTRICTS

Section 130.0821. Governing Board of Certain Countywide Community College Districts [NEW].

SUBCHAPTER A. GENERAL PROVISIONS

§ 130.003. State Appropriation for Public Junior Colleges

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

(b) To be eligible for and to receive a proportionate share of the appropriation, a public junior college must:

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

(4) collect, from each full-time and part-time student enrolled, matriculation and other session fees in the amounts required and provided by law for other state-supported institutions of higher education, except, however, the governing board of a public junior college district may waive the difference in the rate of tuition for nonresident and resident students for a person, and his dependents, who owns property which is

subject to ad valorem taxation by the junior college district, that the amount charged non-residents who have not received a waiver of nonresident tuition need not be greater than the amount so required by law on January 1, 1971, and that notwithstanding the provisions of Subsection (b) of Section 54.051 of this code, the minimum tuition charge for resident students shall be \$25;

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

[Amended by Acts 1977, 65th Leg., p. 1379, ch. 550, § 1, eff. Aug. 29, 1977.]

SUBCHAPTER E. BOARDS OF TRUSTEES OF JUNIOR COLLEGE DISTRICTS

§ 130.082. **Governing Board of Junior College of Other than Independent School District**

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

(d) The number of members or trustees of the governing board shall be either seven or nine, in accordance with the laws applicable to the junior college district on the effective date of this code or on the date of the creation of a new district or a new board. Any seven-member board may be increased to nine, and the two additional members shall be appointed by resolution or order of the board for terms of office as prescribed in Subsection (e) of this section. Any vacancy occurring on the board through death, resignation, or otherwise, shall be filled by appointment by resolution or order of the board. If the vacancy occurs on a board whose members are elected in at-large elections, the person appointed to fill the unexpired term shall serve until the next regular election of members to the board, at which time the position shall be filled by election for a term appropriately shortened to conform with what regularly would have been the length of the term for that position. If the vacancy occurs on a board whose members are elected from single-member districts, the person appointed to fill the unexpired term shall serve until the next regular election for that particular district. Each member of the board shall be a resident, qualified voter of the district and shall take the proper oath of office before taking up the duties thereof. Members of a board shall not receive any remuneration or emolument of office, but they shall be entitled to reimbursement for their actual expenses incurred in performing their duties, to the extent authorized and permitted by the board. The board shall elect one of its members as president of the board, and the president shall preside at meetings of said board and perform such other duties and functions as are prescribed by the board. The president of the board

shall have a vote the same as the other members. The board shall elect a secretary of the board who may or may not be a member of the board, and who shall be the official custodian of the minutes, books, records, and seal of said board, and who shall perform such other duties and functions as are prescribed by the board. The board shall be authorized to elect any other officers as deemed necessary or advisable. Officers of the board shall be elected at the first regular meeting of the board following the regular election of members of the board in even-numbered years, or at any time thereafter in order to fill a vacancy. Said board shall be authorized to appoint or employ such agents, employees, and officials as deemed necessary or advisable to carry out any power, duty, or function of said board; and to employ a president, dean, or other administrative officer, and upon the president's recommendation to employ faculty and other employees of the junior college. Said board shall act and proceed by and through resolutions or orders adopted or passed by the board and the affirmative vote of a majority of all members of the board shall be required to adopt or pass a resolution or order, and the board shall adopt such rules, regulations, and bylaws as it deems advisable, not inconsistent with this section.

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

(i) The governing board of a countywide junior or community college district that contains a city with a population of more than 800,000 residents may set the date for an election held under the provisions of this section on any day in April by a resolution adopted not less than 90 days before the date selected; provided, however, that such election may not be held on the same date as the election of the governing board of any independent school district in such county unless the election date of all independent school districts in such county is on such date. The elections in each trustee district may be conducted jointly with the elections held in April in a city or school district in the trustee district. When a runoff election is necessary, the board may order the election for a date to coincide with the date of the runoff election for city officials, if the city is holding a runoff election; otherwise, the board shall set the date of the runoff election for not later than three weeks following the regular election. When members of the board and municipal officers are to be elected on the same day, the governing bodies of the district and the city shall enter into an agreement governing the conduct of the joint election in accordance with the provisions of Article 978b, Revised Civil Statutes of Texas, 1925, as amended.

[Amended by Acts 1975, 64th Leg., p. 2035, ch. 673, § 1, eff. June 20, 1975; Acts 1977, 65th Leg., p. 1386, ch. 554, § 1, eff. June 15, 1977.]

§ 130.0821. Governing Board of Certain County-wide Community College Districts

(a) The members of the governing board of a countywide community college district that contains a city with a population of more than 800,000 residents shall be elected from single-member trustee districts at all elections held after January 1, 1978.

(b) Before January 1, 1978, the board of trustees shall divide the district into seven compact trustee districts which contain as nearly as practicable an equal number of inhabitants according to the last preceding federal census. Residents of each trustee district shall be entitled to elect one member of the board, and each candidate seeking to represent a trustee district must reside in the trustee district he seeks to represent. Trustees shall, during their term of office, reside within the trustee district from which they were elected.

(c) Members of the board of trustees of the district shall serve for staggered terms of six years with the terms of two or three members expiring in even-numbered years.

(d) The trustees elected in 1978 shall draw lots for appropriate terms so that the terms of two trustees shall expire in 1980, two in 1982, and three in 1984.

(e) Within 90 days following the publication of census tract data compiled during each subsequent decennial federal census, the board of trustees shall redivide the district into seven trustee districts if such census data indicates that the population of the most populous trustee district exceeds the population of the least populous district by more than 10 percent. At the next district election following the redivision of the district, each trustee district shall elect a member of the board, and the members elected shall draw lots for two two-year terms, two four-year terms, and three six-year terms.

(f) Any election held pursuant to the terms of this section shall be conducted in accordance with the provisions of Subsection (i), Section 130.082 of this code.

(g) Trustees elected under the provisions of this section take office on the first Tuesday in May. [Added by Acts 1977, 65th Leg., p. 1868, ch. 743, § 1, eff. Aug. 29, 1977.]

§ 130.086. Branch Campuses

(a) The board of trustees of a junior college district may establish and operate branch campuses, centers, or extension facilities, without regard to the geographical bounds of the junior college district, provided that each branch campus, center, or extension facility and each course or program offered in such locations is subject to the prior and continuing approval of the Coordinating Board, Texas College and University System.

(b) Such branch campuses, centers, or extension facilities shall be within the role and scope of the junior college as determined by the Coordinating Board, Texas College and University System.

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

(d) Before any course may be offered by a junior college within the district of another operating public junior college, it must be established that the second public junior college is not capable of or is unable to offer the course. If the course is to be offered in a county which has a population of more than 97,500 persons, according to the last preceding federal census, and which has no state-supported senior college or university within its boundaries, it must also be established that any other college or university in the county is not able and willing to offer the course. After the need is established and the course is not locally available, then the first junior college may offer the course when approval is granted by the Coordinating Board, Texas College and University System, under the provisions of Subsection (a).

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

(f) Out-of-district branch campuses, centers, or extension facilities of junior colleges existing prior to September 1, 1971, shall be reviewed by the Coordinating Board, Texas College and University System, to determine their feasibility and desirability with respect to the junior college and the population of the geographical area served by the branch campus, center, or extension facility.

[Amended by Acts 1975, 64th Leg., p. 2035, ch. 673, § 2, eff. June 20, 1975; Acts 1975, 64th Leg., p. 2109, ch. 689, §§ 1 to 4, June 20, 1975.]

SUBCHAPTER G. FISCAL PROVISIONS

§ 130.121. Tax Assessment, Equalization, and Collection

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

(g) The governing board of a joint county junior college district shall be authorized to have the taxable property in its district assessed, its values equalized, or its taxes collected, in whole or in part, by the tax assessors, boards of equalization, or tax collectors, respectively, of any county, city, taxing district, or other governmental subdivision in which all or any part of the joint county junior college district is located. The tax assessors or tax collectors of a governmental subdivision, on the request of the governing board of a joint county junior college district, shall assess and collect the taxes of the joint county junior college district on the taxable property in the territory of the district located within the governmental subdivision. The taxes assessed and collected shall be based on levies made and rates fixed by

the governing board of the joint county junior college district. Unless otherwise determined by the governing board of the joint county junior college district, the assessed valuations of the property for state and county taxes shall be used as the valuation for the joint county junior college district taxes. The tax assessors or tax collectors shall collect the joint county junior college district taxes at the same time they assess or collect the taxes levied by their own governmental subdivisions. All taxes collected for the joint county junior college district shall be accounted for and paid over to the treasurer of the joint county junior college district by the tax collectors no later than the 10th of the month following the month of collection. Tax assessors and tax collectors shall receive compensation in an amount agreed on between the appropriate parties, but not to exceed two percent of the ad valorem taxes assessed. The functions assumed by the officials of a governmental subdivision under the subsection are additional duties pertaining to their offices.

[Amended by Acts 1977, 65th Leg., p. 563, ch. 198, § 1, eff. May 20, 1977.]

**CHAPTER 135. TEXAS STATE
TECHNICAL INSTITUTE**

SUBCHAPTER A. GENERAL PROVISIONS

Section
135.05. Interpreters for the Deaf [NEW].

§ 135.05. Interpreters for the Deaf

(a) The institute shall provide qualified interpreters for deaf students in attendance at each campus. In order to be qualified, an interpreter must:

(1) be capable of giving verbatim translation of the spoken word through finger spelling, the language of signs, and speaking without voice;

(2) be capable of reverse interpretation from the language of signs to the spoken word;

(3) be a member of the Texas Society of Interpreters for the Deaf; and

(4) hold a Comprehensive Skills Certificate from the National Registry of Interpreters for the Deaf.

(b) The institute shall also provide equipment, materials, and services, including tutoring, counseling, and other support services, necessary for the deaf student to take full advantage of existing educational programs.

[Added by Acts 1977, 65th Leg., p. 1034, ch. 379, § 1, eff. Aug. 29, 1977.]

TITLE 4. COMPACTS

**CHAPTER 160. REGIONAL EDUCATION
COMPACT**

Section
160.041. Application of Sunset Act [NEW].
160.07. Academic Common Market [NEW].

§ 160.041. Application of Sunset Act

The office of Southern Regional Education Compact Commissioner for Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished, and this chapter expires effective September 1, 1989.

[Added by Acts 1977, 65th Leg., p. 1853, ch. 735, § 2.155, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

§ 160.07. Academic Common Market

(a) The Coordinating Board, Texas College and University System, is hereby authorized to participate on behalf of the State of Texas in the interstate agreement known as the "Academic Common Market," which provides reciprocal higher educational opportunities to the citizens of states declared as parties to the Southern Regional Education Compact.

(b) The governing board of any public institution of higher education may propose programs and curricula for approval by the Coordinating Board, Texas College and University System, which are to be offered to citizens of participating states on a resident tuition or registration fee basis.

(c) Notwithstanding any other provisions of this code, the governing board of any public institution of higher education shall charge nonresident students from participating states enrolled in programs designated pursuant to this section the same amount charged resident students in such programs.

[Added by Acts 1977, 65th Leg., p. 105, ch. 50, § 1, eff. Aug. 29, 1977.]

CHAPTER 161. COMPACT FOR EDUCATION

Section
161.021. Application of Sunset Act [NEW].

§ 161.021. Application of Sunset Act

The office of Compact for Education Commissioner for Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished, and this chapter expires effective September 1, 1989.

[Added by Acts 1977, 65th Leg., p. 1853, ch. 735, § 2.150, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

TEXAS EDUCATION CODE

TABLE OF
SPECIAL LAWS PERTAINING
TO EDUCATION

Certain special laws relating to education, many of which were classified to Title 49, Education—Public, of the Civil Statutes, have not been repealed and are not carried into the Education Code. They have been dropped from the Civil Statutes as special laws.

The tabulation below lists these special laws from the 64th and 65th Legislatures, numerically by article number classification to Vernon's Texas Civil Statutes (where so classified), followed by the subject matter and the original and amendatory citations to the General and Special Laws of Texas.

Civ.St.Art.	Laws Citation	Subject Matter
		COUNTY SCHOOL BOARD OR TRUSTEES
		Abolition of office and transfer of duties
—	1977, ch. 544	—Fayette County
		COUNTY SUPERINTENDENT
		Abolition of office and transfer of duties
2688i-2	1967, ch. 493	—Counties of 95,000 to 97,500
	1975, ch. 652	
—	1975, ch. 107	—Medina County
—	1975, ch. 267	—Crosby County
—	1975, ch. 706	—La Salle County
—	1975, ch. 710	—Gonzales and Travis Counties
—	1975, ch. 728	—Jack County
—	1975, ch. 741	—Cameron, Nueces, Tyler, Marion and Cass Counties
		INDEPENDENT SCHOOL DISTRICTS
2774b	1951, ch. 339	—City of 900,000 or more and 200,000 scholastics
	1965, ch. 312	
	1975, ch. 717	
		TAXES AND TAXATION
		Common school districts
—	1975, ch. 541	—Collin County

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FAMILY CODE

TITLE 1. HUSBAND AND WIFE

SUBTITLE A. THE MARRIAGE RELATIONSHIP

CHAPTER 1. ENTERING THE MARRIAGE RELATIONSHIP

SUBCHAPTER D. CEREMONY AND RETURN OF LICENSE

Section

1.86. Duplicate License [NEW].

SUBCHAPTER A. APPLICATION FOR MARRIAGE LICENSE

§ 1.05. Absent Applicant

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

(c) The affidavit of an absent applicant must include:

(1) the absent applicant's full name (including the maiden surname, if applicable), address, date of birth, place of birth (including city, county, and state), citizenship, and social security number, if any;

(2) a declaration that the absent applicant has not been divorced within the last 30 days;

(3) a declaration that the absent applicant is not presently married (unless to the other applicant and they wish to marry again);

(4) a declaration that the other applicant is not related to the absent applicant as:

(A) an ancestor or descendant, by blood or adoption;

(B) a brother or sister, of the whole or half blood or by adoption; or

(C) a parent's brother or sister of the whole or half blood;

(5) a declaration that the absent applicant desires to marry, and the name, age, and address of the person to whom the absent applicant desires to be married;

(6) the approximate date on which the marriage is to occur;

(7) the reason the absent applicant is unable to appear personally before the county clerk for the issuance of the license; and

(8) if the absent applicant will be unable to attend the ceremony, the appointment of any adult, except the other applicant, to act as proxy for the purpose of participating in the ceremony.

[Amended by Acts 1975, 64th Leg., p. 619, ch. 254, § 1, Sept. 1, 1975.]

Section 13 of the 1975 Act read: "This Act takes effect September 1, 1975."

§ 1.07. Issuance of License

(a) The county clerk may not issue a license to the applicants if:

(1) either applicant fails to provide information as required by Sections 1.02 and 1.05 of the code;

(2) either applicant fails to submit proof of age and identity;

(3) either applicant is under 14 years of age and has not received a court order under Section 1.53 of this code;

(4) either applicant is 14 years of age or older but under 18 years of age and has received neither parental consent nor a court order under Section 1.53 of this code;

(5) either applicant fails to comply with the requirements of Subchapter B of this chapter;

(6) either applicant checks "false" in response to a statement in the application, except as provided in Subsection (b) of this section, or fails to make a required declaration in an affidavit required of an absent applicant; or

(7) either applicant indicates that he or she has been divorced by a decree of a court of this state within the last 30 days.

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

[Amended by Acts 1975, 64th Leg., p. 620, ch. 254, § 2, eff. Sept. 1, 1975.]

SUBCHAPTER B. MEDICAL EXAMINATION

§ 1.26. Duties of Laboratory

The laboratory shall:

(1) conduct a standard serologic test prescribed by the Texas Department of Health Resources;

(2) complete the laboratory statement and the detailed laboratory report on the prescribed

forms and have them signed by the person authorized to enter the results of the test;

(3) transmit the laboratory statement and one copy of the detailed laboratory report to the designated physician; and

(4) transmit a copy of the detailed reactive laboratory report to the Texas Department of Health Resources weekly except that positive darkfields (syphilis) shall be reported within 24 hours.

[Amended by Acts 1977, 65th Leg., p. 595, ch. 211, § 1, eff. May 20, 1977.]

SUBCHAPTER C. UNDERAGE APPLICANTS

§ 1.51. Age Requirements: General Rules

Except with parental consent as prescribed by Section 1.52 of this code or with a court order as prescribed by Section 1.53 of this code, the county clerk shall not issue a marriage license if either applicant is under 18 years of age.

[Amended by Acts 1975, 64th Leg., p. 620, ch. 254, § 3, eff. Sept. 1, 1975.]

§ 1.52. Underage Applicant: Parental Consent

(a) If the applicant is 14 years of age or older but under 18 years of age, the county clerk shall issue the license if parental consent is given as prescribed by this section.

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

[Amended by Acts 1975, 64th Leg., p. 620, ch. 254, § 4, eff. Sept. 1, 1975.]

§ 1.53. Underage Applicant: Court Order

(a) A person who is under 18 years of age may petition in his own name in a district court for an order granting permission to marry. In all suits filed under this section, the trial judge may advance the cause if he determines that the best interest of the applicant would be served by an early hearing.

(b) The petition must be filed in the county where a parent resides if a managing conservator or a guardian of the person has not been appointed. If a managing conservator or a guardian of the person has been appointed, the petition must be filed in the county where the managing conservator or the guardian of the person resides. If no person authorized to consent to marriage for the child resides in this state, the petition must be filed in the county where the child lives.

(c) The petition shall include a statement of the reasons the child desires to marry, whether each parent is living or dead, the name and residence address of each living parent, and whether or not a managing conservator or a guardian of the person has been appointed for the child.

(d) Process shall be served as in other civil cases on each living parent of the child, or if a managing conservator or a guardian of the person has been appointed, on the managing conservator or guardian of the person. Citation may be given by publication as in other civil cases, except that notice shall be published one time only.

(e) The court shall appoint a guardian ad litem to represent the child in the proceeding and to speak for or against the petition in the manner he believes to be in the best interest of the child. The court shall prescribe a fee to be paid by the child for the services of the guardian ad litem; and the fee shall be collected as are other costs of the proceeding.

(f) If, after a hearing, the court, sitting without a jury, believes marriage to be in the best interest of the child, it shall make an order granting the child permission to marry.

[Amended by Acts 1975, 64th Leg., p. 620, ch. 254, § 5, eff. Sept. 1, 1975.]

SUBCHAPTER D. CEREMONY AND RETURN OF LICENSE

§ 1.83. Persons Authorized to Conduct Ceremony

The following persons are authorized to conduct marriage ceremonies:

(1) licensed or ordained Christian ministers and priests;

(2) Jewish rabbis;

(3) persons who are officers of religious organizations and who are duly authorized by the organization to conduct marriage ceremonies; and

(4) justices and retired justices of the supreme court, judges and retired judges of the court of criminal appeals, justices and retired justices of the courts of civil appeals, judges and retired judges of the district courts, judges of the county and probate courts, judges of the county courts at law, courts of domestic relations and juvenile courts, justices of the peace, and judges of the federal courts of this state.

[Amended by Acts 1977, 65th Leg., p. 135, ch. 64, § 1, eff. Aug. 29, 1977.]

§ 1.86. Duplicate License

(a) On the application and proof of identity of a person whose marriage is recorded in the records of the county clerk, the county clerk shall issue a duplicate marriage license completed with information as contained in the records.

(b) On the application and proof of identity of both persons to whom a marriage license was issued but not recorded as required by Section 1.85 of this code, the county clerk shall issue a duplicate license if each person applying submits to the clerk an affidavit stating:

(1) that the persons to whom the original license was issued were married to each other by a person authorized to conduct marriage ceremonies before the expiration date of the original license;

(2) the name of the person who conducted the ceremony; and

(3) the date on which the marriage ceremony occurred.

[Added by Acts 1975, 64th Leg., p. 621, ch. 254, § 6, eff. Sept. 1, 1975.]

[Sections 1.87 to 1.90 reserved for expansion]

CHAPTER 2. VALIDITY OF MARRIAGE

SUBCHAPTER B. VOID MARRIAGES

§ 2.21. Consanguinity

(a) A person may not marry:

(1) an ancestor or descendant, by blood or adoption;

(2) a brother or sister, of the whole or half blood or by adoption;

(3) a parent's brother or sister, of the whole or half blood; or

(4) a son or daughter of a brother or sister of the whole or half blood or by adoption.

(b) A marriage entered into in violation of this section is void.

[Amended by Acts 1975, 64th Leg., p. 1184, ch. 442, § 1, eff. June 19, 1975.]

SUBCHAPTER C. VOIDABLE MARRIAGES

§ 2.41. Underage

(a) The licensed or informal marriage of a person under 14 years of age, unless a court order has been obtained as provided in Section 1.53 of this code, is voidable and subject to annulment on the petition of a next friend for the benefit of the underage party or on the petition of the parent or the judicially designated managing conservator or guardian (whether an individual, authorized agency, or court) of the person of the underage party. A suit filed under this subsection by a next friend must be brought within 90 days after the 14th birthday of the underage party, or it is barred. A suit by a parent, managing conservator, or guardian of the person may be brought at any time before the party is 14 years of age, but thereafter must be brought within 90 days after the petitioner knew or should have known of the marriage, or it is barred. However, in no case may a suit by a parent, managing conservator, or guardian of the person be brought under this subsection after the underage person has reached 18 years of age.

(b) The licensed or informal marriage of a person 14 years of age or older but under 18 years of age, without parental consent as provided in Section 1.52 or 1.92 of this code or without a court order as provided by Section 1.53 of this code, is voidable and subject to annulment on the petition of a next friend for the benefit of the underage party, or on the petition of the parent or the judicially designated managing conservator or guardian (whether an individual, authorized agency or court) of the person of the underage party. A suit filed under this subsection by a next friend must be brought within 90 days after the date of the marriage, or it is barred. A suit by a parent, managing conservator, or guardian of the person must be brought within 90 days after the date the petitioner knew or should have known of the marriage, or it is barred. However, in no case may a suit by a parent, managing conservator, or guardian of the person be brought under this subsection after the underage person has reached 18 years of age.

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

[Amended by Acts 1975, 64th Leg., p. 621, ch. 254, § 7, eff. Sept. 1, 1975.]

CHAPTER 3. DISSOLUTION OF MARRIAGE

SUBCHAPTER B. JURISDICTION AND VENUE: RESIDENCE QUALIFICATIONS

Section

3.26. Acquiring Jurisdiction over Nonresident Respondent [NEW].

SUBCHAPTER C. SUIT

3.521. Citation by Publication [NEW].

SUBCHAPTER B. JURISDICTION AND VENUE; RESIDENCE QUALIFICATIONS

§ 3.26. Acquiring Jurisdiction over Nonresident Respondent

(a) If the petitioner is a resident or a domiciliary of this state at the commencement of a suit for divorce, annulment, or to declare a marriage void, the court may exercise personal jurisdiction over the respondent, or the respondent's personal representative, although the respondent is not a resident or a domiciliary of this state if:

(1) this state is the last state in which marital cohabitation between petitioner and the respondent occurred and the suit is commenced within two years after the date on which cohabitation ended; or

(2) notwithstanding Subdivision (1) above, there is any basis consistent with the constitution of this state or the United States for the exercise of the personal jurisdiction.

(b) A court acquiring jurisdiction under this section also acquires jurisdiction in a suit affecting the parent-child relation if Section 11.051 of this code is applicable.

[Added by Acts 1975, 64th Leg., p. 622, ch. 254, § 8, eff. Sept. 1, 1975.]

[Sections 3.27 to 3.50 reserved for expansion]

SUBCHAPTER C. SUIT

§ 3.521. Citation by Publication

(a) Citation in a suit for divorce or annulment or to declare a marriage void may be given by publication as in other civil cases, except that notice shall be published one time only.

(b) The notice shall be sufficient if given in substantially the following form:

“STATE OF TEXAS

To (name of person to be served with citation), and to all whom it may concern (if the name of any person to be served with citation is unknown), Respondent(s),

GREETINGS:

“YOU ARE HEREBY COMMANDED to appear and answer before the Honorable District Court _____ Judicial District, _____ County, Texas, at the Courthouse of said county in _____, Texas, at or before 10 o'clock a. m. of the Monday next after the expiration of 20 days from the date of service of this citation, then and there to answer the petition of _____, Petitioner, filed in said Court on the _____ day of _____, against _____, Respondent(s), and the said suit being number _____ on the docket of said Court, and entitled ‘In the Matter of Marriage of _____ and _____,’ the nature of which suit is a request to _____ (statement of relief sought).

“The Court has authority in this suit to enter any judgment or decree dissolving the marriage and providing for the division of property which will be binding on you.

“Issued and given under my hand and seal of said Court at _____, Texas, this the _____ day of _____, _____.

.....
Clerk of the District Court of _____ County, Texas

By _____, Deputy.”

(c) The form authorized in this section and the form authorized by Section 11.09 of this code may be combined in appropriate situations.

(d) Where no parent-child relationship exists, service by publication may be completed by posting the

citation at the courthouse door for a period of seven days in the county where the suit is filed.

(e) Where the petitioner or his or her attorney of record shall make oath that no children presently under 18 years of age were born or adopted by the parties and that no appreciable amount of property was accumulated by the parties during the marriage, the court may dispense with the appointment of an attorney ad litem; but, in every such case a statement of the evidence, approved and signed by the judge, shall be filed with the papers of the cause as a part of the record thereof.

[Added by Acts 1975, 64th Leg., p. 622, ch. 254, § 9, eff. Sept. 1, 1975.]

§ 3.54. Counseling

(a) After a petition for divorce is filed, the court may, in its discretion, direct the parties to counsel with a person or persons named by the court, who shall submit a written report to the court before the hearing on the petition.

(b) In his report, the counselor shall give only his opinion as to whether there exists a reasonable expectation of reconciliation of the parties, and if so, whether further counseling would be beneficial. The sole purpose of the report is to aid the court in determining whether the suit for divorce should be continued pending further counseling, and the report shall not be admitted as evidence in the suit. Copies of the report shall be furnished to the parties.

(c) If the court is of the opinion that there exists a reasonable expectation of the parties' reconciliation, the court may by written order continue the proceedings and direct the parties to any person or persons named by the court for further counseling for a period of time fixed by the court not to exceed 60 days, subject to any terms, conditions, and limitations the court deems desirable. The court shall consider the circumstances of the parties, including the needs of the parties' family, and the availability of counseling services, in making its order. At the expiration of the period of time specified by the court, the counselor to whom the parties were directed shall report to the court whether the parties have complied with the court's order. Thereafter, the court shall proceed as in divorce suits generally.

(d) No person who has counseled parties to a suit for divorce under this section is competent to testify in any action involving the parties or their children. The files, records, and other work-products of the counselor are privileged and confidential for all purposes and may not be admitted as evidence in any action involving the parties or their children.

(e) The expenses of counseling may be taxed as costs against either or both parties.

[Amended by Acts 1975, 64th Leg., p. 623, ch. 254, § 10, eff. Sept. 1, 1975.]

§ 3.61. Jury

In a suit for divorce or annulment or to declare a marriage void, either party, except as provided in Section 2.41 of this code, may demand a jury trial. [Amended by Acts 1975, 64th Leg., p. 624, ch. 254, § 11, eff. Sept. 1, 1975.]

CHAPTER 4. RIGHTS, DUTIES, POWERS, AND LIABILITIES OF SPOUSES

Section

4.05. Action of Alienation of Affection and Criminal Conversation not Authorized [NEW].

§ 4.05. Action of Alienation of Affection and Criminal Conversation not Authorized

A right of action by one spouse against a third party for criminal conversation is not authorized in this state.

[Added by Acts 1975, 64th Leg., p. 1942, ch. 637, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 Act provided: "This Act does not apply to litigation pending before the effective date of this Act."

SUBTITLE B. PROPERTY RIGHTS AND LIABILITIES

CHAPTER 5. MARITAL PROPERTY

SUBCHAPTER B. MANAGEMENT, CONTROL, AND DISPOSITION OF MARITAL PROPERTY

Section

5.23. [Repealed].

§ 5.23. Repealed by Acts 1975, 64th Leg., p. 624, ch. 254, § 12, eff. Sept. 1, 1975

TITLE 2. PARENT AND CHILD

SUBTITLE A. THE PARENT-CHILD RELATIONSHIP AND THE SUIT AFFECTING THE PARENT-CHILD RELATIONSHIP

CHAPTER 11. GENERAL PROVISIONS

Section

11.051. Acquiring Jurisdiction Over Nonresident [NEW].

11.071. Identification of Court of Continuing Jurisdiction [NEW].

11.20. Representation of Department [NEW].

§ 11.01. Definitions

As used in this subtitle and Subtitle C of this title,¹ unless the context requires a different definition:

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

(2) "Court" means the district court, court of domestic relations, juvenile court having the jurisdiction of a district court, or other court expressly given jurisdiction of a suit under this subtitle.

[See Compact Edition, Volume 1 for text of (3) to (7)]

(8) "Illegitimate child" means a child who is not and has never been the legitimate child of a man and whose parent-child relationship with its natural mother has not been terminated by a court decree.

[Amended by Acts 1975, 64th Leg., p. 1253, ch. 476, §§ 1 & 2, eff. Sept. 1, 1975.]

¹ Section 31.01 et seq.

Section 58 of the 1975 amendatory act provided: "This Act takes effect September 1, 1975."

§ 11.04. Venue

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

(c) A child resides in the county where his parents (or parent if only one parent is living) reside, except that:

(1) if a managing conservator has been appointed by court order or designated in an affidavit of relinquishment, or if a custodian for the child has been appointed by order of a court before January 1, 1974, the child resides in the county where the managing conservator or custodian resides;

(2) if a guardian of the person has been appointed by order of a county or probate court and a managing conservator has not been appointed, the child resides in the county where the guardian of the person resides;

(3) if the parents of the child do not reside in the same county and neither a managing conservator nor a guardian of the person has been appointed, the child resides in the county where the parent having care and control of the child resides;

(4) if the child is under the care and control of an adult other than a parent and (A) neither a managing conservator nor a guardian of the person has been appointed or (B) the whereabouts of the managing conservator or the guardian of the person is unknown or (C) the person whose residence determines the residence of the child under this section has left the child under the care and control of the adult, the child resides where the adult having care and control of the child resides;

(5) if a guardian or custodian of the child has been appointed by order of a court of another state or nation, the child resides in the county where the guardian or custodian resides; or

(6) if it appears that the child is not under the care and control of an adult, the child resides where he is found.

[Amended by Acts 1975, 64th Leg., p. 1253, ch. 476, § 3, eff. Sept. 1, 1975.]

§ 11.05. Continuing Jurisdiction

(a) Except as provided in Subsections (b), (c), and (d) of this section, when a court acquires jurisdiction of a suit affecting the parent-child relationship, that court retains continuing jurisdiction of all matters provided for under this subtitle in connection with the child, and no other court has jurisdiction of a suit affecting the parent-child relationship with regard to that child except on transfer as provided in Section 11.06 of this code.

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

(c) A court shall have jurisdiction over a suit affecting the parent-child relationship if it has been, correctly or incorrectly, informed by the State Department of Public Welfare that the child has not been the subject of a suit affecting the parent-child relationship and the petition states that no other court has continuing jurisdiction over the child.

(d)(1) In a suit in which a determination of paternity is sought, except as provided in paragraph (2), the jurisdiction of the court terminates when an order dismissing with prejudice a suit under Chapter 13¹ becomes final, or when an order under Subsection (b), Section 13.08, declaring that the alleged father is not the father of the child becomes final, or when an order denying voluntary legitimation under Section 13.10² becomes final.

(2) The jurisdiction of the court does not terminate if the child was subject to the jurisdiction of the court or some other court in a suit affecting the parent-child relationship prior to the commencement of the suit to determine paternity.

[Amended by Acts 1975, 64th Leg., p. 1254, ch. 476, §§ 4 to 6, eff. Sept. 1, 1975.]

¹ Section 13.01 et seq.

² So in enrolled bill; there is no Section 13.10.

§ 11.051. Acquiring Jurisdiction Over Nonresident

In a suit affecting the parent-child relationship, the court may exercise personal jurisdiction over a person on whom service of citation is required or over the person's personal representative, although the person is not a resident or domiciliary of this state, if:

(1) the child was conceived in this state and the person on whom service is required is a parent or an alleged or probable father of the child;

(2) the child resides in this state, as defined by Section 11.04 of this code, as a result of the acts or directives or with the approval of the person on whom service is required;

(3) the person on whom service is required has resided with the child in this state; or

(4) notwithstanding Subdivisions (1), (2), or (3) above, there is any basis consistent with the

constitutions of this state or the United States for the exercise of the personal jurisdiction. [Added by Acts 1975, 64th Leg., p. 1255, ch. 476, § 7, eff. Sept. 1, 1975.]

§ 11.06. Transfer of Proceedings

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

(g) The court transferring a proceeding shall send to the proper court in the county to which transfer is made the complete files in all matters affecting the child, certified copies of all entries in the minutes, and a certified copy of any decree of dissolution of marriage issued in a suit joined with the suit affecting the parent-child relationship. If the transferring court retains jurisdiction of another child who was the subject of the suit, the court shall send a copy of the complete files to the court to which the transfer is made and shall keep the original files.

[Amended by Acts 1975, 64th Leg., p. 1255, ch. 476, § 8, eff. Sept. 1, 1975.]

§ 11.07. Commencement of Suit and Petition for Further Remedy

(a) A suit affecting the parent-child relationship shall be commenced by the filing of a petition as provided in this chapter.

(b) Except in a motion to modify as provided in Section 14.08 of this code, a request for further action concerning a child who is the subject of a suit affecting the parent-child relationship and who is under the jurisdiction of a court with continuing jurisdiction shall be initiated by the filing of a petition as provided in this chapter.

(c) On the receipt of a petition requesting further action concerning the child in the court of continuing jurisdiction, the clerk shall file the petition and all other papers relating to the request for further action in the file of the suit affecting the parent-child relationship under the same docket number as the prior proceeding.

[Amended by Acts 1975, 64th Leg., p. 1255, ch. 476, § 9, eff. Sept. 1, 1975.]

§ 11.071. Identification of Court of Continuing Jurisdiction

(a) The petitioner or the court shall request from the State Department of Public Welfare identification of the court that last had jurisdiction of the child in a suit affecting the parent-child relationship unless:

(1) the petition alleges that no court has continuing jurisdiction of the child, and the issue is not disputed by the pleadings; or

(2) the petition alleges that the court in which the suit, petition for further remedy, or motion to modify has been filed has acquired and retains continuing jurisdiction of the child as the

result of a prior proceeding, and the issue is not disputed by the pleadings.

(b) The department shall, on the written request of the court, an attorney, or any party, identify the court that last had jurisdiction of the child in a suit affecting the parent-child relationship and give the docket number of the suit, or state that the child has not been the subject of a suit affecting the parent-child relationship. The child shall be identified in the request by name, birthdate, and place of birth. The department shall transmit this information within 10 days after the day the request is received.

(c) If a request for information from the department relating to the identity of the court having continuing jurisdiction of the child has been made pursuant to Subsection (a), no final order, except an order of dismissal, shall be entered until the information is filed with the court. If a final order is entered in the absence of the filing of the information from the department, the order is voidable on a showing that a court other than the court that entered the order had continuing jurisdiction.

(d) If the court in which a petition in a suit affecting the parent-child relationship is filed determines that another court has continuing jurisdiction of the child, the court in which the petition is filed shall dismiss the suit without prejudice.

[Added by Acts 1975, 64th Leg., p. 1255, ch. 476, § 10, eff. Sept. 1, 1975.]

§ 11.08. Contents of Petition

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

(b) The petition must include:

(1) a statement that the court in which the petition is filed has continuing jurisdiction or that no court has continuing jurisdiction of the suit;

(2) the name, sex, place and date of birth, and place of residence of the child, except that if adoption of a child is sought, the name of the child may be omitted;

(3) the full name, age, and place of residence of the petitioner and his relationship to the child or the fact that no relationship exists;

(4) the names, ages, and place of residence of the parents, except in a suit in which adoption is sought;

(5) the name and place of residence of the managing conservator, if any, or the child's custodian, if any, appointed by an order of the court before January 1, 1974, or by order of a court of another state or nation;

(6) the names and places of residence of the guardians of the person and estate of the child, if any;

(7) the names and places of residence of possessory conservators or other persons, if any,

having access to the child under an order of the court;

(8) in a suit in which termination of the parent-child relationship between an illegitimate child and its mother is sought, the name and place of residence of the alleged father or probable father of the child or a statement that the identity of the father of the child is unknown;

(9) a full description and statement of value of all property owned or possessed by the child;

(10) a statement describing what action the court is requested to make concerning the child and the statutory grounds on which the request is made; and

(11) any other information required by other provisions of this subtitle.

(c) The petition and other matters in a suit in which a determination of paternity is sought, if the petitioner is a person other than the alleged father of the child, are confidential, and the district clerk and employees of the clerk may not disclose to any person other than the court, the department, or a party to the suit any matter concerning the suit. This subsection does not apply if and when the suit is set for trial under Subsection (b) of Section 13.05 of this code.

[Amended by Acts 1975, 64th Leg., p. 1256, ch. 476, §§ 11 & 12, Sept. 1, 1975.]

§ 11.09. Citation and Notice

(a) Except as provided in Subsection (b) of this section, the following persons are entitled to service of citation on the filing of a petition in a suit affecting the parent-child relationship:

(1) the managing conservator, if any;

(2) possessory conservators, if any;

(3) persons, if any, having access to the child under an order of the court;

(4) persons, if any, required by law or by order of a court to provide for the support of a child;

(5) the guardian of the person of the child, if any;

(6) the guardian of the estate of the child, if any;

(7) each parent as to whom the parent-child relationship has not been terminated or process has not been waived under Section 15.03(c)(2) of this code;

(8) in a suit in which termination of the parent-child relationship between an illegitimate child and its mother is sought, the alleged father or probable father, unless there is attached to the petition an affidavit of waiver of interest in a child executed by the alleged father or probable father as provided in Section 15.041 of

this code or unless the petition states that the identity of the father is unknown; and

(9) in a suit to determine the paternity of a child, the alleged father, unless the alleged father is a petitioner.

(b) Service of citation may be given to any other person who has or who may assert an interest in the child and may be given to the unknown father of an illegitimate child.

(c)(i) Except in a suit in which termination of the parent-child relationship is sought, citation on the filing of a petition in a suit affecting the parent-child relationship or notice of a hearing shall be issued and served as in other civil cases except that citation or notice may be given by registered or certified mail, return receipt requested. In such cases, the clerk shall mail the citation and a copy of the petition to the person so notified marked for delivery to the addressee only. The filing of the returned receipt indicating delivery by registered or certified mail to the proper person shall be sufficient proof of the fact of service.

(ii) In a suit in which termination of the parent-child relationship is sought, citation on the filing of a petition or notice of a hearing shall be issued and served as in other civil cases.

(d) Citation may be given by publication as in other civil cases to persons entitled to service of citation who cannot be notified by personal service or registered or certified mail and to persons whose names are unknown. The notice shall be published one time. If the name of a person entitled to service of citation is unknown, the notice to be published shall be addressed to "All Whom It May Concern." One or more causes to be heard on a certain day may be included in one notice and hearings may be continued from time to time without further notice.

(e) Notice by publication shall be sufficient if given in substantially the following form:

"STATE OF TEXAS

To (names of persons to be served with citation), and to all whom it may concern (if the name of any person to be served with citation is unknown), Respondent(s),

GREETINGS:

"YOU ARE HEREBY COMMANDED to appear and answer before the Honorable District Court, _____ Judicial District, _____ County, Texas, at the Courthouse of said county in _____, Texas, at or before 10 o'clock a. m. of the Monday next after the expiration of 20 days from the date of service of this citation, then and there to answer the petition of _____, Petitioner, filed in said Court on the _____ day of _____, 19____, against _____, Respondent(s), and said suit being number _____ on the docket of

said Court, and entitled 'In the interest of _____, a child,' the nature of which suit is a request to (statement of relief sought, e. g., 'terminate the parent-child relationship'). Said child was born the _____ day of _____, 19____, in (place of birth).

"The court has authority in this suit to enter any judgment or decree in the child's interest which will be binding upon you, including the termination of the parent-child relationship, the determination of paternity, and the appointment of a conservator with authority to consent to the child's adoption.

"Issued and given under my hand and seal of said Court at _____, Texas, this the _____ day of _____, 19____.

"....., Clerk of the District Court of County, Texas.

By _____, Deputy."

[Amended by Acts 1975, 64th Leg., p. 1257, ch. 476, § 13, eff. Sept. 1, 1975.]

§ 11.10. Guardian Ad Litem

(a) In any suit in which termination of the parent-child relationship is sought, the court shall appoint a guardian ad litem to represent the interests of the child, unless the child is a petitioner or unless an attorney ad litem has been appointed for the child or unless the court finds that the interests of the child will be represented adequately by a party to the suit and are not adverse to that party. In any other suit under this subtitle, the court may appoint a guardian ad litem. The managing conservator may be appointed guardian ad litem if he is not a parent of the child or a person petitioning for adoption of the child and if he has no personal interest in the suit.

(b) A guardian ad litem shall be appointed to represent any other person entitled to service of citation under the provisions of Section 11.09 of this code if the person is incompetent or a child, unless the person has executed an affidavit of relinquishment of parental rights or an affidavit of waiver of interest in child containing a waiver of service of citation.

(c) The court may appoint an attorney for any party in a case in which it deems representation necessary to protect the interests of the child who is the subject matter of the suit.

[Amended by Acts 1975, 64th Leg., p. 1258, ch. 476, § 14, eff. Sept. 1, 1975.]

§ 11.11. Temporary Orders

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

(c) In a suit under this subtitle the court may dispense with the necessity of a bond in connection with temporary orders in behalf of the child.

[Amended by Acts 1975, 64th Leg., p. 1259, ch. 476, § 15, eff. Sept. 1, 1975.]

§ 11.12. Social Study

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

(b) The social study may be made by any state agency, including the State Department of Public Welfare, or any private agency, or any person appointed by the court. If an authorized agency is the managing conservator, the social study shall be made by the authorized agency. The social study shall be made according to criteria established by the court.

(c) The agency or person making the social study shall file its findings and conclusions with the court on a date set by the court. The report shall be made a part of the record of the suit; however, the disclosure of its contents to the jury is subject to the rules of evidence.

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

[Amended by Acts 1975, 64th Leg., p. 1259, ch. 476, § 16, eff. Sept. 1, 1975.]

§ 11.13. Jury

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

(b) The court may not enter a decree that contravenes the verdict of the jury, except with respect to the issues of the specific terms and conditions of access to the child, support of the child, and the rights, privileges, duties, and powers of conservators, on which issues the verdict, if any, is advisory only. [Amended by Acts 1975, 64th Leg., p. 1259, ch. 476, § 17, eff. Sept. 1, 1975.]

§ 11.14. Hearing

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

(h) Repealed by Acts 1975, 64th Leg., p. 1259, ch. 476, § 18, eff. Sept. 1, 1975.

[Amended by Acts 1975, 64th Leg., p. 1259, ch. 476, § 18, eff. Sept. 1, 1975.]

§ 11.16. Copies of Decree

Copies of a decree of termination or adoption issued under Section 15.05 or Section 16.08 of this code are not required to be mailed to parties as provided in Rules 119a and 239a, Texas Rules of Civil Procedure.

[Amended by Acts 1975, 64th Leg., p. 1259, ch. 476, § 19, eff. Sept. 1, 1975.]

§ 11.17. Central Record File

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

(b) On entry of a decree of adoption or on the termination of jurisdiction of a court as provided in Section 11.05(d) of this code, the clerk of the court at petitioner's request shall transmit to the department a complete file in the case, including all pleadings, papers, studies, and records in the suit other than the minutes of the court. The clerk of the court, on

entry of a decree of adoption, shall send to the department a certified copy of the petition and decree of adoption. The clerk may not transmit to the department pleadings, papers, studies, and records relating to a suit for divorce or annulment or to declare a marriage void. When the department receives the complete file or petition and decree of adoption, it shall close the records concerning that child; and except for statistical purposes, it shall not disclose any information concerning the prior proceedings affecting the child. Except as provided in Subsection (d) of this section, any subsequent inquiries concerning the child shall be handled as though the child had not been previously the subject of a suit affecting the parent-child relationship. On the receipt of additional records concerning a child who has been the subject of a suit affecting the parent-child relationship in which the records have been closed as required in this section, a new file shall be made and maintained as other records required by this section.

(c) The department may charge a reasonable fee to cover the cost of determining and sending information concerning the identity of courts with continuing jurisdiction. The receipts shall be deposited in any financial institution as determined by the commissioner of welfare and withdrawn as necessary for the sole purpose of operating and maintaining the central record file.

(d) The records concerning a child maintained by the district clerk after entry of a decree of adoption, and all the records required to be maintained by the department are confidential, and no person is entitled to access to or information from these records except as provided by this subtitle or on an order of the court which issued the decree or of a district court of Travis County for good cause.

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

(f) The court, on the motion of a party or on the court's own motion, may order the sealing of the file, the minutes of the court, or both, in a proceeding in which adoption or termination was sought. This subsection does not relieve the clerk from the duty to transmit files or petitions and decrees of adoption to the department as required by Subsection (b) of this section.

[Amended by Acts 1975, 64th Leg., p. 1259, ch. 476, §§ 20, 21, eff. Sept. 1, 1975.]

§ 11.20. Representation of Department

In any suit brought under Subtitle A or C of this title in which the State Department of Public Welfare is a party, the department shall be represented in the trial court by the prosecuting attorney who represents the state in criminal cases in the district or county court of the county where the suit is filed or transferred or by the attorney general.

[Added by Acts 1977, 65th Leg., p. 1262, ch. 486, § 1, eff. Aug. 29, 1977.]

CHAPTER 12. THE PARENT-CHILD RELATIONSHIP

§ 12.02. Relation of Child to Father

(a) A child is the legitimate child of his father if the child is born or conceived before or during the marriage of his father and mother.

(b) A child is the legitimate child of his father if at any time his mother and father have attempted to marry in apparent compliance with the laws of this state or another state or nation, although the attempted marriage is or might be declared void, and the child is born or conceived before or during the attempted marriage.

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

[Amended by Acts 1975, 64th Leg., p. 1260, ch. 476, § 22, eff. Sept. 1, 1975.]

§ 12.04. Rights, Privileges, Duties, and Powers of Parent

Except as otherwise provided by judicial order or by an affidavit of relinquishment of parental rights executed under Section 15.03 of this code, the parent of a child has the following rights, privileges, duties, and powers:

- (1) the right to have physical possession of the child and to establish its legal domicile;
- (2) the duty of care, control, protection, moral and religious training, and reasonable discipline of the child;
- (3) the duty to support the child, including providing the child with clothing, food, shelter, medical care, and education;
- (4) the duty to manage the estate of the child, except when a guardian of the estate has been appointed;
- (5) the right to the services and earnings of the child;
- (6) the power to consent to marriage, to enlistment in the armed forces of the United States, and to medical, psychiatric, and surgical treatment;
- (7) the power to represent the child in legal action and to make other decisions of substantial legal significance concerning the child;
- (8) the power to receive and give receipt for payments for the support of the child and to hold or disburse any funds for the benefit of the child;
- (9) the right to inherit from and through the child; and
- (10) any other right, privilege, duty, or power existing between a parent and child by virtue of law.

[Amended by Acts 1975, 64th Leg., p. 1260, ch. 476, § 23, eff. Sept. 1, 1975.]

CHAPTER 13. DETERMINATION OF PATERNITY

Former Chapter 13, Voluntary Legitimation, consisting of Sections 13.01 to 13.06, was revised and amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, to read, Determination of Paternity, Sections 13.01 to 13.43. The provisions of former Chapter 13 are now found in Subchapters B and C herein, Sections 13.21 to 13.24, 13.42 and 13.43.

SUBCHAPTER A. PATERNITY SUIT [NEW]

Section

- 13.01. Time Limitation of Suit.
- 13.02. Pretrial Proceedings: Blood Tests.
- 13.03. Pretrial Proceedings: Appointment of Experts.
- 13.04. Pretrial Proceedings: Conference.
- 13.05. Pretrial Proceedings: Effect of Blood Tests.
- 13.06. Evidence at Trial.
- 13.07. Settlement.
- 13.08. Decree.
- 13.09. Effect of Decree Establishing Paternity.

SUBCHAPTER B. VOLUNTARY LEGITIMATION [NEW]

- 13.21. Voluntary Legitimation.
- 13.22. Statement of Paternity.
- 13.23. Effect of Statement of Paternity.
- 13.24. Validation of Prior Statements.

SUBCHAPTER C. GENERAL PROVISIONS [NEW]

- 13.41. Venue.
- 13.42. Conservatorship, Support, Fees, and Payments.
- 13.43. Birth Certificate.

SUBCHAPTER A. PATERNITY SUIT

§ 13.01. Time Limitation of Suit

A suit to establish the parent-child relationship between a child who is not the legitimate child of a man and the child's natural father by proof of paternity must be brought before the child is one year old, or the suit is barred.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.02. Pretrial Proceedings: Blood Tests

(a) When the respondent appears in a paternity suit, the court shall order the mother, alleged father, and child to submit to blood tests. If the appearance is before the birth of the child, the court shall order the blood tests made as soon as medically practical after the birth.

(b) An order issued under this section is enforceable by contempt, except that if the petitioner is the mother or the alleged father and refuses to submit to the blood test, the court shall dismiss the suit. If the respondent is the mother or the alleged father and refuses to submit to the blood test, the fact of refusal may be introduced as evidence as provided in Section 13.06(d) of this code.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.03. Pretrial Proceedings: Appointment of Experts

(a) The court may appoint two or more experts qualified as examiners of blood types to make the blood tests. The court may determine the number and qualifications of the experts and shall prescribe the arrangements for conducting the tests.

(b) The court may fix reasonable fees for the court-appointed examiners and may require the fees to be paid by any or all of the parties or by the State Department of Public Welfare in the amounts and in the manner directed, or the court may tax all or part or none of the fees as costs in the suit.

(c) A party may employ other qualified examiners of blood tests. The court may order blood samples made available to these examiners if requested. [Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.04. Pretrial Proceedings: Conference

(a) After completion of the blood tests, the court shall order all parties to appear, either in person or by counsel, at a pretrial conference. The court shall call its appointed examiners to testify in person or by deposition about their tests and findings. A party may call other qualified examiners of blood tests to testify.

(b) Witnesses called by the court are the court's witnesses, and witnesses called by a party are that party's witnesses. The court and the parties may examine and cross-examine all witnesses.

(c) All evidence presented at the pretrial conference is a part of the record of the case. [Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.05. Pretrial Proceedings: Effect of Blood Tests

(a) At the conclusion of the pretrial conference, if the court finds that the tests show by clear and convincing evidence that the alleged father is not the father of the child, the court shall dismiss the suit with prejudice.

(b) If the court finds that the blood tests fail to show by clear and convincing evidence the alleged father is not the father of the child, the court shall set the suit for trial.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.06. Evidence at Trial

(a) Unless otherwise permitted by the court on a showing of good cause, a party may call to testify on the results of the blood tests only those experts who testified at the pretrial conference.

(b) A witness called by a party at the trial is that party's witness.

(c) If the blood tests show the possibility of the alleged father's paternity, the court may admit this evidence if offered at the trial.

(d) Evidence of a refusal by the respondent to submit to a blood test is admissible to show only that the alleged father is not precluded from being the father of the child.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.07. Settlement

The child must be a party to a settlement agreement with the alleged father. The child shall be represented in the settlement agreement by a guardian ad litem appointed by the court. The court must approve any settlement agreement, dismissal, or nonsuit.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.08. Decree

(a) On a verdict of the jury, or on a finding of the court if there is no jury, that the alleged father is the father of the child, the court shall issue an order designating the alleged father as the father of the child.

(b) On a verdict of the jury, or on a finding of the court if there is no jury, that the alleged father is not the father of the child, the court shall issue an order declaring this finding.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.09. Effect of Decree Establishing Paternity

The effect of a decree designating the alleged father as the father of the child is to create the parent-child relationship between the father and the child as if the child were born to the father and mother during marriage.

[Sections 13.10 to 13.20 reserved for expansion]

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

SUBCHAPTER B. VOLUNTARY LEGITIMATION

§ 13.21. Voluntary Legitimation

(a) If a statement of paternity has been executed by the father of an illegitimate child, the father or mother of the child or the State Department of Public Welfare may file a petition for a decree designating the father as a parent of the child. The statement of paternity must be attached to the petition.

(b) The court shall enter a decree designating the child as the legitimate child of its father and the father as a parent of the child if the court finds that:

- (1) the parent-child relationship between the child and its original mother has not been terminated by a decree of a court;
- (2) the statement of paternity was executed as provided in this chapter, and the facts stated therein are true; and
- (3) the mother or the managing conservator, if any, has consented to the decree.

(c) The requirement of consent of the mother is satisfied if she is the petitioner. If the entry of the decree is in the best interest of the child, the court may consent to the legitimation of the child in lieu of the consent of the mother or managing conservator.

(d) A suit for voluntary legitimation may be joined with a suit for termination under Chapter 15 of this code.¹

(e) A suit under this section may be instituted at any time.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

¹ Section 15.01 et seq.

§ 13.22. Statement of Paternity

The statement of paternity authorized to be used in Section 13.21 of this code must be executed by the father of the child as an affidavit and witnessed by two credible adults. The affidavit must clearly state that the father acknowledges the child as his child, that he and the mother, who is named in the affidavit, were not married to each other at the time of conception of the child or at any subsequent time, and that the child is not the legitimate child of another man. The statement must be executed before a person authorized to administer oaths under the laws of this state.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.23. Effect of Statement of Paternity

(a) A statement of paternity executed as provided in Section 13.22 of this code is prima facie evidence that the child is the child of the person executing the statement and that the person has an obligation to support the child.

(b) If the father's address is unknown or he is outside the jurisdiction of the court at the time a suit is instituted under Section 13.21 of this code, his statement of paternity, in the absence of controverting evidence, is sufficient for the court to enter a decree establishing his paternity of the child.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.24. Validation of Prior Statements

A statement acknowledging paternity or an obligation to support a child which was signed by the father before January 1, 1974, is valid and binding even though the statement is not executed as provided in Section 13.22 of this code and is not filed with the State Department of Public Welfare or with the court.

[Sections 13.25 to 13.40 reserved for expansion]

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

SUBCHAPTER C. GENERAL PROVISIONS

§ 13.41. Venue

(a) If the alleged father is not the petitioner, the suit shall be brought in the county where the alleged father resides, except that if the alleged father is not a resident or domiciliary of this state and jurisdiction is to be established as provided by Section 11.051 of this code, the suit shall be brought where the mother resides.

(b) If the alleged father is the petitioner, the suit shall be brought in the county where the mother resides, except that if the mother is not a domiciliary of this state and jurisdiction is to be established as provided by Section 11.051 of this code, the suit shall be brought where the child resides.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.42. Conservatorship, Support, Fees, and Payments

(a) In a suit in which a determination of paternity is sought, the court may provide for the managing and possessory conservatorship and support of and access to the child; except that no alleged father denying paternity may be required to make any payment for the support of the child until paternity is established.

(b) In addition to the payment authorized by Section 14.05 of this code, the court may award reasonable attorney's fees incurred in the suit.

(c) A payment ordered under Subsection (b) of this section is enforceable as provided in Section 14.09 of this code.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

§ 13.43. Birth Certificate

On a determination of paternity, the clerk of the court, unless directed otherwise by the court, shall transmit a copy of the decree to the State Registrar of Vital Statistics. The decree shall state the name of the child. The registrar shall substitute for the original a new birth certificate based on the decree in accordance with the provisions of the laws which

permit the correction or substitution of birth certificates for adopted children or children legitimated by the subsequent marriage of their parents and in accordance with the rules and regulations promulgated by the State Department of Health.

[Amended by Acts 1975, 64th Leg., p. 1261, ch. 476, § 24, eff. Sept. 1, 1975.]

CHAPTER 14. CONSERVATORSHIP, POSSESSION AND SUPPORT OF CHILDREN

§ 14.02. Rights, Privileges, Duties, and Powers of Managing Conservator

(a) Except as provided in Subsection (d) of this section, a parent appointed managing conservator of the child retains all the rights, privileges, duties, and powers of a parent to the exclusion of the other parent, subject to the rights, privileges, duties, and powers of a possessory conservator as provided in Section 14.04 of this code and to any limitation imposed by court order in allowing access to the child.

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

(d) The appointment of a managing conservator does not create, rescind, or otherwise alter a right to inherit as established by law or as modified under Chapter 15 of this code.¹

[Amended by Acts 1975, 64th Leg., p. 1265, ch. 476, §§ 25 and 26, eff. Sept. 1, 1975.]

¹ Section 15.01 et seq.

§ 14.03. Possession of and Access to Child

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

(d) If the court finds that it is in the best interests of the child as provided in Section 14.07 of this code, the court may grant reasonable access rights to either the maternal or paternal grandparents of the child; and to either the natural maternal or paternal grandparents of a child whose parent-child relationship has been terminated or who has been adopted before or after the effective date of this code. Such relief shall not be granted unless one of the child's legal parents at the time the relief is requested is the child's natural parent. The court may issue any necessary orders to enforce said decree.

[Amended by Acts 1975, 64th Leg., p. 1265, ch. 476, § 27, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 335, ch. 164, § 1, eff. Aug. 29, 1977.]

§ 14.07. Best Interest of Child

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

(b) In determining the best interest of the child, the court shall consider the circumstances of the parents. In the event of the death of the parents, the grandparents may be considered but such consid-

eration shall not alter or diminish the discretionary power of the court.

(c) In a nonjury trial the court may interview the child in chambers to ascertain the child's wishes as to his conservator. Upon the application of any party and when the issue of managing conservatorship is contested, the court shall confer with a child 12 years of age or older and may confer with a child under 12 years of age, but in either event the results of such interview shall not alter or diminish the discretionary power of the court. The court may permit counsel to be present at the interview. On the motion of a party or on the court's own motion, the court shall cause a record of the interview to be made when the child is 12 years of age or older, which record of the interview shall be made part of the record in the case.

[Amended by Acts 1975, 64th Leg., p. 1265, ch. 476, § 28, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1862, ch. 739, § 1, eff. Aug. 29, 1977.]

§ 14.08. Modification of Order

(a) A court order or the portion of a decree that provides for the support of a child or the appointment of a conservator or that sets the terms and conditions of conservatorship for support for, or access to a child may be modified only by the filing of a motion in the court having jurisdiction of the suit affecting the parent-child relationship. Any party affected by the order or the portion of the decree to be modified may file the motion.

(b) Each party whose rights, privileges, duties, or powers may be affected by the motion is entitled to at least 30 days' notice of a hearing on the motion to modify.

(c) After a hearing, the court may modify an order or portion of a decree that:

(1) designates a managing conservator if the circumstances of the child or parent have so materially and substantially changed since the entry of the order or decree to be modified that the retention of the present managing conservator would be injurious to the welfare of the child and that the appointment of the new managing conservator would be a positive improvement for the child; or

(2) provides for the support of a child, sets the terms and conditions for access to or possession of a child, or prescribes the relative rights, privileges, duties, and powers of conservators if the circumstances of the child or a person affected by the order or portion of the decree to be modified have materially and substantially changed since the entry of the order or decree; except that an order providing for the support of a child may be modified only as to obligations accruing subsequent to the motion to modify.

(d) If the motion is filed for the purpose of changing the designation of the managing conservator and is filed within one year after the date of issuance of the order or decree to be modified, there shall be attached to the motion an affidavit executed by the person making the motion. The affidavit must contain at least one of the following allegations along with the supportive facts:

(1) that the child's present environment may endanger his physical health or significantly impair his emotional development; or

(2) that the managing conservator is the person seeking the modification or consents to the modification, and the modification is in the best interest of the child.

(e) On the filing of a motion to which the provisions of Subsection (d) of this section apply, the court shall deny the motion and refuse to schedule a hearing unless the court determines, on the basis of the affidavit, that adequate facts to support an allegation listed in Subdivision (1) or (2) of Subsection (d) of this section are stated in the affidavit. If the court determines that the facts stated are adequate to support an allegation, a time and place for the hearing shall be set.

[Amended by Acts 1975, 64th Leg., p. 1265, ch. 476, § 29, eff. Sept. 1, 1975.]

§ 14.10. Habeas Corpus

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

(b) The court shall disregard any cross action or motion pending for modification of the decree determining managing conservatorship, possession, or support of or access to the child unless it finds that:

(1) the previous order was granted by a court that did not have jurisdiction of the parties; or

(2) the child has not been in the relator's possession and control for at least 6 months immediately preceding the filing of the petition for the writ.

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

(e) If the right to possession of a child is not governed by a court order, the court in a habeas corpus proceeding involving the right of possession of the child shall compel return of the child to the relator if, and only if, it finds that the relator has a superior right to possession of the child by virtue of the rights, privileges, duties, and powers of a parent as set forth in Section 12.04 of this code.

(f) The court shall disregard any motion for temporary or permanent adjudication relating to the possession of the child in a habeas corpus proceeding brought under Subsection (e) of this section unless at the time of the hearing an action is pending under this subtitle, in which case the court may proceed to

issue any temporary order as provided by Section 11.11 of this code.

[Amended by Acts 1975, 64th Leg., p. 1266, ch. 476, § 30, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1290, ch. 508, § 1, eff. Aug. 29, 1977.]

CHAPTER 15. TERMINATION OF THE PARENT-CHILD RELATIONSHIP

Section

15.021. Filing of Petition to Terminate Before Birth [NEW].

15.041. Affidavit of Waiver of Interest in Child [NEW].

§ 15.02. Involuntary Termination of Parental Rights

A petition requesting termination of the parent-child relationship with respect to a parent who is not the petitioner may be granted if the court finds that:

(1) the parent has:

(A) voluntarily left the child alone or in the possession of another not the parent and expressed an intent not to return; or

(B) voluntarily left the child alone or in the possession of another not the parent without expressing an intent to return, without providing for the adequate support of the child, and remained away for a period of at least three months; or

(C) voluntarily left the child alone or in the possession of another not the parent and, although expressing an intent to return, failed to do so without providing adequate support of the child and remained away for a period of at least six months; or

(D) knowingly placed or knowingly allowed the child to remain in conditions or surroundings which endanger the physical or emotional well-being of the child; or

(E) engaged in conduct or knowingly placed the child with persons who engaged in conduct which endangers the physical or emotional well-being of the child; or

(F) failed to support the child in accordance with his ability during a period of one year ending within six months of the date of the filing of the petition; or

(G) abandoned the child without identifying the child or furnishing means of identification, and the child's identity cannot be ascertained by the exercise of reasonable diligence; or

(H) voluntarily, and with knowledge of the pregnancy, abandoned the mother of the child beginning at a time during her pregnancy with the child and continuing

through the birth, failed to provide adequate support or medical care for the mother during the period of abandonment before the birth of the child, and remained apart from the child or failed to support the child since the birth; or

(I) contumaciously refused to submit to a reasonable and lawful order of a court under Section 34.05 of this code; or

(J) been the major cause of:

(i) the failure of the child to be enrolled in school as required by the Texas Education Code; or

(ii) the child's absence from his home without the consent of his parents or guardian for a substantial length of time or without the intent to return; or

(K) executed before or after the suit is filed an unrevoked or irrevocable affidavit of relinquishment of parental rights as provided by Section 15.03 of this code; and in addition, the court further finds that

(2) termination is in the best interest of the child.

[Amended by Acts 1975, 64th Leg., p. 1266, ch. 476, § 31, eff. Sept. 1, 1975.]

§ 15.021. Filing of Petition to Terminate Before Birth

A petition in a suit affecting the parent-child relationship which requests the termination of the parent-child relationship with respect to either or both parents may be filed before the birth of the child and after the first trimester of the mother's pregnancy. If the petition is filed before the birth of the child, no hearing on the termination may be held nor may orders other than temporary orders be issued until the child is at least five days old. If the petition is filed before the birth of the child, the term "unborn child" shall be substituted for the name of the child in all records and documents required by this title that are filed before the birth of the child. After the birth of the child, the name of the child shall be entered in the record and used in subsequent proceedings other than an adoption. [Added by Acts 1975, 64th Leg., p. 1267, ch. 476, § 32, eff. Sept. 1, 1975.]

§ 15.03. Affidavit of Relinquishment of Parental Rights

(a) An affidavit for voluntary relinquishment of parental rights must be signed after the birth of the child by the parent, whether or not a minor, whose parental rights are to be relinquished, witnessed by two credible persons, and verified before any person authorized to take oaths.

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

(c) The affidavit may contain:

(1) a designation of any qualified person, the State Department of Public Welfare, or any

authorized agency as managing conservator of the child;

(2) a waiver of process in a suit to terminate the parent-child relationship brought under Section 15.02(1)(K) of this code, or in a suit to terminate joined with a petition for adoption under Section 16.03(b) of this code; and

(3) a consent to the placement of the child for adoption by the State Department of Public Welfare or by an agency authorized by the State Department of Public Welfare to place children for adoption.

[Amended by Acts 1975, 64th Leg., p. 1267, ch. 476, § 33, eff. Sept. 1, 1975.]

§ 15.04. Affidavit of Status of Child

(a) If the child is not the legitimate child of the father, an affidavit shall be executed by the mother, whether or not a minor, witnessed by two credible persons, and verified before any person authorized to take oaths.

(b) The affidavit must state:

(1) that the mother is not and has not been married to the father of the child;

(2) that the mother and father have not attempted to marry under the laws of this state or another state or nation;

(3) that paternity has not been established under the laws of any state or nation; and

(4) one of the following, as applicable:

(A) the father is unknown and no probable father is known;

(B) the name of the father, but the affiant does not know the whereabouts of the father;

(C) the father has executed a statement of paternity under Section 13.22 of this code and an affidavit of relinquishment of parental rights under Section 15.03 of this code and both affidavits have been filed with the court;

(D) the name and whereabouts of the father; or

(E) the name of any probable father of the child.

(c) The affidavit of status of child may be executed at any time after the first trimester of the pregnancy of the mother.

[Amended by Acts 1975, 64th Leg., p. 1268, ch. 476, § 34, eff. Sept. 1, 1975.]

§ 15.041. Affidavit of Waiver of Interest in Child

(a) A person may execute an affidavit disclaiming any interest in a child and waiving notice or the service of citation in any suit to be filed affecting the parent-child relationship with respect to the child.

(b) The affidavit shall be signed by the person, whether or not a minor, witnessed by two credible persons, and verified before a person authorized to take oaths. The affidavit may be executed before the birth of the child.

(c) The affidavit may contain a statement that the affiant does not admit being the father of the child or having had a sexual relationship with the mother of the child.

(d) An affidavit of waiver of interest in a child may be used in any proceeding in which the affiant attempts to establish an interest in the child. The affidavit may not be used in any proceeding brought by another person to establish the affiant's paternity of the child.

[Added by Acts 1975, 64th Leg., p. 1268, ch. 476, § 35, eff. Sept. 1, 1975.]

§ 15.07. Effect of Decree

A decree terminating the parent-child relationship divests the parent and the child of all legal rights, privileges, duties, and powers, with respect to each other, except that the child retains the right to inherit from and through its divested parent unless the court otherwise provides. Nothing in this chapter shall preclude or affect the rights of a natural maternal or paternal grandparent to reasonable access under Section 14.03(d) of this code.

[Amended by Acts 1975, 64th Leg., p. 1269, ch. 476, § 36, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 335, ch. 164, § 2, eff. Aug. 29, 1977.]

CHAPTER 16. ADOPTION

SUBCHAPTER A. ADOPTION OF CHILDREN

Section

16.031. Social Study: Time for Hearing [NEW].

SUBCHAPTER A. ADOPTION OF CHILDREN

§ 16.02. Who May Adopt

Any adult is eligible to adopt a child who may be adopted.

[Amended by Acts 1975, 64th Leg., p. 1269, ch. 476, § 37, eff. Sept. 1, 1975.]

§ 16.03. Prerequisites to Petition

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

(b) Except as provided in Subsection (c) of this section, no petition for adoption of a child may be considered unless there has been a decree terminating the parent-child relationship as to each living parent of the child or unless the termination proceeding is joined with the proceeding for adoption.

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

(d) If an affidavit of relinquishment of parental rights contains a consent that the State Department of Public Welfare or an authorized agency may place the child for adoption and appoints the department or agency managing conservator of the child, no further consent by the parent is required and the adoption decree shall terminate all rights of the parent without further termination proceedings.

[Amended by Acts 1975, 64th Leg., p. 1269, ch. 476, §§ 38 to 40, eff. Sept. 1, 1975.]

Former subsec. (d) was repealed by § 39 of the 1975 Act.

§ 16.031. Social Study: Time for Hearing

(a) In a suit affecting the parent-child relationship in which an adoption is sought, the court shall order the making of a social study as provided in Section 11.12 of this code and shall set a date for its filing.

(b) The court shall set the date for the hearing on the adoption at a time not later than 60 days, nor earlier than 40 days, after the date on which the investigator is appointed. For good cause shown, the court may set the hearing at any time that provides adequate time for filing the report of the study.

[Added by Acts 1975, 64th Leg., p. 1269, ch. 476, § 41, eff. Sept. 1, 1975.]

§ 16.08. Decree

(a) If the court is satisfied that the requirements for adoption have been met and the adoption is in the best interest of the child, the court shall make a decree granting the adoption, reciting the findings pertaining to the court's jurisdiction.

(b) If a request for termination of the parent-child relationship has been joined with the petition for adoption, the court shall also enter in its decree a termination of the parent-child relationship. The court must make separate findings that the termination is in the best interests of the child and that the adoption is in the best interests of the child.

(c) The name of the child may be changed in the decree if requested.

[Amended by Acts 1975, 64th Leg., p. 1269, ch. 476, § 42, eff. Sept. 1, 1975.]

§ 16.09. Effect of Adoption Decree

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

(d) Nothing in this chapter shall preclude or affect the rights of a natural maternal or paternal grandparent to reasonable access under Section 14.03(d) of this code.

[Amended by Acts 1977, 65th Leg., p. 335, ch. 163, § 3, eff. Aug. 29, 1977.]

SUBCHAPTER B. ADOPTION OF ADULTS

§ 16.55. Effect of Adoption Decree

On entry of the decree of adoption, the adopted adult is the son or daughter of the adoptive parents for all purposes, and of the natural parents for inheritance purposes only. However, the natural parents may not inherit from or through the adopted adult.

[Amended by Acts 1975, 64th Leg., p. 1270, ch. 476, § 43, eff. Sept. 1, 1975.]

CHAPTER 17. SUIT FOR PROTECTION OF CHILD IN EMERGENCY

§ 17.01. Taking Possession in Emergency

An authorized representative of the State Department of Public Welfare, a law-enforcement officer, or a juvenile probation officer may take possession of a child to protect him from an immediate danger to his health or physical safety and deliver him to any court having jurisdiction of suits under this subtitle, whether or not the court has continuing jurisdiction under Section 11.05 of this code. The child shall be delivered immediately to the court. [Amended by Acts 1975, 64th Leg., p. 1270, ch. 476, § 44, eff. Sept. 1, 1975.]

§ 17.05. Duration of Order

(a) An order issued under Section 17.04 of this code expires at the end of the 10-day period following the date of the order, on the restoration of the child to the possession of its parent, guardian, or conservator, or on the issuance of ex parte temporary orders in a suit affecting the parent-child relationship under this subtitle, whichever occurs first.

(b) If the child is not restored to the possession of its parent, guardian, or conservator, the court shall:

- (1) order such restoration of possession; or
(2) direct the filing of a suit affecting the parent-child relationship in the appropriate court with regard to continuing jurisdiction.

[Amended by Acts 1975, 64th Leg., p. 1270, ch. 476, § 45, eff. Sept. 1, 1975.]

CHAPTER 21. UNIFORM RECIPROCAL ENFORCEMENT OF SUPPORT ACT

SUBCHAPTER A. GENERAL PROVISIONS

Section

21.07. Declaration of Reciprocity: Other Nations [NEW].

SUBCHAPTER A. GENERAL PROVISIONS

§ 21.03. Definitions

In this chapter, unless the context requires a different definition:

(1) "State" includes any state, territory, or possession of the United States and the District of Columbia in which this or a substantially similar reciprocal law has been enacted and includes a foreign nation or a state of a nation declared to have a similar reciprocal law as provided in Section 21.07 of this code.

[See Compact Edition, Volume 1 for text of (2) to (14)]

(15) "Prosecuting attorney" means the criminal district attorney, an attorney designated by the court, or the county attorney, or the district attorney where there is no criminal district attorney, attorney designated by the court, or county attorney.

[See Compact Edition, Volume 1 for text of (16)]

[Amended by Acts 1975, 64th Leg., p. 1270, ch. 476, §§ 46 and 47, eff. Sept. 1, 1975.]

§ 21.07. Declaration of Reciprocity: Other Nations

(a) If the attorney general finds that reciprocal provisions are available in a foreign nation or the state of a foreign nation for the enforcement of support orders issued in this state, the attorney general may declare the foreign nation or a state of a foreign nation to be a reciprocating state for the purpose of this chapter.

(b) A declaration made under Subsection (a) of this section may be revoked by the attorney general.

(c) A declaration by the attorney general made under Subsection (a) of this section may be reviewed by the court in an action under this title.

[Added by Acts 1975, 64th Leg., p. 1270, ch. 476, § 48, eff. Sept. 1, 1975.]

[Sections 21.08 to 21.10 reserved for expansion]

SUBCHAPTER C. CIVIL ENFORCEMENT

§ 21.39. Enforcement Power of Court

In addition to the foregoing powers, the court of this state when acting as the responding state has the power to subject the defendant to such terms and conditions as the court may deem proper to assure compliance with its orders, and in particular:

(1) to require the defendant to furnish a cash deposit or bond of such character and in such amount as the court may deem proper to assure payment of any amount required to be paid by the defendant;

(2) to require the defendant to make payments at specified intervals to the district clerk or probation department of the court;

(3) to punish the defendant who shall violate any order of the court to the same extent as is

provided by law for contempt of the court in any other suit or proceeding cognizable by the court; and

(4) to order the defendant (obligor) to pay as court costs a reasonable fee to any attorney or to the prosecuting attorney's office who represents the petitioner in any enforcement proceeding.

[Amended by Acts 1975, 64th Leg., p. 1271, ch. 476, § 49, eff. Sept. 1, 1975.]

CHAPTER 31. REMOVAL OF DISABILITIES OF MINORITY

§ 31.01. Petition

(a) A minor who is a resident of this state and is at least 17 years of age, or is at least 16 years of age, living separate and apart from his parents, managing conservator, or guardian and is self-supporting and managing his own financial affairs, may petition to have his disabilities of minority removed for limited purposes or for general purposes.

(b) A minor who is not a resident of this state and is at least 17 years of age may petition to have his disabilities of minority removed for a limited purpose or for general purposes if he is an adult under the laws of the state of his residence.

(c) A minor may institute suit under this section in his own name and need not be represented by next friend.

[Amended by Acts 1975, 64th Leg., p. 1271, ch. 476, § 50, eff. Sept. 1, 1975.]

§ 31.02. Requisites of Petition

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

(c) The petition must be verified by a parent of the petitioner, except that if a managing conservator or guardian of the person has been appointed, the petition must be verified by the person so appointed. If the person who is to verify the petition is unavailable or his whereabouts are unknown, the guardian ad litem shall verify the petition after his appointment.

[Amended by Acts 1975, 64th Leg., p. 1271, ch. 476, § 51, eff. Sept. 1, 1975.]

CHAPTER 34. REPORT OF CHILD ABUSE

Section

34.07. Failure to Report; Penalty [NEW].

34.08. Confidentiality [NEW].

§ 34.02. Contents of Report: to Whom Made

(a) Nonaccusatory reports reflecting the reporter's belief that a child has been or will be abused or

neglected, or has died of abuse or neglect, has violated the compulsory school attendance laws on three or more occasions, or has, on three or more occasions, been voluntarily absent from his home without the consent of his parent or guardian for a substantial length of time or without the intent to return shall be made to:

- (1) the State Department of Public Welfare;
- (2) the agency designated by the court to be responsible for the protection of children; or
- (3) any local or state law enforcement agency.

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

(c) All reports received by any local or state law enforcement agency shall be referred to the State Department of Public Welfare or to the agency designated by the court to be responsible for the protection of children.

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

[Amended by Acts 1975, 64th Leg., p. 1271, ch. 476, § 52, eff. Sept. 1, 1975.]

§ 34.05. Investigation and Report of Receiving Agency

(a) The State Department of Public Welfare or the agency designated by the court to be responsible for the protection of children shall make a thorough investigation promptly after receiving either the oral or written report. The primary purpose of the investigation shall be the protection of the child.

(b) In the investigation the department or agency shall determine:

- (1) the nature, extent, and cause of the abuse or neglect;
- (2) the identity of the person responsible for the abuse or neglect;
- (3) the names and conditions of the other children in the home;
- (4) an evaluation of the parents or persons responsible for the care of the child;
- (5) the adequacy of the home environment;
- (6) the relationship of the child to the parents or persons responsible for the care of the child;
- (7) all other pertinent data.

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

(e) The agency designated by the court to be responsible for the protection of children or the department shall make a complete written report of the investigation. The report, together with its recommendations, shall be submitted to the juvenile court or the district court, the district attorney, and the appropriate law enforcement agency if sufficient grounds for the institution of a suit affecting the parent-child relationship are found.

[Amended by Acts 1975, 64th Leg., p. 1272, ch. 476, § 53, eff. Sept. 1, 1975.]

§ 34.07. Failure to Report; Penalty

(a) A person commits an offense if the person has cause to believe that a child's physical or mental health or welfare has been or may be further adversely affected by abuse or neglect and knowingly fails to report in accordance with Section 34.02 of this code.

(b) An offense under this section is a Class B misdemeanor.

[Added by Acts 1975, 64th Leg., p. 1272, ch. 476, § 54, eff. Sept. 1, 1975.]

§ 34.08. Confidentiality

The reports, records, and working papers used or developed in an investigation made under this chapter are confidential and may be disclosed only for purposes consistent with the purposes of this code under regulations adopted by the investigating agency.

[Added by Acts 1975, 64th Leg., p. 1272, ch. 476, § 54, eff. Sept. 1, 1975.]

CHAPTER 35. CONSENT TO MEDICAL TREATMENT

Section

35.04. Examination of Abused or Neglected Children [NEW].

§ 35.04. Examination of Abused or Neglected Children

(a) Except as provided in Subsection (b) of this section, a licensed physician or dentist having reasonable grounds to believe that a child's physical or mental condition has been adversely affected by abuse or neglect may examine the child without the consent of the child, the child's parents, or other person authorized to consent for the child or his parents. The examination may include X-rays, blood tests, and penetration of tissue necessary to accomplish these tests.

(b) Unless consent is obtained as otherwise allowed by law, a physician or dentist may not examine a child:

(1) who is 16 years old or over and refuses to consent; or

(2) if consent is refused by an order of a court.

(c) A physician or dentist examining a child under the authority of this section is not liable for damages except those damages resulting from his negligence.

[Added by Acts 1975, 64th Leg., p. 1273, ch. 476, § 55, eff. Sept. 1, 1975.]

TITLE 3. DELINQUENT CHILDREN AND CHILDREN IN NEED OF SUPERVISION

CHAPTER 51. GENERAL PROVISIONS

Section

51.18. Powers and Duties of Alternate Juvenile Court [NEW].

§ 51.02. Definitions

In this title:

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

(2) "Parent" means the mother, the father whether or not the child is legitimate, or an adoptive parent, but does not include a parent whose parental rights have been terminated.

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

[Amended by Acts 1975, 64th Leg., p. 2152, ch. 693, § 1, eff. Sept. 1, 1975.]

Section 27 of the 1975 amendatory act provided: "This Act takes effect on September 1, 1975."

§ 51.03. Delinquent Conduct; Conduct Indicating a Need for Supervision

(a) Delinquent conduct is conduct, other than a traffic offense, that violates:

(1) a penal law of this state punishable by imprisonment or by confinement in jail; or

(2) a reasonable and lawful order of a juvenile court entered under Section 54.04 or 54.05 of this code, including an order prohibiting conduct referred to in Subsection (b)(4) of this section.

(b) Conduct indicating a need for supervision is:

(1) conduct, other than a traffic offense or other than an offense included in Subdivision (5) of this subsection, that on three or more occasions violates either of the following:

(A) the penal laws of this state of the grade of misdemeanor that are punishable by fine only; or

(B) the penal ordinances of any political subdivision of this state;

(2) the unexcused voluntary absence of a child on 10 or more days or parts of days within a six-month period or three or more days or parts of days within a four-week period from school;

(3) the voluntary absence of a child from his home without the consent of his parent or guardian for a substantial length of time or without intent to return;

(4) conduct which violates the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (first or subsequent offense) or driving while under the influence of any narcotic drug or of any

other drug to a degree which renders him incapable of safely driving a vehicle (first or subsequent offense); or

(5) conduct prohibited by city ordinance or by state law involving the inhalation of the fumes or vapors of paint and other protective coatings or glue and other adhesives.

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

(d) For the purpose of Subsection (b)(2) of this section an absence is excused when the absence results from:

- (1) illness of the child;
- (2) illness or death in the family of the child;
- (3) quarantine of the child and family;
- (4) weather or road conditions making travel dangerous;
- (5) an absence approved by a teacher, principal, or superintendent of the school in which the child is enrolled; or
- (6) circumstances found reasonable and proper.

[Amended by Acts 1975, 64th Leg., p. 2153, ch. 693, §§ 2 to 4, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 906, ch. 340, § 1, eff. June 6, 1977.]

§ 51.04. Jurisdiction

(a) This title covers the proceedings in all cases involving the delinquent conduct or conduct indicating a need for supervision engaged in by a person who was a child within the meaning of this title at the time he engaged in the conduct, and the juvenile court has exclusive original jurisdiction over proceedings under this title.

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

(d) If the judge of a court designated in Subsection (b) or (c) of this section is not an attorney licensed in this state, there shall also be designated an alternate court, the judge of which is an attorney licensed in this state. The alternate juvenile court shall rule on motions and hold hearings as provided in Section 51.18 of this chapter.

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

(g) The juvenile board, or if there is no juvenile board, the juvenile court, may appoint a referee to conduct hearings under this title and in accordance with Section 54.10 of this code. The referee shall be an attorney licensed to practice law in this state. Payment of any referee services shall be provided from county funds.

[Amended by Acts 1975, 64th Leg., p. 1357, ch. 514, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 2153, ch. 693, §§ 5 to 7, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1112, ch. 411, § 1, eff. June 15, 1977.]

§ 51.05. Court Sessions and Facilities

(a) The juvenile court shall be deemed in session at all times. Suitable quarters shall be provided by the commissioners court of each county for the hearing of cases and for the use of the judge, the probation officer, and other employees of the court.

(b) The juvenile court and the juvenile board shall report annually to the commissioners court on the suitability of the quarters and facilities of the juvenile court and may make recommendations for their improvement.

[Amended by Acts 1975, 64th Leg., p. 2154, ch. 693, § 8, eff. Sept. 1, 1975.]

§ 51.09. Waiver of Rights

(a) Unless a contrary intent clearly appears elsewhere in this title, any right granted to a child by this title or by the constitution or laws of this state or the United States may be waived in proceedings under this title if:

- (1) the waiver is made by the child and the attorney for the child;
- (2) the child and the attorney waiving the right are informed of and understand the right and the possible consequences of waiving it;
- (3) the waiver is voluntary; and
- (4) the waiver is made in writing or in court proceedings that are recorded.

(b) Notwithstanding any of the provisions of Subsection (a) of this section, the statement of a child is admissible in evidence in any future proceeding concerning the matter about which the statement was given if:

- (1) when the child is in a detention facility or other place of confinement or in the custody of an officer, the statement is made in writing and the statement shows that the child has at some time prior to the making thereof received from a magistrate a warning that:

(A) he may remain silent and not make any statement at all and that any statement he makes may be used in evidence against him;

(B) he has the right to have an attorney present to advise him either prior to any questioning or during the questioning;

(C) if he is unable to employ an attorney, he has the right to have an attorney to counsel with him prior to or during any interviews with peace officers or attorneys representing the state;

(D) he has the right to terminate the interview at any time;

(E) if he is 15 years of age or older at the time of the violation of a penal law of the grade of felony the juvenile court may

waive its jurisdiction and he may be tried as an adult; and

(F) the statement must be signed in the presence of a magistrate by the child with no law enforcement officer or prosecuting attorney present. The magistrate must be fully convinced that the child understands the nature and contents of the statement and that the child is signing the same voluntarily. If such a statement is taken, the magistrate shall sign a written statement verifying the foregoing requisites have been met.

The child must knowingly, intelligently, and voluntarily waive these rights prior to and during the making of the statement and sign the statement in the presence of a magistrate who must certify that he has examined the child independent of any law enforcement officer or prosecuting attorney and determined that the child understands the nature and contents of the statement and has knowingly, intelligently, and voluntarily waived these rights.

(2) it be made orally and the child makes a statement of facts or circumstances that are found to be true, which conduct tends to establish his guilt, such as the finding of secreted or stolen property, or the instrument with which he states the offense was committed.

(3) the statement was res gestae of the delinquent conduct or the conduct indicating a need for supervision or of the arrest.

[Amended by Acts 1975, 64th Leg., p. 2154, ch. 693, § 9, eff. Sept. 1, 1975.]

§ 51.12. Place and Conditions of Detention

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

(c) In each county, the judge of the juvenile court and the members of the juvenile board, if there is one, shall personally inspect the detention facilities at least annually and shall certify in writing to the authorities responsible for operating and giving financial support to the facilities that they are suitable or unsuitable for the detention of children in accordance with:

(1) the requirements of Subsection (a) of this section;

(2) the requirements of Article 5115, Revised Civil Statutes of Texas, 1925, as amended, defining "safe and suitable jails," if the detention facility is a county jail; and

(3) recognized professional standards for the detention of children.

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

(e) If there is no certified place of detention in the county in which the petition is filed, the designated place of detention may be in another county.

[Amended by Acts 1975, 64th Leg., p. 2155, ch. 693, §§ 10 and 11, eff. Sept. 1, 1975.]

§ 51.15. Fingerprints and Photographs

(a) No child may be fingerprinted without the consent of the juvenile court except as provided in Subsection (f) of this section. However, if a child 15 years of age or older is referred to the juvenile court for a felony, his fingerprints may be taken and filed by a law-enforcement officer investigating the case.

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

[Amended by Acts 1975, 64th Leg., p. 2156, ch. 693, § 12, eff. Sept. 1, 1975.]

§ 51.16. Sealing of Files and Records

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

(h) A person whose files and records have been sealed under this Act is not required in any proceeding or in any application for employment, information, or licensing to state that he has been the subject of a proceeding under this Act; and any statement that he has never been found to be a delinquent child shall never be held against the person in any criminal or civil proceeding.

[Amended by Acts 1975, 64th Leg., p. 2156, ch. 693, § 13, eff. Sept. 1, 1975.]

§ 51.18. Powers and Duties of Alternate Juvenile Court

If a juvenile court, the judge of which is not an attorney licensed in this state, issues an order that may be appealed as provided in Subsection (c) of Section 56.01 of this code, the child shall have a right to a trial de novo before the alternate juvenile court or may appeal the order of the court as provided in Section 56.01.

[Added by Acts 1977, 65th Leg., p. 1112, ch. 411, § 2, eff. June 15, 1977.]

CHAPTER 54. JUDICIAL PROCEEDINGS

Section

54.041. Order Prohibiting Harmful Contacts [NEW].

54.10. Hearings Before Referee [NEW].

§ 54.01. Detention Hearing

(a) If the child is not released under Section 53.02 of this code, a detention hearing without a jury shall be held promptly, but not later than the second working day after he is taken into custody; provided, however, that when a child is detained on a Friday or Saturday, then such detention hearing shall be held on the first working day after the child is taken into custody.

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

(m) The detention hearing required in this section may be held in the county of the designated place of detention where the child is being held even though the designated place of detention is outside the county of residence of the child or the county in which the alleged delinquent conduct or conduct indicating a need for supervision occurred.

[Amended by Acts 1975, 64th Leg., p. 2156, ch. 693, §§ 14 and 15, eff. Sept. 1, 1975.]

§ 54.02. Waiver of Jurisdiction and Discretionary Transfer to Criminal Court

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

(j) The juvenile court may waive its exclusive original jurisdiction and transfer a person to the appropriate district court or criminal district court for criminal proceedings if:

- (1) the person is 18 years of age or older;
- (2) the person was 15 years of age or older and under 17 years of age at the time he is alleged to have committed a felony;
- (3) no adjudication concerning the alleged offense has been made or no adjudication hearing concerning the offense has been conducted; and
- (4) the juvenile court finds from a preponderance of the evidence that after due diligence of the state it was not practicable to proceed in juvenile court before the 18th birthday of the person because:

(A) the state did not have probable cause to proceed in juvenile court and new evidence has been found since the 18th birthday of the person; or

(B) the person could not be found.

(k) The petition and notice requirements of Sections 53.04, 53.05, 53.06, and 53.07 of this code must be satisfied, and the summons must state that the hearing is for the purpose of considering waiver of jurisdiction under Subsection (j) of this section.

(l) The juvenile court shall conduct a hearing without a jury to consider waiver of jurisdiction under Subsection (j) of this section.

[Amended by Acts 1975, 64th Leg., p. 2156, ch. 693, § 16, eff. Sept. 1, 1975.]

§ 54.03. Adjudication Hearing

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

(c) Trial shall be by jury unless jury is waived in accordance with Section 51.09 of this code. Jury verdicts under this title must be unanimous.

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

[Amended by Acts 1975, 64th Leg., p. 2157, ch. 693, § 17, eff. Sept. 1, 1975.]

§ 54.04. Disposition Hearing

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

(g) Repealed by Acts 1975, 64th Leg., p. 2158, ch. 693, § 23, eff. Sept. 1, 1975.

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

[Amended by Acts 1975, 64th Leg., p. 2158, ch. 693, § 23, eff. Sept. 1, 1975.]

§ 54.041. Order Prohibiting Harmful Contacts

When a child has been found to have engaged in delinquent conduct or conduct indicating a need for supervision and the juvenile court has made a finding that the child is in need of rehabilitation or that the protection of the public or the child requires that disposition be made, the juvenile court, on notice to all persons affected and on hearing, may enjoin all contact between the child and a person who is found to be a contributing cause of the child's delinquent conduct or conduct indicating a need for supervision.

[Added by Acts 1975, 64th Leg., p. 2157, ch. 693, § 18, eff. Sept. 1, 1975.]

§ 54.10. Hearings Before Referee

(a) The hearing provided in Sections 54.01, 54.03, and 54.04 of this code may be held by a referee appointed in accordance with Section 51.04(g) of this code provided:

(1) the parties have been informed by the referee that they are entitled to have the hearing before the juvenile court judge or in the case of a detention hearing provided for in Section 54.01 of this code, a substitute judge as authorized by Section 51.04(f) of this code; or

(2) the child and the attorney for the child have in accordance with the requirements of Section 51.09 of this code waived the right to have the hearing before the juvenile court judge or substitute judge.

(b) At the conclusion of the hearing, the referee shall transmit written findings and recommendations to the juvenile court judge. The juvenile court judge shall adopt, modify, or reject the referee's recommendations within 24 hours. In the same case of a detention hearing as authorized by Section 54.01 of this code, the failure of the juvenile court to act within 24 hours results in release of the child by operation of law and a recommendation that the child be released operates to secure his immediate release subject to the power of the juvenile court judge to modify or reject that recommendation.

[Added by Acts 1975, 64th Leg., p. 2157, ch. 693, § 19, eff. Sept. 1, 1975.]

CHAPTER 55. PROCEEDINGS CONCERNING CHILDREN WITH MENTAL ILLNESS, RETARDATION, DISEASE, OR DEFECT

§ 55.01. Physical or Mental Examination

(a) At any stage of the proceedings under this title, the juvenile court may cause the child to be examined by a physician, psychiatrist, or psychologist.

(b) If an examination ordered under Subsection (a) of this section is to determine whether the child is mentally retarded, the examination must consist of a comprehensive diagnosis and evaluation as defined in the Mentally Retarded Persons Act¹ and shall be conducted at a facility approved by the Texas Department of Mental Health and Mental Retardation.

[Amended by Acts 1977, 65th Leg., p. 1453, ch. 591, § 1, eff. Jan. 1, 1978.]

¹ See Civil Statutes, art. 5547-300. Section 3 of the 1977 amendatory act provided: "This Act takes effect January 1, 1978."

§ 55.02. Mentally Ill Child

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

(c) If the juvenile court enters an order of temporary hospitalization of the child, the child shall be cared for, treated, and released in conformity to the Texas Mental Health Code except:

(1) a juvenile court order of temporary hospitalization of a child automatically expires when the child becomes 18 years of age;

(2) the head of a mental hospital shall notify the juvenile court that ordered temporary hospitalization at least 10 days prior to discharge of the child; and

(3) appeal from juvenile court proceedings under this section shall be to the court of civil appeals as in other proceedings under this title.

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

(e) If the child is discharged from the mental hospital before reaching 18 years of age, the juvenile court may:

(1) dismiss the juvenile court proceedings with prejudice; or

(2) continue with proceedings under this title as though no order of temporary hospitalization had been made.

[Amended by Acts 1975, 64th Leg., p. 2157, ch. 693, §§ 20 and 21, eff. Sept. 1, 1975.]

§ 55.03. Mentally Retarded Child

(a) If it appears to the juvenile court, on the suggestion of a party or on the court's own notice, that a child alleged or found to have engaged in delinquent conduct or conduct indicating a need for supervision may be mentally retarded, the court shall order a comprehensive diagnosis and evaluation of the child to be performed at a facility approved by the Texas Department of Mental Health and Mental Retardation. If the court finds that the results of such comprehensive diagnosis and evaluation indicate a significantly subaverage general intellectual function of 2.5 or more standard deviations below the age-group mean for the tests used existing concurrently with deficits in adaptive behavior of Levels I-IV, the court shall initiate proceedings to order commitment of the child to a facility for the care and treatment of mentally retarded persons.

(b) The Mentally Retarded Persons Act (Article 3871b, Vernon's Texas Civil Statutes)¹ governs proceedings for commitment of a child meeting the criteria set forth in Subsection (a) of this section except that:

(1) the juvenile court shall conduct the proceedings whether or not the juvenile court is also a county court; and

(2) on receipt of the court's order entering the findings set forth in Subsection (a) of this section, together with those findings set forth in the Mentally Retarded Persons Act as prerequisites for court commitments, the Texas Department of Mental Health and Mental Retardation or the appropriate community center shall thereupon admit the child to a residential care facility for the mentally retarded.

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

(e) If the child is discharged from the facility for the care and treatment of mentally retarded persons before reaching 18 years of age, the juvenile court may:

(1) dismiss the juvenile court proceedings with prejudice; or

(2) continue with proceedings under this title as though no order of commitment had been made.

[Amended by Acts 1975, 64th Leg., p. 2158, ch. 693, § 22, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1453, ch. 591, § 2, eff. Jan. 1, 1978.]

¹ Repealed; see, now, Civil Statutes, art. 5547-300.

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TITLE 1. GENERAL PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

Section
1.001. Purpose of Code.
1.002. Construction of Code.

§ 1.001. Purpose of Code

(a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 448, Acts of the 58th Legislature, Regular Session, 1963 (Article 5429b-1, Vernon's Texas Civil Statutes). The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the general and permanent natural resources law more accessible and understandable by:

- (1) rearranging the statutes into a more logical order;
- (2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;

(3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and

(4) restating the law in modern American English to the greatest extent possible.

[Acts 1977, 65th Leg., p. 2347, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 1.002. Construction of Code

The Code Construction Act (Article 5429b-2, Vernon's Texas Civil Statutes) applies to the construction of each provision in this code, except as otherwise expressly provided by this code.

[Acts 1977, 65th Leg., p. 2347, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

TITLE 2. PUBLIC DOMAIN

SUBTITLE A. GENERAL PROVISIONS

CHAPTER 11. PROVISIONS GENERALLY APPLICABLE TO THE PUBLIC DOMAIN

SUBCHAPTER A. GENERAL PROVISIONS

Section
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SUBCHAPTER B. TERRITORY AND BOUNDARIES OF THE STATE

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11.041. Permanent School Fund.
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11.071. Recovery of Value of Minerals and Timber.
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11.077. Suit Against Adverse Claimant.
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SUBCHAPTER A. GENERAL PROVISIONS

§ 11.001. Definitions

In this chapter:

- (1) "State" means the State of Texas.
- (2) "Land office" means the General Land Office.
- (3) "Commissioner" means the Commissioner of the General Land Office.

[Acts 1977, 65th Leg., p. 2349, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 11.002 to 11.010 reserved for expansion]

SUBCHAPTER B. TERRITORY AND
BOUNDARIES OF THE STATE

§ 11.011. Vacant and Unappropriated Land

So that the law relating to the public domain may be brought together, the following extract is taken from the joint resolutions of the Congress of the United States relating to the annexation of Texas to the United States, which was approved June 23, 1845: "Said State, when admitted into the Union, . . . shall also retain all the vacant and unappropriated lands lying within its limits, to be applied to the payment of debts and liabilities of said Republic of Texas, and the residue of said lands, after discharging said debts and liabilities, to be disposed of as said State may direct. . . ."

[Acts 1977, 65th Leg., p. 2349, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.012. Gulfward Boundary of Texas

(a) The gulfward boundary of the State of Texas is the boundary determined in and pursuant to the decision of the United States Supreme Court in *Texas v. Louisiana*, 426 U.S. 465 (1976).

(b) The State of Texas has full sovereignty over the water, the beds and shores, and the arms of the Gulf of Mexico within its boundaries as provided in Subsection (a) of this section, subject only to the right of the United States to regulate foreign and interstate commerce under Article I, Section 8 of the United States Constitution, and the power of the United States over admiralty and maritime jurisdiction under Article III, Section 2 of the United States Constitution.

(c) The State of Texas owns the water and the beds and shores of the Gulf of Mexico and the arms of the Gulf of Mexico within the boundaries provided in this section, including all land which is covered by the Gulf of Mexico and the arms of the Gulf of Mexico either at low tide or high tide.

(d) None of the provisions of this section may be construed to relinquish any dominion, sovereignty, territory, property, or rights of the State of Texas previously held by the state.

[Acts 1977, 65th Leg., p. 2349, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.013. Gulfward Boundaries of Counties

(a) The gulfward boundary of each county located on the coastline of the Gulf of Mexico is the Three Marine League line as determined by the United States Supreme Court.

(b) The area in the extended boundaries of the counties as provided in this section becomes a part of the public free school land and is subject to the constitutional and statutory provisions of this state pertaining to the use, distribution, sale, and lease of public free school land in this state.

[Acts 1977, 65th Leg., p. 2349, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.014. Land Acquired From Oklahoma

(a) Land acquired by the state in *Oklahoma v. Texas*, 272 U.S. 21 (1926) and subsequent orders of the United States Supreme Court relating to that case, is incorporated into the counties which are adjacent to the land, and the north and south lines of the adjacent counties, Lipscomb, Hemphill, Wheeler, Collingsworth, and Childress, are extended east to the 100th degree of west longitude as it is fixed in the final judgment.

(b) The land acquired from Oklahoma shall become a part of the respective counties as though it were originally included in each county for governmental purposes and shall be assessed for taxes and have taxes collected under the provisions of existing law.

[Acts 1977, 65th Leg., p. 2350, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.015. Extension of Texas-New Mexico Boundary

(a) The boundary lines of all counties in the Texas Panhandle that border on the New Mexico boundary line are extended by extending the north and south lines of certain counties west to the Texas-New Mexico line, which was established by the survey of John H. Clark in 1859 and later retraced to completion on September 26, 1911, by the Boundary Commission composed of Francis M. Cockrell and Sam R. Scott, under authority of S.J.R. No. 124, of the 61st Congress, Third Session.

(b) The boundary line is referred to as the 103rd Meridian and is described as follows:

Beginning at the point where the one hundred and third degree of longitude west from Greenwich intersects the parallel of thirty-six degrees and thirty Minutes North latitude, as determined and fixed by John H. Clark, the Commissioner on the part of the United States in the years eighteen hundred and fifty-nine and eighteen hundred and sixty; thence South with the line run by said Clark for the said one hundred and third degree of longitude to the Thirty-second parallel of North latitude to the point marked by said Clark as the Southeast corner of New Mexico; and thence West with the thirty-second degree of North latitude as determined by said Clark to the Rio Grande.

(c) Copies of the deeds certified by the custodian of records in each of the counties in New Mexico in which the land is located and other instruments of title are admissible as evidence in suits filed in this state to the same extent as the original deeds or certified copies of them.

(d) The county clerk of each of the counties in Texas in which the land is now located may file the certified copies of deeds and other instruments affecting title in the same manner as the original deeds could have been filed.

[Acts 1977, 65th Leg., p. 2350, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.016. Land Acquired From Mexico in 1933

(a) The State of Texas recognizes the provisions of 54 Stat. 21 (1940) and accepts as part of its territory and assumes civil and criminal jurisdiction over all of certain parcels or tracts of land lying adjacent to the territory of the State of Texas which were acquired by the United States under a convention between the United States of America and the United Mexican States signed February 1, 1933.

(b) The parcels and tracts of land acquired by the state constitute a part of the respective counties within whose boundaries they are located by extending the county boundaries to the Rio Grande and are subject to the civil and criminal jurisdiction of these counties.

(c) Any parcels or tracts, parts of which are located in two separate counties, shall be surveyed by the county surveyors of both counties, who shall determine the portion of the land located in their respective counties and shall file the field notes of the land in their offices together with a map of the parcels or tracts in the map records of the county.

(d) For the purpose of determining the boundaries, the boundary lines of the parcels and tracts established by the American Section of the International Boundary Commission, United States and Mexico, shall be accepted as the true boundaries.

(e) Any parcels or tracts of land that are adjacent to or contiguous to a water improvement district or a conservation and reclamation district may be included within the district by a written contract entered into between the owner of the land and the board of directors of the district. The contract shall specifically describe the land to be included in the district, the character of water service to be furnished to the land, and the terms and conditions on which the land is to be included in the district and shall be acknowledged in the manner required for the acknowledgment of deeds and recorded in the deed records of the county in which the land is located.

(f) None of the provisions of this section may be construed to affect the ownership of the land. [Acts 1977, 65th Leg., p. 2350, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.017. Chamizal Area

(a) The State of Texas accepts as part of its territory and assumes civil and criminal jurisdiction over the tract of land lying adjacent to the State of Texas which was acquired by the United States of America from the United Mexican States under the Convention for the Solution of the Problem of the Chamizal, signed August 29, 1963, and ceded to Texas by Act of Congress.

(b) The territory shall be a part of El Paso County.

(c) None of the provisions of this section affect the ownership of the land.

[Acts 1977, 65th Leg., p. 2351, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.018. Cession of Certain El Paso Land

(a) To facilitate the project for rectification of the Rio Grande in the El Paso-Juarez Valley under the convention between the United States of America and the United Mexican States signed February 1, 1933, without cost to the state, all right, title, and interest of the State of Texas in and to the bed and banks of the Rio Grande in El Paso County and Hudspeth County which may be necessary or expedient in the construction of the project is ceded to the United States of America.

(b) This cession is made on the express condition that the State of Texas retain concurrent jurisdiction with the United States of America over every portion of land ceded which remains within the territorial limits of the United States after the project is completed so that process may be executed in the same manner and with the same effect as before the cession took place.

(c) None of the provisions of this section may be construed as a cession or relinquishment of any rights which the State of Texas, its citizens, or any property owners have in the water of the Rio Grande, its use, or access to it.

[Acts 1977, 65th Leg., p. 2351, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 11.019 to 11.040 reserved for expansion]

SUBCHAPTER C. SPECIAL FUNDS

§ 11.041. Permanent School Fund

(a) In addition to land and minerals granted to the permanent school fund under the constitution and other laws of this state, the permanent school fund shall include:

(1) the mineral estate in river beds and channels;

(2) the mineral estate in areas within tide-water limits, including islands, lakes, bays, and the bed of the sea which belong to the state; and

(3) the arms and the beds and shores of the Gulf of Mexico within the boundary of Texas.

(b) The land and minerals dedicated to the permanent school fund shall be managed as provided by law.

[Acts 1977, 65th Leg., p. 2352, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.042. Asylum Fund

The 400,000 acres of land set apart for the various asylums in equal portions of 100,000 acres for each by act of the legislature, approved August 30, 1856, is recognized and set apart to provide a permanent fund for the support, maintenance, and improvement of the asylums.

[Acts 1977, 65th Leg., p. 2352, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.043. University Fund

After payment of the amount due to the permanent school fund for proceeds from the sale of the portion of the public land set aside for payment of the public debt by act of the legislature in 1879 and payment directed to be made to the permanent school and university funds by act of the legislature in 1883, the remainder of the land not to exceed two million acres or the proceeds from their sale shall be divided in half and one of the halves shall constitute a permanent endowment fund for The University of Texas System.

[Acts 1977, 65th Leg., p. 2352, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 11.044 to 11.070 reserved for expansion]

SUBCHAPTER D. REGULATION OF THE
PUBLIC DOMAIN

§ 11.071. Recovery of Value of Minerals and Timber

(a) At least semiannually, the commissioner and the county attorney of each county shall report to the attorney general the name and address of each person who has taken any minerals or other property of value from public land or who has cut, used, destroyed, sold, or otherwise appropriated any timber from public land and shall report any other data within their knowledge. The county attorneys also shall assist the attorney general relating to these matters in any manner he requests.

(b) The attorney general shall file suit in any county in which all or part of the injury occurred or in the county in which the defendant resides to recover the value of the property, or with the consent of the governor, the attorney general may compromise and settle any of these liabilities with or without suit.

(c) The attorney general shall pay all amounts collected or received by him to the permanent funds to which they belong.

(d) From amounts recovered by suit, the attorney general shall receive a fee of 10 percent and the county attorney shall receive a fee of five percent, and from amounts recovered by compromise, the attorney general and county attorney shall each

receive one-half of the fees to be taxed against the defendant as costs. No county attorney may receive compensation from cases not reported by him to the attorney general.

[Acts 1977, 65th Leg., p. 2352, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.072. Fences With and Without Gates

(a) A person who has used any of the pasture land by joining fences or otherwise and who builds or maintains more than three miles lineal measure of fences running in the same general direction without a gate in it shall be fined not less than \$200 nor more than \$1,000.

(b) The gate in the fence described in Subsection (a) of this section shall be at least 10 feet wide and shall not be locked or kept closed so that it obstructs free ingress or egress.

(c) The provisions of this section do not apply to persons who have previously settled on land not their own, if the enclosure is 200 acres or less and if the principal pursuit of the person on the land is agriculture.

[Acts 1977, 65th Leg., p. 2353, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.073. Definition of Fencing

In Sections 11.074 and 11.075 of this code, "fencing" means the erection of any structure of wood, wire, wood and wire, or any other material, whether it encloses land on all sides or only one or more sides, which is intended to prevent the passage of cattle, horses, mules, sheep, goats, or hogs.

[Acts 1977, 65th Leg., p. 2353, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.074. Herding and Line-Riding

(a) No owner of stock, manager, agent, employee, or servant may fence, use, occupy, or appropriate by herding or line-riding any portion of the public land of the state or land which belongs to the public schools or asylums unless he obtains a lease for the land from the proper authority.

(b) Any owner of stock or his manager, agent, employee, or servant who fences, uses, occupies, or appropriates by herding or line-riding any portion of the land covered by Subsection (a) of this section without a lease for the land, on conviction, shall be fined not less than \$100 nor more than \$1,000 and confined in the county jail for not less than three months nor more than two years. Each day for which a violation continues constitutes a separate offense.

(c) Prosecution under this section may take place in the county in which a portion of the land is located or to which the county may be attached for judicial purposes or in Travis County.

[Acts 1977, 65th Leg., p. 2353, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.075. Appropriation of Land by Fencing

(a) Unless a lease for the land is obtained, any appropriation of public land of the state or land which belongs to the public schools and asylums by fencing or by enclosures consisting partly of fencing and partly of natural obstacles or impediments to the passage of livestock is an unlawful appropriation of land which is punishable by the penalty provided in Subsection (b) of Section 11.074 of this code.

(b) Each day that the violation continues constitutes a separate offense.

[Acts 1977, 65th Leg., p. 2353, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.076. Unlawful Enclosures

(a) If the governor is credibly informed that any portion of the public land or the land which belongs to any of the special land funds has been enclosed or that fences have been erected on the land in violation of law, he may direct the attorney general to institute suit in the name of the state for the recovery of the land, damages, and fees.

(b) The fee for the attorney general may not be less than \$10 if the amount recovered is less than \$100, but if the amount of recovery is over \$100, the fee shall be 10 percent paid by the defendant for the use and occupancy of the land and the removal of the enclosure and fences.

(c) The damages may not be less than five cents an acre a year for the period of occupancy.

(d) In a suit brought under this section, the court shall issue a writ of sequestration directed to any sheriff in the state requiring him to take into actual custody the land and any property on the land which belongs to the person who is unlawfully occupying the land and to hold the land and other property until the court issues further orders. The writ may be executed by the sheriff to whom it is delivered, and he shall proceed to execute the writ.

(e) The defendant in the suit may replevy the property as provided in other cases by executing the bond required by law.

(f) A suit brought under this section and any appeal has precedence over other cases.

(g) If judgment is recovered by the state in the suit, the court shall order the enclosure or fences removed and shall charge the costs of the suit to the defendant. Property on the land which belongs to the defendant and which is not exempt from execution may be used to pay costs and damages in addition to the personal liability of the defendant. [Acts 1977, 65th Leg., p. 2353, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.077. Suit Against Adverse Claimant

If any public land is held, occupied, or claimed adversely to the state or to any fund of the state by

any person or if land is forfeited to the state for any reason, the attorney general shall file suit for the land, for rent on the land, and to recover damages to the land.

[Acts 1977, 65th Leg., p. 2354, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 11.078. Venue

A suit brought under the provisions of Section 11.076 or Section 11.077 of this code shall be brought in the county in which the land or any part of the land is located.

[Acts 1977, 65th Leg., p. 2354, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

SUBTITLE B. SURVEYS AND SURVEYORS

CHAPTER 21. SURVEYS AND FIELD NOTES

SUBCHAPTER A. GENERAL PROVISIONS

Section
21.001. Definitions.

SUBCHAPTER B. SURVEYS

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21.012. Surveys on Navigable Streams.
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21.014. Survey for Division Line.

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21.079. Land in More Than One Zone.

SUBCHAPTER A. GENERAL PROVISIONS

§ 21.001. Definitions

In this chapter:

(1) "Commissioner" means the Commissioner of the General Land Office.

(2) "Land office" means the General Land Office.

(3) "Navigable stream" means a stream which retains an average width of 30 feet from the mouth up.

[Acts 1977, 65th Leg., p. 2355, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 21.002 to 21.010 reserved for expansion]

SUBCHAPTER B. SURVEYS

§ 21.011. Surveys of Public Land

Each survey of public land shall be made under authority of law and by a surveyor duly appointed, elected, or licensed and qualified.

[Acts 1977, 65th Leg., p. 2355, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 21.012. Surveys on Navigable Streams

(a) If the circumstances of the lines previously surveyed under the law will permit, land surveyed for individuals, lying on a navigable stream, shall front one-half of the square on the stream with the line running at right angles with the general course of the stream.

(b) A navigable stream may not be crossed by the lines of a survey.

[Acts 1977, 65th Leg., p. 2355, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 21.013. Surveys Not on a Navigable Stream

Surveys that are not made on navigable streams shall be in a square as far as lines previously surveyed will permit.

[Acts 1977, 65th Leg., p. 2355, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 21.014. Survey for Division Line

(a) Before running a division line between two settlers or occupants claiming land, the surveyor shall give written notice to the interested parties.

(b) A survey made contrary to the true intent and meaning of this section is invalid.

[Acts 1977, 65th Leg., p. 2356, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 21.015 to 21.040 reserved for expansion]

SUBCHAPTER C. FIELD NOTES

§ 21.041. Field Notes of a Survey of Public Land

The field notes of a survey of public land shall state:

- (1) the county in which the land is located;
- (2) the authority under which the survey is made and a true description of the survey;
- (3) the land by proper field notes with the necessary calls and connections for identification, observing the Spanish measurement by varas;
- (4) a diagram of the survey;
- (5) the variation at which the running was made;
- (6) the names of the chain carriers;
- (7) the date the survey was made; and
- (8) the signature of the surveyor.

[Acts 1977, 65th Leg., p. 2356, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

1 West's Tex.Stats. & Codes '77 Supp.—11

§ 21.042. Surveyor's Certification

(a) The surveyor shall certify officially:

- (1) to the correctness of the survey;
- (2) that the survey was made according to law;
- (3) that the survey was actually made in the field; and
- (4) that the field notes are duly recorded, giving the book and page.

(b) If the survey was made by a deputy, the county surveyor shall certify officially that:

- (1) he has examined the field notes;
- (2) he finds them correct; and
- (3) he has determined that the survey is duly recorded, giving the book and page of record.

[Acts 1977, 65th Leg., p. 2356, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 21.043. Lost Field Notes

(a) If the original field notes of an authorized survey are lost or destroyed, the owner or his agent may obtain a certified copy of the record from the county surveyor on making an affidavit of the loss or destruction and filing it in the office of the county surveyor where the survey was recorded.

(b) The certified copy shall be as valid as the original record and shall secure to the owner all the rights before the commissioner that the original would have secured.

[Acts 1977, 65th Leg., p. 2356, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 21.044. Incorrect Field Notes

(a) The commissioner shall have a plain statement of errors in any field notes submitted to the land office, together with a sketch of the map, forwarded by mail, or personally by the interested party, to the surveyor who made the survey, with a request to correct and return the field notes and map.

(b) The surveyor shall correct and return the field notes and map at once without further charge.

(c) If the conflict exists only on the map or in the field notes, the surveyor need only officially certify to the facts and furnish a true sketch of the survey with its connections.

[Acts 1977, 65th Leg., p. 2356, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 21.045 to 21.070 reserved for expansion]

SUBCHAPTER D. TEXAS CO-ORDINATE SYSTEM

§ 21.071. Adoption of Co-Ordinate System

The system of plane rectangular co-ordinates which has been established by the National Oceanic and Atmospheric Administration for defining and

stating the positions or locations of points on the surface of the earth within the State of Texas is adopted and will be known and designated as the "Texas Co-ordinate System."

[Acts 1977, 65th Leg., p. 2357, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 21.072. Purpose and Limitations of Co-Ordinate System

(a) The only purpose for adopting the Texas Co-ordinate System is to recognize the system for use in the State of Texas to definitely ascertain positions on the surface of the earth.

(b) Notwithstanding any other provisions of this subchapter, the use of the system is not required, and the provisions of this subchapter shall not be construed to set aside or disturb any corner or survey already established.

(c) The use of the term "Texas Co-ordinate System" on a map, report, survey, or other document is limited to co-ordinates based on the Texas Co-ordinate System as defined in this subchapter.

[Acts 1977, 65th Leg., p. 2357, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 21.073. Division of State Into Zones

For the purpose of using the system, the state is divided into five zones:

- (1) the North Zone;
- (2) the North Central Zone;
- (3) the Central Zone;
- (4) the South Central Zone; and
- (5) the South Zone.

[Acts 1977, 65th Leg., p. 2357, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 21.074. Area Within Zones

(a) The area included in the following counties constitutes the North Zone: Armstrong, Briscoe, Carson, Castro, Childress, Collingsworth, Dallam, Deaf Smith, Donley, Gray, Hall, Hansford, Hartley, Hemphill, Hutchinson, Lipscomb, Moore, Ochiltree, Oldham, Parmer, Potter, Randall, Roberts, Sherman, Swisher, and Wheeler.

(b) The area included in the following counties constitutes the North Central Zone: Andrews, Archer, Bailey, Baylor, Borden, Bowie, Callahan, Camp, Cass, Clay, Cochran, Collin, Cooke, Cottle, Crosby, Dallas, Dawson, Delta, Denton, Dickens, Eastland, Ellis, Erath, Fannin, Fisher, Floyd, Foard, Franklin, Gaines, Garza, Grayson, Gregg, Hale, Hardeman, Harrison, Haskell, Henderson, Hill, Hockley, Hood, Hopkins, Howard, Hunt, Jack, Johnson, Jones, Kaufman, Kent, King, Knox, Lamar, Lamb, Lubbock, Lynn, Marion, Martin, Mitchell, Montague, Morris, Motley, Navarro, Nolan, Palo Pinto, Panola, Parker, Rains, Red River, Rockwall, Rusk, Scurry, Shackel-

ford, Smith, Somervell, Stephens, Stonewall, Tarrant, Taylor, Terry, Throckmorton, Titus, Upshur, Van Zandt, Wichita, Wilbarger, Wise, Wood, Yoakum, and Young.

(c) The area included in the following counties constitutes the Central Zone: Anderson, Angelina, Bastrop, Bell, Blanco, Bosque, Brazos, Brown, Burleson, Burnet, Cherokee, Coke, Coleman, Comanche, Concho, Coryell, Crane, Crockett, Culberson, Ector, El Paso, Falls, Freestone, Gillespie, Glasscock, Grimes, Hamilton, Hardin, Houston, Hudspeth, Irion, Jasper, Jeff Davis, Kimble, Lampasas, Lee, Leon, Liberty, Limestone, Llano, Loving, McLennan, McCulloch, Madison, Mason, Menard, Midland, Milam, Mills, Montgomery, Nacogdoches, Newton, Orange, Pecos, Polk, Reagan, Reeves, Robertson, Runnels, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Shelby, Sterling, Sutton, Tom Green, Travis, Trinity, Tyler, Upton, Walker, Ward, Washington, Williamson, and Winkler.

(d) The area included in the following counties constitutes the South Central Zone: Aransas, Atascosa, Austin, Bandera, Bee, Bexar, Brazoria, Brewster, Caldwell, Calhoun, Chambers, Colorado, Comal, DeWitt, Dimmit, Edwards, Fayette, Fort Bend, Frio, Galveston, Goliad, Gonzales, Guadalupe, Harris, Hays, Jackson, Jefferson, Karnes, Kendall, Kerr, Kinney, LaSalle, Lavaca, Live Oak, McMullen, Matagorda, Maverick, Medina, Presidio, Real, Refugio, Terrell, Uvalde, Val Verde, Victoria, Waller, Wharton, Wilson, and Zavala.

(e) The area included in the following counties constitutes the South Zone: Brooks, Cameron, Duval, Hidalgo, Jim Hogg, Jim Wells, Kenedy, Kleberg, Nueces, San Patricio, Starr, Webb, Willacy, and Zapata.

[Acts 1977, 65th Leg., p. 2357, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 21.075. Zone Names in Land Description

(a) As established for use in the North Zone, the Texas Co-ordinate System shall be named, and in any land description in which it is used it shall be designated, the "Texas Co-ordinate System, North Zone."

(b) As established for use in the North Central Zone, the Texas Co-ordinate System shall be named, and in any land description in which it is used it shall be designated, the "Texas Co-ordinate System, North Central Zone."

(c) As established for use in the Central Zone, the Texas Co-ordinate System shall be named, and in any land description in which it is used it shall be designated, the "Texas Co-ordinate System, Central Zone."

(d) As established for use in the South Central Zone, the Texas Co-ordinate System shall be named, and in any land description in which it is used it

shall be designated, the "Texas Co-ordinate System, South Central Zone."

(e) As established for use in the South Zone, the Texas Co-ordinate System shall be named, and in any land description in which it is used it shall be designated, the "Texas Co-ordinate System, South Zone."

[Acts 1977, 65th Leg., p. 2358, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 21.076. Co-Ordinate System Definitions

(a) For the purpose of precisely defining the Texas Co-ordinate System, the following definitions by the National Oceanic and Atmospheric Administration are adopted:

(1) The Texas Co-ordinate System, North Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes $34^{\circ} 39'$ and $36^{\circ} 11'$, along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian $101^{\circ} 30'$ west longitude and the parallel $34^{\circ} 00'$ north latitude. This origin is given the co-ordinates: $x = 2,000,000$ feet (720,000 varas) and $y = 0$ feet (0 varas).

(2) The Texas Co-ordinate System, North Central Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes $32^{\circ} 08'$ and $33^{\circ} 58'$, along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian $97^{\circ} 30'$ west longitude and the parallel $31^{\circ} 40'$ north latitude. This origin is given the co-ordinates: $x = 2,000,000$ feet (720,000 varas) and $y = 0$ feet (0 varas).

(3) The Texas Co-ordinate System, Central Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes $30^{\circ} 07'$ and $31^{\circ} 53'$, along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian $100^{\circ} 20'$ west longitude and the parallel $29^{\circ} 40'$ north latitude. This origin is given the co-ordinates: $x = 2,000,000$ feet (720,000 varas) and $y = 0$ feet (0 varas).

(4) The Texas Co-ordinate System, South Central Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard parallels at north latitudes $28^{\circ} 23'$ and $30^{\circ} 17'$, along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian of $99^{\circ} 00'$ west longitude and the parallel $27^{\circ} 50'$ north latitude. This origin is given the co-ordinates: $x = 2,000,000$ feet (720,000 varas) and $y = 0$ feet (0 varas).

(5) The Texas Co-ordinate System, South Zone, is a Lambert conformal projection of the Clarke spheroid of 1866, having standard paral-

els at north latitudes $26^{\circ} 10'$ and $27^{\circ} 50'$, along which parallels the scale shall be exact. The origin of co-ordinates is at the intersection of the meridian $98^{\circ} 30'$ west longitude and the parallel $25^{\circ} 40'$ north latitude. This origin is given the co-ordinates: $x = 2,000,000$ feet (720,000 varas) and $y = 0$ feet (0 varas).

(b) The position of the Texas Co-ordinate System shall be as marked on the ground by triangulation or traverse stations established in conformity with the standards adopted by the National Oceanic and Atmospheric Administration for first-order and second-order work, whose geodetic positions have been rigidly adjusted on the North American datum of 1927, and whose co-ordinates have been computed on the system defined in this subchapter. Any of these stations may be used for establishing a survey connection with the Texas Co-ordinate System.

[Acts 1977, 65th Leg., p. 2358, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 21.077. Unit of Measurement

The unit of measurement in this subchapter has the following values, based on the International Meter established by the National Bureau of Standards:

- (1) one meter = 39.37 inches exactly;
- (2) one foot = 12.00 inches exactly; and
- (3) one vara = $33\frac{1}{2}$ inches exactly.

[Acts 1977, 65th Leg., p. 2359, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 21.078. Terms "X Co-Ordinate" and "Y Co-Ordinate"

(a) The plane rectangular co-ordinates of a point on the earth's surface, to be used in expressing the position or location of the point in the appropriate zone, of this system, shall consist of two distances, expressed in feet and decimals of a foot.

(b) One of these distances, to be known as the "x co-ordinate," shall give the position in an east-and-west direction; the other, to be known as the "y co-ordinate," shall give the position in a north-and-south direction.

(c) These co-ordinates shall be made to depend on and conform to the plane rectangular co-ordinates of the triangulation and traverse stations of the National Oceanic and Atmospheric Administration within the State of Texas, as those co-ordinates have been determined by the survey.

[Acts 1977, 65th Leg., p. 2359, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 21.079. Land in More Than One Zone

If a tract of land to be defined by a single description extends from one zone into another of the co-ordinate zones, the positions of all points on its boundaries may be referred to by either of the zones,

the zone which is used being specifically named in the description.

[Acts 1977, 65th Leg., p. 2360, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 22. BOARD OF EXAMINERS OF LAND SURVEYORS

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SUBCHAPTER A. GENERAL PROVISIONS

§ 22.001. Definitions

In this chapter:

- (1) "Board" means the Board of Examiners of State Land Surveyors.
- (2) "Licensed surveyor" means a licensed state land surveyor.

(3) "Commissioner" means the Commissioner of the General Land Office.

(4) "Land office" means the General Land Office.

[Acts 1977, 65th Leg., p. 2361, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 22.002 to 22.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 22.011. Board

The Board of Examiners of State Land Surveyors is composed of the commissioner and two reputable licensed state land surveyors with at least 15 years of practical and active experience in the field as land surveyors.

[Acts 1977, 65th Leg., p. 2361, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.012. Appointment

The governor shall appoint the members who are licensed state land surveyors on the recommendation of the commissioner and with the advice and consent of two-thirds of the senate.

[Acts 1977, 65th Leg., p. 2361, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.013. Terms of Office

Members appointed by the governor hold office for staggered terms of four years, with the term of one member expiring every two years.

[Acts 1977, 65th Leg., p. 2361, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.014. Board Chairman

The commissioner serves as chairman of the board.

[Acts 1977, 65th Leg., p. 2362, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.015. Secretary-Treasurer

(a) The board shall meet in the land office and elect one of its members secretary-treasurer.

(b) The secretary-treasurer shall keep:

- (1) an accurate record of the proceedings of the board;
- (2) a correct list of all persons licensed by the board; and
- (3) an account of all receipts and expenditures of the board.

(c) The board may authorize the commissioner to designate an employee of his office as assistant secretary-treasurer to do all clerical work of the board.

[Acts 1977, 65th Leg., p. 2362, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.016. Board Meetings

The chairman may call a meeting of the board at any time the accumulated business for the attention of the board may warrant.

[Acts 1977, 65th Leg., p. 2362, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.017. Quorum

The presence of two members of the board constitutes a quorum for the transaction of any business, and the concurrence of two members is necessary for the adoption or rejection of any question on which the board is required to decide.

[Acts 1977, 65th Leg., p. 2362, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.018. Records

The records kept by the secretary-treasurer shall be deposited in the land office and become records of that office.

[Acts 1977, 65th Leg., p. 2362, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.019. Expenses

(a) Money received by the board may be used to defray the actual expense incurred by the members of the board in the execution of this law and other expense necessary for the proper administration of the provisions of this chapter.

(b) The remainder of the money received by the board which is not used for the expenses provided for in Subsection (a) of this section shall be deposited annually in the State Treasury to the credit of the General Revenue Fund.

(c) No appropriation may be made to defray the expenses of the board or to carry into effect the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2362, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 22.020 to 22.050 reserved for expansion]

SUBCHAPTER C. LICENSING OF
LAND SURVEYORS

§ 22.051. Requirement for License

No person may be authorized to perform the duties of a licensed state land surveyor unless he passes the examination and obtains a license as provided by this chapter.

[Acts 1977, 65th Leg., p. 2362, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.052. Residency

A surveyor's license may be issued under the provisions of this chapter only to a person who resides in the State of Texas.

[Acts 1977, 65th Leg., p. 2362, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.053. Preparation of Examination

The board shall prepare written questions on:

- (1) the theory of surveying;
- (2) practical surveying;
- (3) theory and use of surveyor's instruments;
- (4) calculation of areas;
- (5) closing field notes;
- (6) the law of land boundaries;
- (7) the history and functions of the General Land Office; and
- (8) other matters relating to surveying which the board considers important.

[Acts 1977, 65th Leg., p. 2362, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.054. Application for License

An application for a license shall be made to the board in writing.

[Acts 1977, 65th Leg., p. 2363, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.055. Examination

(a) On receipt of a written application for license, the board shall prepare and forward written questions, together with the application, to the county school superintendent of the county in which the applicant resides or the person to whom his duties were transferred, with suitable words on the enclosure indicating the contents, and the name and address of the applicant.

(b) On receipt of the questions, the county school superintendent or the person to whom his duties were transferred shall hold them unopened and notify the applicant of the time and place of the examination.

(c) The applicant shall appear at the time and place set, and the envelope containing the questions shall be opened in his presence only. The examination shall be conducted in the same manner and under the same restrictions as required for teachers' certificates.

(d) After the examination is completed, the examining authority shall return both the questions and answers to the chairman of the board, together with \$8 of the applicant's \$10 deposit.

[Acts 1977, 65th Leg., p. 2363, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.056. Examination Fee

Before taking the examination, the applicant shall deposit with the county superintendent or the person to whom his duties were transferred the sum of \$10, from which \$2 shall be retained and disposed of in the same manner as the fees paid by applicants for teachers' certificates.

[Acts 1977, 65th Leg., p. 2363, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.057. Consideration of Examination Answers

After the examination is returned to the chairman of the board, the chairman shall either:

- (1) convene the board for the purpose of passing upon the answers and the issuance or refusal of the license; or
- (2) transmit the questions and answers to the other members of the board for their consideration and action and issue a license to the applicant if he passed a successful examination.

[Acts 1977, 65th Leg., p. 2363, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.058. Storing Examinations

The examination questions and answers shall be deposited in the land office and safely kept there for at least two years.

[Acts 1977, 65th Leg., p. 2363, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.059. Reexamination on Refusal of License

If a license is refused an applicant, he may take any subsequent examination after the expiration of at least six months from the date of the preceding examination. A subsequent examination shall be taken under the same conditions as in the first instance and may be taken by the payment of the same fee.

[Acts 1977, 65th Leg., p. 2363, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.060. Oath of Office

Before a license is issued and a person who has successfully passed the examination may perform the duties of a licensed surveyor, the applicant must take the official oath of office.

[Acts 1977, 65th Leg., p. 2364, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.061. Bond

(a) Before a surveyor's license is issued and a person who has successfully passed the examination may perform the duties of a licensed surveyor, the applicant must file a good and sufficient bond for \$1,000, payable to the governor, conditioned that he will faithfully, impartially, and honestly perform all the duties of a licensed surveyor to the best of his skill and ability in all matters in which he may be employed.

(b) The bond may be executed by two or more solvent personal sureties or a solvent surety company authorized to transact business in this state.

(c) Each personal surety signing the bond shall take and subscribe an oath that he is worth, over and above all debts and exemptions, at least double the penalty of the bond. A personal bond shall be approved by the commissioners court of the county in which the applicant resides.

(d) A surety on the bond is not relieved of liability on the bond without first giving the governor and commissioner 30 days notice in writing. The termination of the bond or the revocation of the surveyor's license or the resignation of the surveyor does not relieve the sureties from any liability which may have already accrued on the bond.

(e) If the liability on the bond is terminated, the licensee may not perform the duties of a licensed state land surveyor until a new bond is executed as in the first instance.

[Acts 1977, 65th Leg., p. 2364, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.062. Recording and Filing Oath and Bond

(a) After the oath and bond have been executed as provided in Sections 22.060 and 22.061 of this code, they shall be recorded in the office of the county clerk of the county in which the applicant resides.

(b) After the oath and bond are recorded, they shall be filed in the land office, accompanied with a \$1 filing fee.

[Acts 1977, 65th Leg., p. 2364, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.063. Issuance of License

After the oath and bond are recorded and filed, a license shall be issued to the applicant, who at that time is authorized to enter on the discharge of the duties of a licensed surveyor.

[Acts 1977, 65th Leg., p. 2364, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.064. Term

A license issued to an applicant under the provisions of this chapter is valid for life unless the licensee resigns, as provided in Section 22.065 of this code, or the license is revoked by the board under the provisions of Subchapter E of this chapter.

[Acts 1977, 65th Leg., p. 2364, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.065. Resignation

(a) A licensed surveyor may resign as a surveyor at any time he may desire by filing his resignation in writing with the commissioner.

(b) On receipt of the resignation, the commissioner shall make an entry on his records showing the resignation by the licensee, and at that time, the duties of the licensee as a licensed state land surveyor cease.

(c) The resignation does not relieve the principal and sureties of the surveyor's official bond of any liability that may have accrued before the effectiveness of the resignation.

[Acts 1977, 65th Leg., p. 2364, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 22.066 to 22.100 reserved for expansion]

SUBCHAPTER D. POWERS AND DUTIES OF
LICENSED SURVEYOR

§ 22.101. Seal of Office

(a) Each licensed surveyor shall obtain a seal of office.

(b) The words, "Licensed State Land Surveyor," which is his official title, shall appear around the margin of the seal, and the word "Texas" shall be between the points of the star.

(c) The surveyor shall attest all his official acts authorized by law with the seal. No act, paper, or map of a licensed state land surveyor may be filed in the county records or the land office unless certified to under the seal of the surveyor.

[Acts 1977, 65th Leg., p. 2365, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.102. Jurisdiction

(a) The jurisdiction of the licensee is coextensive with the limits of the state.

(b) Election to the office of county surveyor for a particular county does not limit the jurisdiction of the licensed surveyor to the county and does not prevent a licensed surveyor from performing the duties of a surveyor in the county.

[Acts 1977, 65th Leg., p. 2365, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.103. County Surveyor

(a) A land surveyor licensed under this chapter may perform the duties that may be performed by the county surveyors and is subject to the direction of the commissioner in matters of land surveying in cases which come under the supervision of such authorities.

(b) A licensed surveyor may hold the office of county surveyor, and if elected, he shall qualify as provided by law for county surveyors.

[Acts 1977, 65th Leg., p. 2365, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.104. Signature on Field Notes

The official field notes made by a surveyor licensed under the provisions of this chapter shall be signed by the surveyor and followed by the designation: "Licensed State Land Surveyor."

[Acts 1977, 65th Leg., p. 2365, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.105. Admissibility of Field Notes

The field notes made by a licensed surveyor in any county in this state have the same force and effect and are admissible in evidence the same as field notes made by a county surveyor.

[Acts 1977, 65th Leg., p. 2365, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.106. Authority to Record Field Notes and Certify Copies

(a) If a county has a county surveyor, the county surveyor alone is authorized to file and record field notes and plats of all surveys made in his county and other documents required by law to be recorded in the county surveyor's records and to issue certificates of fact and certify the correctness of copies of any document, record, or entry shown by the records of the county surveyor.

(b) If a county surveyor or his authorized deputy or deputies are absent from his office, the county clerk of the county has free access to the county surveyor's office and public records and is authorized to record field notes, plats, and other documents required to be recorded in the county surveyor's records and to issue certificates of fact and certify the correctness of copies of any document, record, or entry shown on the official records of the county surveyor.

(c) If a county does not have a county surveyor, the county clerk of the county is the legal custodian of the county surveyor's records and is authorized to make all the certificates and certify the copies which a legally authorized county surveyor may make.

[Acts 1977, 65th Leg., p. 2365, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.107. Fees for Recording Field Notes and Certifying Copies

(a) The fees for recording documents in the county surveyor's records and issuing certificates and making certified copies are the same as provided by law.

(b) The county surveyor is entitled to fees for documents recorded by him or his deputies and for certificates and certified copies issued by him or his deputies. The county clerk is entitled to fees for documents recorded by him and for certificates and certified copies issued by him under the provisions of this subchapter.

[Acts 1977, 65th Leg., p. 2366, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.108. Examination of Records

(a) A licensed surveyor has access to the records of county surveyors for examination and information.

(b) All examinations shall be made under the regulations provided by the county surveyor or the commissioners court for the safekeeping and preservation of the records.

(c) An examination fee shall not be charged if an investigation of the records is being made for surveys of public land under the law regulating the sale or lease of the public land or to identify and establish the boundaries of the public land.

(d) The examination fee for other purposes shall not exceed \$1 an hour, and fees for copies shall not exceed 35 cents for 100 words.

[Acts 1977, 65th Leg., p. 2366, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.109. Recordation of Field Notes and Plats of Public Land

(a) The field notes and plats of every survey of public land made by a surveyor licensed under the provisions of this chapter shall be recorded in the county surveyor's records of the county in which the land is located.

(b) The field notes and plats of public land made by a licensed surveyor affecting the lines, boundaries, and areas of the land shall be forwarded to the land office after they have been recorded under the provisions of this subchapter.

[Acts 1977, 65th Leg., p. 2366, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.110. Discovery of Public Land

If a licensed surveyor discovers an undisclosed tract of public land, he shall not reveal that fact to anyone except to the person who has it enclosed, but he shall forward a report of the existence of the tract, the acreage in the tract, and its probable value to the commissioner.

[Acts 1977, 65th Leg., p. 2366, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 22.111. Compensation

A licensed surveyor receives as compensation for his services the amount which is mutually agreed on between the surveyor and the interested party, including expenses incident to the survey, whether the party is a private person, a county, a court, or the state.

[Acts 1977, 65th Leg., p. 2366, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 22.112 to 22.150 reserved for expansion]

SUBCHAPTER E. REVOCATION OF LICENSE

§ 22.151. Cause for Revocation

A license may be revoked by the board if the licensee has been:

- (1) found guilty of a felony by a court of competent jurisdiction;
- (2) adjudged to have committed a theft or fraud or to be insane;
- (3) found by the board to be incompetent;
- (4) found by the board to have unlawfully given information concerning any undisclosed public land or to have been directly or indirectly interested in the purchase or acquisition of title to any public land; or

(5) found by the board to be guilty of any act or default discreditable to the surveying profession.

[Acts 1977, 65th Leg., p. 2366, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 23. COUNTY SURVEYORS

SUBCHAPTER A. GENERAL PROVISIONS

Section

23.001. Definitions.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

23.011. Election.

23.012. Residence.

23.013. Bond.

23.014. Deputy Surveyor.

23.015. Chain Carriers and Markers.

23.016. Office Location.

SUBCHAPTER C. POWERS AND DUTIES

23.051. In General.

23.052. Surveys on Which Patents Are to be Obtained.

23.053. Record of Field Notes.

23.054. Right of Inspection.

23.055. Bound Records.

23.056. Lost Records.

23.057. Custody of Records in Absence of County Surveyor.

23.058. Delivery of Records to Successor.

23.059. Failure to Survey.

SUBCHAPTER A. GENERAL PROVISIONS

§ 23.001. Definitions.

In this chapter:

(1) "Commissioner" means the Commissioner of the General Land Office.

(2) "Land office" means the General Land Office.

[Acts 1977, 65th Leg., p. 2367, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 23.002 to 23.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 23.011. Election

At each general election, a county surveyor shall be elected in each county for a term of two years.

[Acts 1977, 65th Leg., p. 2367, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 23.012. Residence

The county surveyor shall reside in the county.

[Acts 1977, 65th Leg., p. 2367, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 23.013. Bond

The county surveyor shall execute a bond conditioned on the faithful performance of the duties of the office. The amount of the bond shall be fixed by the commissioners court and shall be not less than \$500 nor more than \$10,000.

[Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 23.014. Deputy Surveyor

(a) A county surveyor may appoint a deputy surveyor as he considers necessary.

(b) The county surveyor shall administer the deputy surveyor's official oath and take his bond in the sum of not less than \$500 nor more than \$10,000, conditioned on the faithful performance of the duties of the office.

(c) The deputy may perform all acts authorized or required by law to be done by the county surveyor.
[Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 23.015. Chain Carriers and Markers

(a) A county surveyor may employ persons 16 years of age or older as chain carriers or markers.

(b) The county surveyor shall administer an oath to each of these employees to faithfully perform his duties in accordance with the instructions given him.
[Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 23.016. Office Location

(a) The county surveyor's office shall be located in the courthouse or in a suitable building at the county seat.

(b) Rent for an office outside the courthouse shall be paid by the commissioners court on showing that:

- (1) the rent is reasonable;
- (2) the office is necessary; and
- (3) an office is not available at the courthouse.

[Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 23.017 to 23.050 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES**§ 23.051. In General**

The county surveyor shall perform the duties required of him by law.

[Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 23.052. Surveys on Which Patents Are to be Obtained

The county surveyor shall:

- (1) receive and examine all field notes of surveys made in the county on which patents are to be obtained;
- (2) certify to the same according to law; and
- (3) record the field notes in a book to be kept by him for that purpose.

[Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 23.053. Record of Field Notes

(a) The commissioners court shall furnish the county surveyor all necessary books of record.

(b) The county surveyor shall record in a well-bound book all the surveys in his county, with the plats that he may make, whether private or official.
[Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 23.054. Right of Inspection

At all times, any interested person, agent, or attorney may examine the books, papers, plats, maps, or other archives belonging to the office of the county surveyor on the payment of the fee set by law. In addition to the fees allowed by law for field work, the county surveyor may charge 20 cents per 100 words for the record.

[Acts 1977, 65th Leg., p. 2368, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 23.055. Bound Records

If the commissioners court considers it necessary, it may order that the county surveyor's record be transcribed in good and substantial books by the county surveyor or special deputies sworn to make true copies of the record. For this service, not more than 15 cents per 100 words shall be allowed to be paid out of the county treasury.

[Acts 1977, 65th Leg., p. 2369, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 23.056. Lost Records

(a) If the maps, field notes, or other records of the county surveyor's office, or any part of them, are lost or destroyed, the county surveyor shall obtain from the commissioner a transcript of the lost records, certified to as required by law.

(b) The certified copy has the same force and effect as the original.

[Acts 1977, 65th Leg., p. 2369, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 23.057. Custody of Records in Absence of County Surveyor

If a county does not have a county surveyor, the county clerk of the county shall take charge of all records, maps, and papers belonging to the county surveyor's office and safely keep them in his office. [Acts 1977, 65th Leg., p. 2369, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 23.058. Delivery of Records to Successor

On removal from office or at the expiration of his term of office, the county surveyor shall deliver to his successor all records, books, papers, maps, and other things pertaining to his office. [Acts 1977, 65th Leg., p. 2369, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 23.059. Failure to Survey

If a county surveyor fails, neglects, or refuses to make a survey or have a survey made, within one month after the amount of lawful surveying fees are tendered to him by a person legally entitled to the survey, he and his sureties shall be liable on his official bond to the injured parties in the amount of damages or injury the parties may sustain by reason of the neglect, refusal, or failure. [Acts 1977, 65th Leg., p. 2369, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

SUBTITLE C. ADMINISTRATION

CHAPTER 31. GENERAL LAND OFFICE

SUBCHAPTER A. GENERAL PROVISIONS

- Section
31.001. Definitions.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

- 31.011. Land Office Established.
- 31.012. Commissioner's Election; Residence.
- 31.013. Bonds.
- 31.014. Commissioner's Liability.
- 31.015. Chief Clerk.
- 31.016. Abstract Clerk.
- 31.017. Receiving Clerk.
- 31.018. Translator.
- 31.019. Draftsmen.
- 31.020. Conditions of Employment.

SUBCHAPTER C. POWERS AND DUTIES

- 31.051. General Duties.
- 31.052. Custody of Records.
- 31.053. Filing Papers.
- 31.054. Public Access to Papers.
- 31.055. Removing Papers.
- 31.056. Revision and Compilation of Abstracts.
- 31.057. Printing Supplementary Abstracts.
- 31.058. Receiving Funds.
- 31.059. Receiving Clerk's Books.
- 31.060. Financial Report.
- 31.061. Examination of Books.
- 31.062. Embezzlement.
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- Section
- 31.101. Definition.
 - 31.102. Authority to Make Geological, Geophysical, and Other Surveys.
 - 31.103. Deposit.
 - 31.104. Payments on Areas Surveyed or Investigated Without a Permit.
 - 31.105. Prohibition.
 - 31.106. Methods.
 - 31.107. Rules.
 - 31.108. Penalty.

SUBCHAPTER A. GENERAL PROVISIONS

§ 31.001. Definitions

In this chapter:

- (1) "State" means the State of Texas.
- (2) "Commissioner" means the Commissioner of the General Land Office.
- (3) "Land office" means the General Land Office.

[Acts 1977, 65th Leg., p. 2370, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 31.002 to 31.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 31.011. Land Office Established

There shall be one General Land Office located in Austin, which shall register all land titles emanating from the state if not prohibited by the constitution. [Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.012. Commissioner's Election; Residence

The commissioner shall be elected at a general election for a term of four years and shall reside in Austin during his term of office. [Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.013. Bonds

(a) The commissioner shall execute a bond for \$50,000 with three or more sureties payable to and approved by the governor and conditioned on the faithful discharge of his duties.

(b) Any bonds required by law to be executed by employees of the land office shall be executed and approved in the manner provided for the commissioner in Subsection (a) of this section. [Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.014. Commissioner's Liability

The commissioner and the sureties on his official bond are responsible to any person who is injured by removal, withdrawal, or alteration of any record or file in the land office, unless the commissioner is

able to show that the act has taken place with the permission of the person owning the file or record. [Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.015. Chief Clerk

(a) The commissioner shall appoint a chief clerk, who shall execute a bond for \$20,000.

(b) The chief clerk may perform any of the duties of the commissioner if the commissioner is sick, is absent, dies, or resigns.

[Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.016. Abstract Clerk

The commissioner shall designate one of his clerks as the abstract clerk and shall assign to him the special duty to correct the abstracts of patented, titled, and surveyed land required to be kept in the land office to reflect errors, changes caused by cancellation of patents and in county lines, and the creation of new counties and to add new patented surveys on the date they are patented.

[Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.017. Receiving Clerk

(a) With the consent of the governor, the commissioner shall appoint a suitable person to serve as receiving clerk for the land office.

(b) The receiving clerk shall execute a bond for \$25,000.

[Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.018. Translator

(a) The commissioner shall appoint a translator who thoroughly understands the Spanish and English languages.

(b) The translator shall execute a bond in the amount required for the chief clerk and shall take the official oath.

(c) The translator shall translate into English and record in a book any laws and public contracts relating to titles to land and any original titles or papers which are written in the Spanish language and which are filed in the land office.

[Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.019. Draftsmen

(a) The commissioner shall appoint a chief draftsman and as many assistant draftsmen as authorized by law.

(b) The chief draftsman and his assistant draftsmen shall draw and complete county maps.

(c) The chief draftsman and his assistant draftsmen shall perform drafting and other duties required by the commissioner for the benefit of the state or individuals.

[Acts 1977, 65th Leg., p. 2371, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.020. Conditions of Employment

(a) The commissioner shall appoint the number of clerks authorized by law and legislative appropriation.

(b) Clerks and employees of the land office shall hold their offices and positions at the pleasure of the commissioner and may be removed by him at any time for satisfactory cause.

[Acts 1977, 65th Leg., p. 2372, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 31.021 to 31.050 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

§ 31.051. General Duties

The commissioner shall:

(1) superintend, control, and direct the official conduct of subordinate officers of the land office;

(2) execute and perform all acts and other things relating to public land of the state or rights of individuals in public land which is required by law;

(3) make and enforce suitable rules consistent with the law; and

(4) give information when required to the governor and the legislature relating to public land and the land office.

[Acts 1977, 65th Leg., p. 2372, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.052. Custody of Records

(a) Books, accounts, records, papers, maps, and original documents relating to land titles which are termed archives by law shall be the books and papers of the land office under the control and custody of the commissioner.

(b) The commissioner shall keep in the land office a copy of each permit, lease, or other paper issued under law.

[Acts 1977, 65th Leg., p. 2372, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.053. Filing Papers

(a) The commissioner shall adopt the most convenient method for filing papers and preserving records of the land office.

(b) A list of all papers in each file shall be retained in the file.

(c) Each employee who files a paper shall place his name on it.

[Acts 1977, 65th Leg., p. 2372, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.054. Public Access to Papers

(a) Any person who desires to examine any paper, record, or file must obtain the written consent of the commissioner or the chief clerk and an order for the detail of a clerk to be present and superintend the examination.

(b) After the examination, the clerk shall carefully examine the papers of the file and make sure that they are all in place.

[Acts 1977, 65th Leg., p. 2372, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.055. Removing Papers

(a) No transfer or deed which may be a link in any chain of title to any certificate on file in the land office may be removed by any person, but the commissioner shall deliver to the interested person on demand certified copies which shall have the same force and effect as the originals.

(b) If the genuineness of any original paper is questioned in a suit, the commissioner, on order of the court in which the suit is pending, shall deliver the original paper to the proper person and shall retain a certified copy of the paper which will have the same force and effect as the original if the original is lost.

(c) If the commissioner has good reason to doubt the genuineness of any transfer, power of attorney, or other paper on file in his office, he shall not permit any person to obtain an official copy of the paper until the doubts have been removed.

[Acts 1977, 65th Leg., p. 2372, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.056. Revision and Compilation of Abstracts

(a) The commissioner shall prepare a revision and compilation of the various volumes of the abstracts of patented, titled, and surveyed land which were previously made by the land office.

(b) The various counties of the state shall be apportioned into one of not more than eight districts for the purpose of revising and compiling the abstracts and the abstracts of each of the districts shall be compiled in a separate volume.

(c) The commissioner may distribute to the officers of the state who require its use but have not previously received a set, one complete set of the abstracts of patented, titled, and surveyed land and may sell the surplus volumes to any persons who apply for them at a price that is not less than the cost to the state.

(d) Any money received from the sale of surplus volumes shall be deposited in the general revenue fund.

(e) The commissioner may have a sufficient number of volumes printed to meet the demand.

(f) Printing and binding shall be done exclusively in the State of Texas.

(g) None of the provisions of this section affect the provisions of Section 31.057 of this code.

[Acts 1977, 65th Leg., p. 2373, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.057. Printing Supplementary Abstracts

(a) The commissioner may have not more than 1,500 copies of the supplementary abstracts of patented, titled, and surveyed land printed and bound annually for distribution to the officers of the state and counties whose duties require them to use it, and surplus copies may be sold at a reasonable price to any person who applies for a copy.

(b) The cost incurred in printing the copies shall be paid from the land office appropriation for printing.

(c) The commissioner shall deposit any money received from the sale of the copies of the State Treasury to the credit of the General Revenue Fund.

[Acts 1977, 65th Leg., p. 2373, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.058. Receiving Funds

(a) The receiving clerk shall receive funds required by law to be paid to the commissioner and shall give to each person who deposits money a certificate of deposit stating the amount, the name of the person, and the type of claim on which the deposit was made.

(b) If funds are received which are of a general character in advance of fees and dues, it shall be stated.

(c) The clerk shall be responsible to the state or individual for the funds.

[Acts 1977, 65th Leg., p. 2373, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.059. Receiving Clerk's Books

(a) The receiving clerk shall keep books in which he shall enter:

- (1) each deposit separately;
- (2) the name of the person; and
- (3) the number of the claim and the location of the land to be perfected.

(b) He shall keep letters and other vouchers filed in neat and regular order and number corresponding with his books.

(c) The receiving clerk shall report to the State Treasurer and pay in kind on the last day of each month funds in his possession which are due to the state and shall receive a receipt in his own name.

(d) In his books, the receiving clerk shall keep separate columns indicating the amount of specie or the amount of currency or other funds paid to him.

(e) On removal from office or resignation, the receiving clerk shall turn over his books, accounts, and money to his successor if he has qualified or to the commissioner and shall receive a receipt for them.

[Acts 1977, 65th Leg., p. 2373, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.060. Financial Report

On or before the meeting of the legislature, the receiving clerk shall furnish to the governor through the commissioner a correct report of the condition of his office, including the amount of money received, the type of claim, the amount of money paid out, and the type of payment.

[Acts 1977, 65th Leg., p. 2374, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.061. Examination of Books

The commissioner shall examine the books and accounts of the receiving clerk to determine if they have been properly kept.

[Acts 1977, 65th Leg., p. 2374, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.062. Embezzlement

(a) In examining the books of the receiving clerk, if the commissioner finds evidence of embezzlement, he shall report it immediately to the governor.

(b) The governor shall suspend the receiving clerk from office until an examination of the books and accounts is made.

(c) If the suspended clerk is found guilty of embezzlement, he shall be removed from office and a suit shall be instituted to recover on his bond.

[Acts 1977, 65th Leg., p. 2374, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.063. Location of Coastal Boundaries

(a) The commissioner shall have the area between the coastline of the Gulf of Mexico and the Three Marine League line compiled and platted and shall locate and set the boundary lines between the coastal counties from the coastline to the Three Marine League line.

(b) The boundary lines between the counties from the coastline to the Three Marine League line shall be located and set by the commissioner in accordance with established engineering practice.

(c) The legal description of the boundary lines set between the counties from the coastline to the continental shelf shall be filed and recorded in the office of the county clerk of the affected county.

[Acts 1977, 65th Leg., p. 2374, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 31.064 to 31.100 reserved for expansion]

SUBCHAPTER D. ISSUANCE OF PERMITS

§ 31.101. Definition

In this subchapter, "areas within tidewater limits" means islands, saltwater lakes, bays, inlets, marshes, and reefs within tidewater limits and that portion of the Gulf of Mexico within the jurisdiction of Texas.

[Acts 1977, 65th Leg., p. 2374, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.102. Authority to Make Geological, Geophysical, and Other Surveys

(a) The commissioner may issue permits for geological, geophysical, and other surveys and investigations of areas within tidewater limits which are not subject to valid oil and gas leases executed by the state.

(b) Any person who has a valid oil and gas lease executed by the state or who has the permission of such a lessee is entitled to conduct geological, geophysical, and other surveys and investigations in the area without obtaining a permit, but the surveys and investigations shall be conducted under rules established by the commissioner.

[Acts 1977, 65th Leg., p. 2375, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.103. Deposit

(a) Before a permit is issued under this subchapter, the applicant shall deposit with the commissioner an amount equal to \$50 a day for the desired term of the permit.

(b) A separate permit shall be obtained and deposit made for each party or part of a party engaged in making a survey or investigation.

(c) Deposits shall be retained by the commissioner in a special trust fund until the survey or investigation is completed and the permittee files with the commissioner a report under oath stating the number of days during which actual work on the survey or investigation was conducted on the area covered by the permit.

(d) After the report is filed, the commissioner shall deposit in the State Treasury to the credit of the permanent school fund an amount equal to \$50 a day for the number of days during which the actual work on the survey or investigation was conducted, and the remaining portion of the deposit shall be returned to the applicant.

[Acts 1977, 65th Leg., p. 2375, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.104. Payments on Areas Surveyed or Investigated Without a Permit

(a) The commissioner or the attorney general shall demand from any person who conducts a survey or investigation on an area within tidewater limits without a permit or lease from the state payment of

§50 a day for each day actual work is done on the survey or investigation.

(b) On refusal to pay, the attorney general shall institute suit to recover as damages for the unauthorized use of the property the amount or the reasonable value of the privilege exercised.

[Acts 1977, 65th Leg., p. 2375, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.105. Prohibition

No person may conduct geological, geophysical, and other surveys and investigations on areas within tidewater limits unless he has a permit or he has an oil and gas leasehold estate in the area or has permission from the owner thereof.

[Acts 1977, 65th Leg., p. 2375, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.106. Methods

The owner of the oil and gas leasehold estate located in an area within tidewater limits or a person having his permission or a person who has a permit may use all reasonable methods including use of explosives to make surveys and investigations.

[Acts 1977, 65th Leg., p. 2375, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.107. Rules

(a) Geological, geophysical, and other surveys and investigations of areas within tidewater limits shall be conducted under rules adopted by the commissioner to prevent unnecessary pollution of water, destruction of fish, oysters, and other marine life, and obstruction of navigation.

(b) The commissioner shall follow the recommendations of the Parks and Wildlife Department to prevent unnecessary pollution of water, destruction of fish, oysters, and other marine life, and obstruction of navigation.

[Acts 1977, 65th Leg., p. 2375, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 31.108. Penalty

Any person who violates the provisions of this subchapter, the provisions of a permit issued under this subchapter, or any rule adopted by the commissioner is guilty of a misdemeanor and on conviction shall be fined not less than \$100 nor more than \$1,000. Each day that a violation occurs constitutes a separate offense.

[Acts 1977, 65th Leg., p. 2376, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 32. SCHOOL LAND BOARD

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Section

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- 32.012. Members of the Board.
- 32.013. Terms of Appointed Members.
- 32.014. Chairman of the Board.
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- 32.016. Board Meetings.
- 32.017. Secretary of the Board.
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SUBCHAPTER C. POWERS AND DUTIES

- 32.061. Board's General Duties.
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SUBCHAPTER A. GENERAL PROVISIONS

§ 32.001. Definitions

In this chapter:

- (1) "Board" means the School Land Board.
- (2) "Commissioner" means the Commissioner of the General Land Office.
- (3) "Land office" means the General Land Office.

(4) "Land" means land dedicated to the permanent school fund and the asylum funds by the constitution and laws of this state and the mineral estate in areas within tidewater limits, including islands, lakes, bays, and the bed of the sea which belong to the state, and the mineral estate in river beds and channels.

[Acts 1977, 65th Leg., p. 2377, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Application of Sunset Act

Acts 1977, 65th Leg., p. 1846, ch. 735, § 2.099, purports to add § 3a to Civil Statutes, art. 5421c-3, without reference to repeal of said article by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 1(a)(1). As so added, § 3a reads:

"The School Land Board is subject to the Texas Sunset Act [Civil Statutes, art. 5429k]; and unless continued in existence as provided by

that Act the board is abolished effective September 1, 1985."

[Sections 32.002 to 32.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 32.011. Creation of Board

There is created a board to be known as the School Land Board.

[Acts 1977, 65th Leg., p. 2377, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.012. Members of the Board

(a) The board is composed of:

- (1) the commissioner;
- (2) a citizen of the state appointed by the governor with the advice and consent of the senate; and
- (3) a citizen of the state appointed by the attorney general with the advice and consent of the senate.

(b) The authority of the attorney general to appoint one of the members of the board, including the authority to make appointments during the recess of the senate, is the same as the authority of the governor to fill vacancies in state offices under the Texas Constitution.

(c) Each appointment made by the governor and the attorney general shall be made in accordance with and subject to the provisions of the Texas Constitution authorizing the filling of vacancies in state offices by appointment of the governor.

[Acts 1977, 65th Leg., p. 2377, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.013. Terms of Appointed Members

The members appointed to the board by the governor and the attorney general serve for terms of two years.

[Acts 1977, 65th Leg., p. 2377, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.014. Chairman of the Board

The commissioner serves as chairman of the board.

[Acts 1977, 65th Leg., p. 2377, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.015. Per Diem and Reimbursement

Each citizen member of the board is entitled to receive a per diem allowance for each day spent in performing his duties and as reimbursement for actual and necessary travel expenses incurred in performing his duties the amount provided in the General Appropriations Act.

[Acts 1977, 65th Leg., p. 2377, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.016. Board Meetings

(a) The board shall meet on the first and third Tuesdays of each month in the land office.

(b) Subject to recesses at the discretion of the board, meetings of the board shall continue until the board has completed its docket.

[Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.017. Secretary of the Board

(a) The board shall select a secretary from persons nominated by the commissioner.

(b) The person selected as secretary shall be approved by a majority of the board.

[Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.018. Employment of Geologist and Mineralogist

The commissioner may employ a geologist and a mineralogist who shall be informed about minerals on public school land and activities under pending applications and previous leases and sales. The geologist and mineralogist shall report to the board any information relating to these subjects.

[Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.019. Board Employees

(a) The commissioner may employ additional employees necessary for the discharge of the duties of the board.

(b) Employees of the board shall be considered employees of the land office, and civil and criminal laws regulating the conduct and relations of employees of the land office apply to employees of the board.

[Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.020. Minutes of Board

The board shall keep minutes which shall include a record of its proceedings and a docket on which the secretary shall enter matters to be considered by the board.

[Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.021. Records and Proceedings as Archives

The records and proceedings of the board shall be records and archives of the land office.

[Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.022. Inspection of Minutes and Docket

(a) On payment of the fees prescribed by law for examination of other land office records, the minutes and docket shall be subject to inspection by any citizen of the state who desires to make the examination.

(b) An examination made under this section shall be made in the presence of the secretary of the board or a clerk designated by law.

[Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 32.023 to 32.060 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

§ 32.061. Board's General Duties

The board shall:

(1) set the dates for the sale and lease of surveyed land;

(2) determine the prices for which surveyed and unsurveyed land shall be sold and leased; and

(3) perform any other duties which may be required by law.

[Acts 1977, 65th Leg., p. 2378, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.062. Adoption of Rules

The board shall adopt rules of procedure and rules for the sale and lease of land covered by this chapter which are not inconsistent with this chapter and laws relating to the sale and lease of school and asylum land and islands, lakes, and bays within tidewater limits and the bed of the sea which belong to the state, and the lease of the mineral estate in river beds and channels.

[Acts 1977, 65th Leg., p. 2379, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.063. Duty to Advise Commissioner

The board shall advise the commissioner regarding any matters submitted to it for that purpose.

[Acts 1977, 65th Leg., p. 2379, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 32.064 to 32.100 reserved for expansion]

SUBCHAPTER D. SALE AND LEASE OF LAND

§ 32.101. Applicable Law

Land shall be sold and leased subject to the terms and conditions provided by law.

[Acts 1977, 65th Leg., p. 2379, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.102. List of Land

From time to time the commissioner shall furnish the board a list of land areas subject to the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2379, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.103. Appraised Value of Land

(a) Except as provided in Subsection (b) of this section, no land may be appraised at less than \$2 an acre.

(b) Land located west of the Pecos River may be appraised at not less than \$1 an acre.

[Acts 1977, 65th Leg., p. 2379, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.104. Appraisal Fee

(a) The board shall charge applicants for the purchase of excess acreage and unsurveyed public school land an appraisal fee for appraising the acreage and land to determine the price at which it is to be sold by the state.

(b) The appraisal fee shall be in an amount set by the board, and any part of the fee which in the opinion of the board is unused shall be refunded to the applicant.

(c) The appraisal fee shall be paid to the commissioner who shall deposit all fees that are not refunded in the State Treasury in the fund provided under Section 32.110 of this code.

(d) The money deposited in the fund to the extent necessary is appropriated to the land office to pay salaries, travel expenses, and other expenses of personnel necessary to accomplish the appraisals or other work of the board.

(e) The provisions of this section are cumulative of other laws which are not in conflict, but if a conflict exists, this section is controlling.

[Acts 1977, 65th Leg., p. 2379, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.105. Date of Sale and Lease

The sale date for the sale or lease of land shall be the first Tuesday of the month.

[Acts 1977, 65th Leg., p. 2379, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.106. Description of Land

The description of public school land offered for sale or lease shall be in accord with the description which may be found in the School Land Registry in the land office.

[Acts 1977, 65th Leg., p. 2379, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.107. Notice of Sale and Lease

(a) The board shall publish notice of the sale or lease of land in at least three issues of four daily newspapers.

(b) The notice shall be published at least 30 days before the date of sale or lease.

(c) The notice shall state that land is to be offered for sale or lease on a certain date and that lists describing the land may be obtained at the land office.

[Acts 1977, 65th Leg., p. 2380, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.108. Entries on Docket

The descriptions of the land shall be entered on the docket, and as applications are filed, the names

of the applicants and the amount of the bids also shall be entered on the docket.

[Acts 1977, 65th Leg., p. 2380, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.109. Acceptance and Rejection of Bids

(a) The board may reject any and all bids, but if the board elects not to reject any and all bids, it is required to accept the best bid submitted.

(b) The minutes of the board shall reflect the acceptance or rejection of a bid, and the approval of the minutes constitutes approval of the act of acceptance or rejection.

[Acts 1977, 65th Leg., p. 2380, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.110. Special Sale Fee

(a) On land sales and mineral leases made by the board, the bidder is required to pay by separate check an amount equal to one percent of the bid payable to the commissioner as a special fee.

(b) Only the special fees paid on the high bids accepted by the board shall be deposited by the commissioner in the State Treasury as a special fund.

(c) Failure to pay the special fee does not render a bid void, but the commissioner shall demand payment of the fee before he issues a lease to the successful bidder. If the successful bidder fails or refuses to make the payment within 30 days after demand by the commissioner, the bidder is not entitled to a lease or sale on the tract covered by his bid and the cash bonus shall be automatically forfeited to be deposited by the commissioner in the State Treasury to the credit of the permanent school fund or the appropriate special mineral fund.

(d) Checks submitted by unsuccessful bidders shall be returned to the bidders with their bid checks.
[Acts 1977, 65th Leg., p. 2380, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 32.111. Issuance of Award or Lease

Each award or lease shall be issued by the commissioner according to the minutes approved by the board.

[Acts 1977, 65th Leg., p. 2380, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 33. MANAGEMENT OF COASTAL PUBLIC LAND

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SUBCHAPTER A. GENERAL PROVISIONS

§ 33.001. Policy

(a) The surface estate in the coastal public land of this state constitutes an important and valuable asset dedicated to the permanent school fund and to

all the people of Texas, and it is the declared policy of this state that the estate be managed pursuant to the policies stated in the following subsections of this section.

(b) The natural resources of the surface estate in coastal public land shall be preserved. These resources include the natural aesthetic values of those areas and the value of the areas in their natural state for the protection and nurture of all types of marine life and wildlife.

(c) Uses which the public at large may enjoy and in which the public at large may participate shall take priority over those uses which are limited to fewer individuals.

(d) The public interest in navigation in the intra-coastal water shall be protected.

(e) Unauthorized use of coastal public land shall be prevented.

(f) Utilization and development of the surface estate in the coastal public land shall not be allowed unless the public interest as expressed by this chapter is not significantly impaired by it.

(g) For the purposes of this chapter, the surface estate in coastal public land shall not be alienated except by the granting of leaseholds and lesser interests and by exchanges of coastal public land for littoral property as provided in this chapter.

(h) Vested rights in land shall be protected, subject to the paramount authority of the state in the exercise of police powers to regulate the exercise of these rights, and the orderly use of littoral property in a manner consistent with the public policy of this state shall not be impaired.

[Acts 1977, 65th Leg., p. 2382, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.002. Purpose

The purpose of this chapter is to implement the policies stated in Section 33.001 of this code by delegating to the board, assisted by the planning division and other staff of the land office, certain responsibilities and duties with respect to the management of the surface estate in coastal public land.

[Acts 1977, 65th Leg., p. 2383, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.003. Short Title

This chapter may be cited as the Coastal Public Lands Management Act of 1973.

[Acts 1977, 65th Leg., p. 2383, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.004. Definitions

In this chapter:

(1) "Land office" means the General Land Office.

(2) "Commissioner" means the Commissioner of the General Land Office.

(3) "Board" means the School Land Board.

(4) "Person" means any individual, firm, partnership, association, corporation which is public or private and profit or nonprofit, trust, or political subdivision or agency of the state.

(5) "Coastal area" means the geographic area comprising all the counties in Texas which have any tidewater shoreline, including that portion of the bed and water of the Gulf of Mexico within the jurisdiction of the State of Texas.

(6) "Coastal public land" means all or any portion of state-owned submerged land, the water overlying that land, and all state-owned islands or portions of islands in the coastal area.

(7) "Island" means any body of land surrounded by the water of a saltwater lake, bay, inlet, estuary, or inland body of water within the tidewater limits of this state and shall include man-made islands resulting from dredging or other operations.

(8) "Management program" means the coastal public land management program provided by this chapter and shall include a comprehensive statement in words, maps, illustrations, or other media inventorying coastal public land resources and capabilities and setting forth objectives, policies, and standards to guide planning and to control the utilization of those resources.

(9) "Seaward" means the direction away from the shore and toward the body of water bounded by the shore.

(10) "Structure" means any structure, work, or improvement constructed on, affixed to, or worked on coastal public land, including fixed or floating piers, wharves, docks, jetties, groins, breakwaters, artificial reefs, fences, posts, retaining walls, levees, ramps, cabins, houses, shelters, landfills, excavations, land canals, channels, and roads.

(11) "Submerged land" means any land extending from the boundary between the land of the state and the littoral owners seaward to the low-water mark on any saltwater lake, bay, inlet, estuary, or inland water within the tidewater limits, and any land lying beneath the body of water, but for the purposes of this chapter only, shall exclude beaches bordering on and the water of the open Gulf of Mexico and the land lying beneath this water.

(12) "Littoral owner," in this chapter only, means the owner of any public or private upland bordered by or contiguous to coastal public land.

[Acts 1977, 65th Leg., p. 2383, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.005. Effect of Chapter

(a) This subchapter does not repeal the following provisions of the Parks and Wildlife Code: Chapters 83 and 86, Subchapter A of Chapter 46, Subchapter A of Chapter 76, Subchapter D of Chapter 76, Subchapter B of Chapter 81, Subchapter G of Chapter 82, Subchapter C of Chapter 216, or Sections 66.101, 66.107, 66.112 through 66.118, 66.205, 76.031 through 76.036, 78.001 through 78.003, 81.002, 136.047, 184.024, 201.015, or 335.025.

(b) None of the provisions of this chapter may be construed to alter, amend, or revoke any existing right granted pursuant to any law.

[Acts 1977, 65th Leg., p. 2384, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 33.006 to 33.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS**§ 33.011. Board to Administer, Implement, and Enforce Chapter**

The board is the executive agency of the state charged with the administration, implementation, and enforcement of this chapter.

[Acts 1977, 65th Leg., p. 2384, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.012. Land Office to Assist Board

The planning division and other staff of the land office shall assist the board in the discharge of its responsibilities and duties under this chapter.

[Acts 1977, 65th Leg., p. 2384, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.013. Additional Personnel

The commissioner may employ any additional personnel in the land office that may be necessary for the board to perform effectively its functions under this chapter.

[Acts 1977, 65th Leg., p. 2384, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.014. Disposition of Money for Grants of Certain Interests

Money received by the board for grants of surface interests under this chapter whose initial term equals or exceeds 20 years shall be deposited in the State Treasury to the credit of the permanent school fund.

[Acts 1977, 65th Leg., p. 2384, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.015. Special Fund

A special fund is created, and money received by the board for the grant of permits under this chapter shall be deposited in the State Treasury to the credit of this special fund.

[Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.016. Disposition of Other Funds

Money received by the board for the grant of any interest not under Section 33.014 or 33.015 of this code shall be deposited in the State Treasury to the credit of the available school fund.

[Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 33.017 to 33.050 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES**§ 33.051. General Duty**

The board, with the technical advice and assistance of the planning division and other staff of the land office, shall perform the duties provided in this subchapter.

[Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.052. Development of Management Program

The board shall develop a continuing comprehensive management program pursuant to the policies stated in Section 33.001 of this code.

[Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.053. Elements of Management Program

The management program, in compliance with the Coastal Zone Management Act of 1972 (16 U.S.C. Section 1451 et seq.), shall include the following elements:

(1) a continuous inventory of coastal public land and water resources including a determination of the extent and location of the coastal public land;

(2) a continuous analysis of the potential uses for which the coastal public land and water might be used, including recommendations as to which configurations of uses consonant with the policies of this chapter maximize the benefits conferred on the present and future citizens of Texas;

(3) guidelines on the priority of uses in coastal public land within the coastal area, including specifically those uses of lowest priority;

(4) a definition of the permissible uses of the coastal public land and water and definitions of the uses of adjacent areas which would have a significant adverse impact on the management or use of coastal public land or water;

(5) recommendations as to increments of jurisdiction or authority necessary to protect coastal public land and water from adverse consequences flowing from the uses of adjacent land;

(6) an inventory of endangered environments and resources in the coastal public land; and

(7) recommendations for any changes necessary in the organizational structure by which the program is implemented and administered.
 [Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.054. Review and Amendment of Management Program

The board may review the management program periodically and may amend the management program as new information or changed conditions may warrant.
 [Acts 1977, 65th Leg., p. 2385, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.055. Public Hearings to Consider Management Program

(a) In developing the management program, after due notice to littoral owners and the public generally, the board shall hold or have held public hearings in the number and at the locations it determines to be appropriate.
 (b) In reviewing or amending the management program, the board may hold or have held public hearings in the manner provided in Subsection (a) of this section.
 [Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.056. Structures on Land Adjacent to Coastal Public Land

(a) On receipt of appropriate applications, the board shall register existing structures extending on coastal public land from adjacent land not owned by the state.
 (b) Insofar as consonant with the policies of this chapter, the board may regulate the placement, length, design, and the manner of construction, maintenance, and the use of all structures which are built so that they extend on coastal public land from adjacent land not owned by the state.
 [Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.057. Gifts of Interests in Land

(a) The board may accept gifts of interests in land, and these interests shall become part of the permanent school fund unless otherwise designated by the grantor.
 (b) At the discretion of the board, the land may be managed as if it were coastal public land within the meaning of this chapter.
 [Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.058. Purchase of Fee and Lesser Interests in Land

(a) The board may select and purchase fee and lesser interests in land of the coastal area for the creation, maintenance, or protection of wildlife refuges, estuarine preserves, natural scenic reserves, historical or archaeological sites, public recreational areas, and research facilities.
 (b) The interests may be purchased by the board with money acquired by gift or grant, but the interests may not be obtained by condemnation.
 (c) Interests acquired under this section shall not become a part of the permanent free school fund unless they are so designated by the board.
 (d) In the discretion of the board, the interests may be managed as if they were coastal public land within the meaning of this chapter regardless of whether they fall within the meaning of coastal public land.
 [Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.059. Studies

The board may study various coastal engineering problems, including the protection of the shoreline against erosion, the design and use of piers, groins, seawalls, and jetties, and the effects of various structures, works, and improvements on the physical and biological systems of the coastal public land.
 [Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.060. Locating and Marking Boundaries

The board may locate and have marked on the ground the boundaries separating coastal public land from other land.
 [Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.061. Complaints

(a) The board shall receive and evaluate any complaint or report from any person concerning instances of unauthorized construction, maintenance, use, or assertion of control of any structure on coastal public land.
 (b) The board shall refer to the attorney general all cases warranting judicial remedies, and the attorney general shall immediately initiate judicial proceedings for the appropriate relief.
 [Acts 1977, 65th Leg., p. 2386, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.062. Designated Official Representative

The board is designated and shall serve as the official representative of the governor of the state to conduct with the federal government any business concerning any matter affecting the coastal public land which arises out of the exercise by the federal

government of any authority it may have over navigable water under the Constitution of the United States.

[Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.063. Fees

The board may prescribe reasonable filing fees and fees for granting leases, easements, and permits.

[Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.064. Rules

The board may adopt procedural and substantive rules which it considers necessary to administer, implement, and enforce this chapter.

[Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 33.065 to 33.100 reserved for expansion]

SUBCHAPTER D. RIGHTS IN COASTAL PUBLIC LAND

§ 33.101. Application to Acquire Rights in Coastal Public Land

Any person who desires to acquire rights in the surface estate in any coastal public land shall make application to the board in writing in the form prescribed by the board.

[Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.102. Contents of Application

The application to acquire rights in coastal public land shall include:

- (1) an adequate legal description of the land in which the rights are sought;
- (2) a statement of the rights sought;
- (3) a statement of the purpose or purposes for which the land is to be used;
- (4) a description of the nature and extent of the improvements, if any, which will be made on the land;
- (5) an estimate of the time within which any improvements to be made will be completed; and

(6) any additional information the board considers necessary, including, in the case of any application for approval of construction, modification, repair, or removal of a structure, a description of all plans for any filling, dumping, dredging, or excavating to be done.

[Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.103. Interests Which May be Granted by the Board

The board may grant the following interests in coastal public land for the indicated purposes:

- (1) leases for public purposes;
- (2) easements for purposes connected with ownership of littoral property;
- (3) permits authorizing limited continued use of previously unauthorized structures on coastal public land not connected with ownership of littoral property; and
- (4) channel easements to the holder of any surface or mineral interest in coastal public land for purposes necessary or appropriate to the use of the interests.

[Acts 1977, 65th Leg., p. 2387, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.104. Processing Application

(a) On receiving an application, the board may circulate it for review and comment to the member agencies of the Interagency Natural Resources Council or its successor.

(b) The board shall determine whether the proposed application should be granted not less than 30 days nor more than 90 days after the application is received.

(c) If the application is granted, the board shall determine the reasonable term, conditions, and consideration for the grant and may consummate the transaction.

[Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.105. Persons to Whom Land May be Leased

The board may lease coastal public land to:

- (1) the Parks and Wildlife Department or to any eligible city or county for public recreational purposes;
- (2) the Parks and Wildlife Department for management of estuarine preserves;
- (3) any nonprofit, tax-exempt environmental organization approved by the board for the purpose of managing a wildlife refuge; and
- (4) any scientific or educational organization or institution for conducting scientific research.

[Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.106. Policies, Provisions, and Conditions of Leases

In addition to policies generally applicable under this chapter, leases granted under this subchapter shall be subject to the policies, provisions, and conditions stated in Sections 33.107 through 33.110 of this code.

[Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.107. Protection of Rights

The littoral rights of the adjacent upland owner shall be protected in a lease.

[Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.108. Rights of the Public

Members of the public may not be excluded from coastal public land leased for public recreational purposes or from an estuarine preserve.

[Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.109. Counties and Cities Eligible to Lease Coastal Public Land

(a) A county is eligible to apply for a lease of coastal public land inside the county and outside the boundaries of any incorporated city, town, or village for public recreational purposes.

(b) An incorporated city, town, or village is eligible to lease coastal public land within its corporate boundaries for public recreational purposes.

[Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.110. Contracts and Franchises

(a) With the approval of the board, a lessee granted a lease for public recreational purposes may enter into contracts and franchise agreements to promote public recreation.

(b) No contract or franchise agreement may authorize any commercial activity within 300 feet of privately owned littoral property without the written consent of the littoral owner of the property.

[Acts 1977, 65th Leg., p. 2388, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.111. Granting Easements

The board may grant easement rights to the owner of adjacent littoral property authorizing the placement or location of a structure on coastal public land for purposes connected with the ownership of littoral property.

[Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.112. Failure to Obtain an Easement

(a) Any owner of littoral property or any person acting under the owner of littoral property who for purposes connected with the ownership of the littoral property shall construct or fix or place on coastal public land any structure without first obtaining an easement from the land office is subject to a civil penalty of not more than \$200.

(b) Each day the structure remains on or is affixed to coastal public land constitutes a separate offense.

[Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.113. Interpretation of Easement Grant

The grant of an easement under Section 33.111 of this code and the waiver under Section 33.115 of this code shall not be construed as recognition of a right existing in the littoral owner incident to the ownership of littoral property.

[Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.114. Policies, Provisions, and Conditions of Easements

In addition to the policies, provisions, and conditions generally applicable in this chapter, each grant of an easement is subject to the policies, provisions, and conditions of Sections 33.115 and 33.117 of this code.

[Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.115. Piers

(a) Without obtaining an easement from the board, the owner of littoral property may construct a pier which:

(1) may be used for any purpose except commercial purposes;

(2) is 100 feet or less in length and 25 feet or less in width; and

(3) requires no filling or dredging.

(b) The location and dimensions of the pier must be registered with the board in the manner provided in this chapter.

[Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.116. Failure to Register Pier

Any owner of littoral property who fails to register the location and dimensions of the pier which is authorized to be constructed under Section 33.115 of this code is subject to a civil penalty of not more than \$200.

[Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.117. Public Policy of State to be Considered

In administering Sections 33.111 through 33.115 of this code, the board shall consider the public policy of the state that the orderly use of privately owned littoral property in a manner consistent with the public policy of the state will not be impaired.

[Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.118. Single Permit

If the activity for which the easement is sought requires the littoral owner to seek one or more permits from any other agency or department of state government, the board may agree with the agency or department to issue a single document

incorporating all rights and privileges of the applicant.

[Acts 1977, 65th Leg., p. 2389, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.119. Issuance of Permits

The board may issue permits authorizing limited continued use of previously unauthorized structures on coastal public land if the use is sought by one who is claiming an interest in the structure but is not incident to the ownership of littoral property.

[Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.120. Failure to Obtain a Permit

A person who maintains, uses, or repairs any structure for which a permit is required under Section 33.119 of this code without first obtaining a permit from the board is subject to a civil penalty of not less than \$50 nor more than \$1,000.

[Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.121. Unauthorized Structures

Any person who constructs, fixes, or places on coastal public land any unauthorized structure for purposes not connected with ownership of littoral property is subject to a civil penalty of not less than \$50 nor more than \$1,000.

[Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.122. Exception to Permit Requirement

No permit may be required for structures, excavations, or other similar structures as long as they are located wholly on the private littoral upland, even though the activities may result in the area being inundated by public water.

[Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.123. Policies, Provisions, and Conditions of Permits

In addition to the policies, provisions, and conditions generally applicable in this chapter, each grant of a permit is subject to the policies, provisions, and conditions of Sections 33.120 through 33.122 and 33.124 through 33.126 of this code.

[Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.124. Permits Prohibited for Certain Structures

The board may not grant a permit which authorizes the continued use of a structure located within 1,000 feet of:

- (1) privately owned littoral property, without written consent of the littoral owner;

- (2) any federal or state wildlife sanctuary or refuge; or

- (3) any federal, state, county, or city park bordering on coastal public land.

[Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.125. Automatic Revocation and Termination of a Permit

A permit that authorizes the continued use of a previously unauthorized structure on coastal public land is considered automatically revoked and terminated if the coastal public land on which the structure is located is:

- (1) subsequently leased for public purposes;

- (2) exchanged for littoral property under this chapter; or

- (3) conveyed to a navigation district as provided by law.

[Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.126. Termination of Permit by Board

Each permit shall provide that if the terms of the permit are broken, the permit may be terminated at the option of the board.

[Acts 1977, 65th Leg., p. 2390, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.127. Terms and Renewal of Permits

Permits may be issued for a period of not more than five years and may be renewed at the discretion of the board.

[Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.128. Use of Previously Unauthorized Structures

Previously unauthorized structures for which permits are obtained may be used only for noncommercial, recreational purposes.

[Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.129. Prohibitions on the Grant of Permits

The board may not grant an application for a permit which would violate the public policy of this state as expressed in this chapter and may not grant a permit for any structure not in existence on August 27, 1973.

[Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.130. Repairs and Rebuilding

If a structure for which a permit is issued is severely damaged or destroyed by any means, no major repairs or rebuilding may be undertaken by the permit holder without the approval of the board.

[Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.131. Structures as Property of the State

A structure presently existing or to be constructed in the future for which a permit is required under this subchapter is the property of the state. Any construction, maintenance, or use of the structure other than as provided in this subchapter is declared to be a nuisance per se and is expressly prohibited. [Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.132. Registration by Board

(a) The registration by the board on or before December 31, 1973, of a structure located in whole or in part on coastal public land on August 27, 1973, and claimed by the person submitting it for registration as an incident of the ownership of littoral property shall not be construed as evidence of the acquiescence of the state in the claim by the owner.

(b) Failure of the owner to register the structure estops the owner from making any further claim of right against the state in the structure and renders the structure a nuisance per se subject to abatement by the state at the expense of the littoral owner. [Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.133. Remedies Cumulative

Remedies provided in this subchapter are cumulative of all other remedies which may be applicable, including those remedies arising from the power of a court to enforce its jurisdiction and its judgments. [Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.134. Use and Development of Land by Littoral Owner

None of the provisions of this chapter shall prevent the littoral owner of property from developing or otherwise using his property in a lawful manner, and this chapter shall not be construed to confer on the board the authority to regulate, control, or restrict the use or development of the property. [Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 33.135 to 33.170 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT AND APPEAL

§ 33.171. Enforcement of Rights of Littoral Owners

(a) A littoral owner whose rights may be affected by any action of the board under this chapter may bring suit for a declaratory judgment against the State of Texas in a district court in Travis County to try the issues.

(b) Service of citation may be obtained by serving the commissioner. [Acts 1977, 65th Leg., p. 2391, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.172. Venue

Unless expressly waived in writing by the attorney general, venue lies in Travis County in any proceeding:

- (1) arising out of an alleged violation of any provision of this chapter or any rule adopted by the board under this chapter;
- (2) touching any interest in land sought or granted under this chapter; and
- (3) to determine the boundaries or title to any coastal public land.

[Acts 1977, 65th Leg., p. 2392, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.173. Right to Appeal

Any interested party who is aggrieved by an action of the board under this chapter may appeal the action by filing a petition in a district court in Travis County.

[Acts 1977, 65th Leg., p. 2392, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.174. Time for Filing Petition

The petition for the appeal must be filed within 30 days after the date of the final action of the board or 30 days after the effective date of the action, whichever is the later date.

[Acts 1977, 65th Leg., p. 2392, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.175. Service of Citation

Service of citation on the board may be accomplished by serving the commissioner.

[Acts 1977, 65th Leg., p. 2392, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 33.176. Issue on Appeal

In an appeal of a board action, the issue is whether the action is invalid, arbitrary, or unreasonable.

[Acts 1977, 65th Leg., p. 2392, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 34. BOARDS FOR LEASE

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SUBCHAPTER A. GENERAL PROVISIONS

§ 34.001. Definitions

In this chapter:

- (1) "Board" means a board for lease.
- (2) "Commissioner" means the Commissioner of the General Land Office.
- (3) "Land office" means the General Land Office.

[Acts 1977, 65th Leg., p. 2394, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.002. Application of Chapter

- (a) The provisions of this chapter do not apply to:
- (1) land dedicated by the constitution and laws of the state to the public school fund;
 - (2) land dedicated by the constitution and laws of the state to The University of Texas, or land donated to the Board of Regents of The University of Texas System, as trustees, by a will, instrument in writing, or otherwise in trust for a scientific, educational, or other charitable or public purpose, or to any other land under the

control of the Board of Regents of The University of Texas System;

(3) land whose title is vested in the state for use and benefit of any part of The Texas A&M University System, or land under the control of the Board of Regents of The Texas A&M University System; or

(4) land subject to lease under the provisions of Subchapter F, Chapter 52, of this code, commonly known as the "Relinquishment Act."

(b) If title to land subject to the provisions of the Relinquishment Act is acquired by a department, board, or agency of the state, the land is not subject to lease by a board created under the provisions of this chapter but shall be leased in the manner provided for the leasing of unsold public school land. [Acts 1977, 65th Leg., p. 2394, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 34.003 to 34.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 34.011. Boards for Lease

Boards for lease are created to lease land owned by a department, board, or agency of the State of Texas.

[Acts 1977, 65th Leg., p. 2394, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Application of Sunset Act

Acts 1977, 65th Leg., p. 1845, ch. 735, § 2.095, purports to add § 1a to Civil Statutes, art. 5382d, without reference to repeal of said article by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1). As so added, § 1a reads:

"The Boards for Lease of State-Owned Lands are subject to the Texas Sunset Act [Civil Statutes, art. 5429k]; and unless each board is continued in existence as provided by that Act the board is abolished effective September 1, 1985."

§ 34.012. Title of Board

The title of each board shall be selected by each board for lease at its first meeting.

[Acts 1977, 65th Leg., p. 2394, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.013. Members of Board

- (a) The membership of each board shall include:
- (1) the commissioner;
 - (2) one citizen of the state appointed by the governor with the advice and consent of the senate; and

(3) the president or chairman of the board or agency or head of the department charged with the responsibility of management or control of land owned by or held in trust for the use and benefit of the department, agency, or board.

(b) The appointed member serves for a term of two years.

[Acts 1977, 65th Leg., p. 2394, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.014. Officers of Board

(a) The commissioner is the chairman of the board.

(b) Each board shall select a secretary who shall be nominated by the commissioner and approved by a majority of the board.

[Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.015. Quorum

A majority of a board constitutes a quorum for the transaction of business.

[Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.016. Records of Board

A board shall keep a complete record of all of its proceedings.

[Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.017. Special Mineral Funds

Special funds are created in the State Treasury to be known as the "(appropriate department, board, or agency) special mineral fund."

[Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.018. Deposit of Receipts

Amounts received under the provisions of this chapter shall be deposited in the State Treasury to the credit of the appropriate special fund, with the exception that all money received under the provisions of this chapter enuring to the benefit of the Parks and Wildlife Department from land held by the department for game and fish conservation, protection, and management purposes shall be deposited in the State Treasury to the credit of the special game and fish fund, and all money received under the provisions of this chapter enuring to the benefit of the Parks and Wildlife Department from park, recreation, and historic land shall be deposited in the State Treasury to the credit of the state parks fund.

[Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.019. Expenditures

(a) The expenses of executing the provisions of this chapter shall be paid by warrants drawn by the comptroller on the State Treasury against the income from the special funds accumulated from leases, rentals, royalties, and other payments.

(b) The amounts received under the provisions of this chapter and deposited to the credit of a special fund shall be used exclusively for the benefit of the appropriate department, board, or agency.

(c) No money may be spent from the special funds except by legislative appropriation and for the purposes and in the amount stated in the Act appropriating it.

[Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.020. Filing in General Land Office

All surveys, files, records, abstracts of title, copies of sale and lease contracts, and all other records pertaining to sales and leases authorized under the provisions of this chapter shall be filed in the land office and constitute archives.

[Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 34.021 to 34.050 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

§ 34.051. Land Subject to Lease

Land owned by or held in trust for the use and benefit of a department, board, or agency may be leased by the appropriate board to any person under the provisions of this chapter for the purpose of prospecting or exploring for and mining, producing, storing, caring for, transporting, preserving, selling, and disposing of the oil, gas, or other minerals.

[Acts 1977, 65th Leg., p. 2395, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.052. Subdivision of Land

A board may have the land subject to its control surveyed or subdivided into tracts, lots, or blocks which will, in its judgment, be most conducive and convenient to facilitate the advantageous sale of oil, gas, or mineral leases.

[Acts 1977, 65th Leg., p. 2396, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.053. Maps and Plats

A board may make maps and plats it considers necessary to carry out the purposes of this chapter.

[Acts 1977, 65th Leg., p. 2396, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.054. Abstracts of Title

A board may obtain authentic abstracts of title to the land subject to its control that it considers necessary and may take the necessary steps to perfect a marketable title to the land.

[Acts 1977, 65th Leg., p. 2396, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.055. Geological Surveys and Investigations

A board may issue a permit for geological, geophysical, and other surveys and investigations on land subject to lease by the board that is not under valid and existing leases and that will encourage the development of the land for oil, gas, or other minerals. A permit may be issued for a consideration and under terms and conditions which the board considers to be in the best interest of the state.

[Acts 1977, 65th Leg., p. 2396, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.056. Placing Lease on Market

If a board determines there is a demand for the purchase of oil, gas, or mineral leases on a lot or tract of land subject to the control of the board which will reasonably insure an advantageous sale, the board shall place the oil, gas, or mineral leases on the market in the tract or tracts which the board may designate.

[Acts 1977, 65th Leg., p. 2396, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.057. Advertisement of Lease

A board shall insert an advertisement that leases will be offered for sale on a certain date in at least three issues of each of four daily newspapers 30 days in advance of the sale date. The advertisement shall give notice that lists describing the land to be leased may be obtained from the land office.

[Acts 1977, 65th Leg., p. 2396, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.058. Minimum Royalty, Bonus, and Rental

(a) A bid shall not be accepted which offers:

(1) a royalty of less than one-eighth of the gross production of oil, gas, or other minerals; or

(2) a cash bonus of less than \$2 an acre.

(b) The minimum royalty and bonus may be increased at the discretion of the board.

(c) A bid shall contain an obligation to pay at least \$1 an acre annual rental beginning with the second year of the lease, with the amount to be set by the board in advance of the advertisement.

[Acts 1977, 65th Leg., p. 2396, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.059. Fixing Royalty, Bonus, and Rental

A board may:

(1) set the royalty and rental and provide for bidding on a basis of the highest cash bonus offered; or

(2) set the cash bonus and rental and provide for bidding on the basis of the highest royalty offered.

[Acts 1977, 65th Leg., p. 2396, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.060. Bids

(a) Bidding shall be by sealed bids to be opened at 10 a. m. on the sale date by a majority of the board.

(b) A separate bid shall be made for each tract offered for lease.

(c) The bid shall state the amount of cash bonus offered and the royalty and rental provided.

(d) The bid shall be accompanied by cash or checks, collectible in Austin and payable to the commissioner, to cover the amount of the cash bonus.

[Acts 1977, 65th Leg., p. 2397, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.061. Special Fee

(a) In addition to the payment accompanying a bid as provided in Subsection (d) of Section 34.060 of this code, a bidder on a mineral lease sale held by a board shall remit a special sale fee by separate check in an amount equal to one percent of the bid in the manner provided in Section 32.110 of this code.

(b) Failure to pay the special fee does not render the bid void, but the commissioner shall demand payment of the fee before he issues a lease to the successful bidder.

(c) If the successful bidder fails or refuses to pay the fee within 30 days after demand is made by the commissioner, the bidder is not entitled to a lease on the tract covered by his bid and the cash bonus is automatically forfeited to the state. The commissioner shall deposit the bonus in the State Treasury to the appropriate fund.

(d) Special fee checks submitted by unsuccessful bidders shall be returned to the bidders together with their bid checks.

[Acts 1977, 65th Leg., p. 2397, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.062. Rejection and Acceptance of Bids

(a) A board may reject all bids.

(b) Unless a board elects to reject all bids, it must accept the highest bid submitted.

(c) The minutes of a board shall show the fact of acceptance or rejection of a bid, and the approval of the minutes constitutes the approval of the act of acceptance or the act of rejection, as the case may be.

[Acts 1977, 65th Leg., p. 2397, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.063. Issuance of Lease

The commissioner shall issue awards or leases in accordance with the minutes as approved by each board.

[Acts 1977, 65th Leg., p. 2397, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.064. Easements

(a) A board may grant easements on the land covered by the provisions of this chapter for irrigation canals, laterals, flumes and ditches, telephone, telegraph, and electric power lines, and pipelines for the gathering or transportation of oil, gas, water, and other fluids or substances, together with the devices, equipment, and appurtenances which may be necessary.

(b) The easements may be granted on terms and conditions the board considers to be in the best interest of the state.

(c) The provisions of this section do not apply to land owned by the state as a part of the penitentiary system and do not repeal Chapter 166, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 6203d, Vernon's Texas Civil Statutes).

[Acts 1977, 65th Leg., p. 2397, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 34.065 to 34.100 reserved for expansion]

SUBCHAPTER D. CONDITIONS OF LEASES

§ 34.101. Separate Leases

Leases for minerals, except oil and gas, shall be granted on separate leases and for separate consideration.

[Acts 1977, 65th Leg., p. 2398, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.102. Term of Lease

A lease issued by the commissioner shall be for a primary term of not to exceed five years and as long thereafter as oil, gas, or other minerals covered by the lease are produced in paying quantities.

[Acts 1977, 65th Leg., p. 2398, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.103. Assignment

(a) All rights purchased may be assigned.

(b) An assignment must be recorded in the county or counties in which the area is located.

(c) The recorded assignment or a certified copy of the recorded assignment shall be filed in the land office within 100 days from the date of the first acknowledgment of the assignment, accompanied by 10 cents an acre for each acre assigned and a filing fee of \$1. The assignment is not effective if it is not

filed and the fee paid in accordance with this section.

[Acts 1977, 65th Leg., p. 2398, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.104. Relinquishment of Lease

(a) Rights to a whole tract or to an assigned portion of a tract may be relinquished to the state at any time by recording an instrument of relinquishment in the county or counties in which the area is located and filing the recorded relinquishment or a certified copy of the recorded relinquishment in the land office, accompanied by a filing fee of \$1.

(b) A relinquishment does not release the lessee from an obligation or liability already accrued in favor of the state.

[Acts 1977, 65th Leg., p. 2398, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.105. State Laws and Orders of Regulatory Authority

Drilling or mining operations for oil, gas, or other minerals and the production of oil, gas, or other minerals under a lease issued under the authority of this chapter are subject to:

(1) the laws of the state;

(2) valid orders made by the Railroad Commission of Texas or other regulatory authority controlling the development of leases for the production of oil, gas, or other minerals; and

(3) regulations which the board may adopt.

[Acts 1977, 65th Leg., p. 2398, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 34.106 to 34.140 reserved for expansion]

SUBCHAPTER E. RENTAL AND ROYALTY PAYMENTS

§ 34.141. Annual Rental

(a) Beginning with the second year of the lease, the lessee shall pay the annual rental specified by the board each year during the life of the lease, unless oil, gas, or other minerals are being produced in paying quantities.

(b) If royalties paid during any year of the life of the lease equal or exceed the annual rental, no annual rental is due for the following year.

(c) If royalties paid during the preceding year do not equal or exceed the annual rental, the annual rental is the amount specified by the board less the amount of royalties paid during the preceding year.

[Acts 1977, 65th Leg., p. 2398, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.142. Due Date for Payment

(a) Annual rental is due and payable on or before the anniversary date of the lease.

(b) Royalty payments shall be paid on or before the last day of each month following the month in which the oil, gas, or other minerals are produced. [Acts 1977, 65th Leg., p. 2399, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.143. Payment to Commissioner

The rental and royalty payments shall be paid to the commissioner at Austin.

[Acts 1977, 65th Leg., p. 2399, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.144. Statements Accompanying Payment

A payment shall be accompanied by sworn statements of the lessee, manager, or other authorized agent showing the gross amount of production since the last report and the market value of the production, together with copies of all daily gauges of tanks, gas meter readings, pipeline run tickets and receipts, and other checks or memoranda of the amounts produced.

[Acts 1977, 65th Leg., p. 2399, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.145. Records Subject to Inspection

The books, accounts, records, and contracts relating to producing, transporting, selling, and marketing the oil, gas, or other minerals are subject to inspection and examination at all times by the commissioner, the attorney general, and the chairman, president, or other member of the board, or the representative of either of them.

[Acts 1977, 65th Leg., p. 2399, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.146. State's Lien on Minerals

The state has a first lien on oil, gas, or other minerals produced from the area covered by the lease to secure the payment of all unpaid royalty or other sums of money that may be due under the lease.

[Acts 1977, 65th Leg., p. 2399, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 34.147 to 34.180 reserved for expansion]

SUBCHAPTER F. DUTIES OF LESSEE

§ 34.181. Duty to Develop

The lessee shall reasonably develop the lease by drilling or mining to the extent the facts justify.

[Acts 1977, 65th Leg., p. 2399, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.182. Protection From Drainage

The lessee shall adequately protect the oil, gas, or other minerals under the land covered by the lease from drainage from adjacent land or leases.

[Acts 1977, 65th Leg., p. 2399, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.183. Effect of Payment on Obligation

The payment of the bonus, rentals, or royalties under the lease does not relieve the lessee of the obligation to develop the lease and protect the oil, gas, or other minerals from drainage.

[Acts 1977, 65th Leg., p. 2399, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.184. Offset Drilling

(a) If oil or gas is produced in paying quantities from a well on privately owned land and the well is within 1,000 feet of the area covered by the lease, or in any case if the land covered by the lease is being drained, the lessee shall begin in good faith the drilling of an offset well on the area covered by his lease within 60 days after initial production on the private land and shall diligently prosecute the drilling.

(b) The offset well shall be drilled to the depth necessary to prevent the undue drainage of the area covered by the lease.

(c) The lessee, manager, or driller shall use all means reasonably necessary in a good-faith effort to make the offset well produce in paying quantities. [Acts 1977, 65th Leg., p. 2400, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 34.185. Forfeiture of Lease

(a) A lease is subject to forfeiture by the commissioner if:

(1) the owner of the rights acquired under the provisions of this chapter fails or refuses to make the payment of a sum due as rental on the lease or for royalty on production within 30 days after it becomes due;

(2) the owner or his authorized agent knowingly makes a false return or false report concerning production, royalty, or drilling;

(3) the owner fails or refuses to drill an offset well or wells in good faith as required by his lease and the rules adopted by the board;

(4) the owner or his agent refuses the proper authority access to the records and other data pertaining to operations under his lease;

(5) the owner or his authorized agent knowingly fails to furnish the log of a well within 30 days after production is found in paying quantities; or

(6) any of the material terms of the lease are violated.

(b) If a lease is forfeited, the area is subject again to lease to the highest bidder under the same rules controlling the original sale of leases.

(c) A forfeiture may be set aside and the lease and all rights under the lease reinstated at any time before the rights of a third party intervene on satisfactory evidence to the commissioner of future

compliance with the provisions of this chapter and the rules adopted relative to this chapter.

[Acts 1977, 65th Leg., p. 2400, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 35. BOARD FOR LEASE OF STATE PARK LANDS

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Section

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- 35.101. Term of Lease.
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- 35.131. Annual Rental.
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- 35.171. Duty to Develop and Prevent Drainage.
- 35.172. Forfeiture of Lease.
- 35.173. Suit for Damages or Specific Performance.

SUBCHAPTER A. GENERAL PROVISIONS

§ 35.001. Definitions

In this chapter:

- (1) "Board" means the Board for Lease of State Park Lands.
- (2) "Commissioner" means the Commissioner of the General Land Office.
- (3) "Land office" means the General Land Office.

[Acts 1977, 65th Leg., p. 2402, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 35.002 to 35.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 35.011. Board for Lease of State Park Lands

A board to be known as the Board for Lease of State Park Lands is created to perform the duties prescribed in this chapter.

[Acts 1977, 65th Leg., p. 2402, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.012. Members of Board

(a) The board consists of:

- (1) the commissioner;
- (2) one citizen of the state appointed by the attorney general with the advice and consent of the senate; and
- (3) the chairman of the Parks and Wildlife Commission.

(b) The appointed member serves for a term of two years.

[Acts 1977, 65th Leg., p. 2402, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.013. Quorum

A majority of the board constitutes a quorum with power to act in all cases except as otherwise provided in this chapter.

[Acts 1977, 65th Leg., p. 2402, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.014. Records of Board

The board shall keep a complete written record of all its proceedings.

[Acts 1977, 65th Leg., p. 2402, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.015. Rules

The board shall adopt proper rules, forms, and contracts that in its judgment will protect the income from land leased under the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2402, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.016. Expenditures From State Park Development Fund

- (a) The state park development fund is created.
- (b) All money deposited in the state park development fund shall be appropriated by the legislature for the development, improvement, and maintenance of state parks.

[Acts 1977, 65th Leg., p. 2402, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.017. Filing in Land Office

All surveys, files, records, copies of sale and lease contracts, and all other records relating to the sales and leases authorized on state park land under the

jurisdiction of the Parks and Wildlife Department shall be filed in the land office and constitute archives.

[Acts 1977, 65th Leg., p. 2402, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 35.018 to 35.050 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

§ 35.051. Land Subject to Lease

Subject to the provisions of this chapter, the board may lease land to any person for prospecting or exploring for and mining, producing, storing, caring for, transporting, preserving, and disposing of oil and gas. The board may lease all land or parcels of land in the following state parks: Abilene State Park, Balmorhea State Park, Bastrop State Park, Bentsen-Rio Grande Valley State Park, Buescher State Park, Big Spring State Park, Blanco State Park, Bonham State Park, Caddo Lake State Park, Cleburne State Park, Daingerfield State Park, Davis Mountains State Park, Fort Griffin State Park, Fort Parker State Park, Old Fort Parker State Park, Frio State Park, Garner State Park, Goose Island State Park, Huntsville State Park, Inks Lake State Park, Jim Hogg State Park, Kerrville State Park, Lake Corpus Christi State Park, Longhorn Cavern State Park, MacKenzie State Park, Meridian State Park, Mineral Wells State Park, Mother Neff State Park, Palmetto State Park, Palo Duro Canyon State Park, Possum Kingdom State Park, San Jose Mission State Park, Stephen F. Austin State Park, Thirty-sixth Division State Park, Tyler State Park, Independence State Park, Barreda State Park, Jeff Davis State Park, Katemey State Park, Love's Lookout State Park, Robinson State Park, Tips State Park, Fannin State Park, Goliad State Park, Gonzales State Park, Kings State Park, Governor James Stephen Hogg Memorial Shrine, Lipantitlan State Park, Acton State Park, and Monument Hill State Park.

[Acts 1977, 65th Leg., p. 2403, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.052. Subdivision of Land

The board may have state park land surveyed and subdivided into lots or blocks which will be conducive or convenient to facilitate the advantageous sale of oil or gas leases. The board may identify the lots and blocks by permanent markings on the ground.

[Acts 1977, 65th Leg., p. 2403, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.053. Maps and Plats

The board may make the maps and plats it considers necessary to carry out the purposes of this chapter.

[Acts 1977, 65th Leg., p. 2403, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.054. Abstracts of Title

The board shall obtain abstracts of title to the state park land.

[Acts 1977, 65th Leg., p. 2403, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.055. Examination and Perfection of Title

(a) The board shall have the abstracts of title examined by the attorney general, who shall file written title opinions.

(b) The board shall take the necessary steps to perfect a marketable title to the land in the State of Texas.

[Acts 1977, 65th Leg., p. 2403, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.056. Filing Abstract of Title and Title Opinion

The abstract of title and the attorney general's title opinion shall be filed in the land office as public documents for the inspection of prospective purchasers of oil and gas leases on the land.

[Acts 1977, 65th Leg., p. 2403, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.057. Placing Lease on Market

If the board determines there is a demand for the purchase of oil and gas leases on a lot or tract of land that will reasonably ensure an advantageous sale, the board may place the oil and gas in the land on the market in the blocks or lots which the board may designate.

[Acts 1977, 65th Leg., p. 2403, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.058. Advertisement of Lease

(a) The board shall advertise a brief description of the land from which the oil and gas is proposed to be sold. The advertisement shall give notice that sealed bids for the purchase of the oil and gas by lease will be opened at 10 a. m. on the designated day and that sealed bids received up to that time will be considered.

(b) The advertisement shall be made by:

(1) publication in two or more papers of general circulation in the state; and

(2) mailing a copy of the advertisement to the county clerk and county judge of every county in the state in which an advertised area is located.

(c) In addition to the provisions of Subsection (b) of this section, the board may have the advertisement placed in oil and gas journals in and out of this state and mailed generally to persons the board thinks may be interested.

[Acts 1977, 65th Leg., p. 2404, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.059. Minimum Royalty and Rental

(a) A bid may not be accepted which offers a royalty of less than one-eighth of the gross production of oil and gas in the land covered by the bid. If all members concur, the board may increase the minimum royalty before the promulgation of the advertisement of the land.

(b) A bid shall contain an obligation to pay at least \$1 an acre rental for delay in drilling, with the amount to be set by the board in advance of the advertisement.

[Acts 1977, 65th Leg., p. 2404, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.060. Bids

(a) A bid shall be directed to the board in care of the land office, retained by the commissioner until the day designated for opening the bids, and opened on that day by the board, or a majority of its members, who shall list, file, and register all bids and money received.

(b) A separate bid shall be made for each survey or subdivision of a survey.

(c) The bid shall state the amount of royalty offered and the amount the bidder is willing to pay in addition to the royalty and annual delay rentals provided for in this subchapter.

(d) The bid shall be accompanied by cash or checks, collectible in Austin, to cover the amount which the bid offers in addition to the royalty and delay rentals, and a payment equal to the minimum delay rental fixed on the land per acre if the bid is accepted.

[Acts 1977, 65th Leg., p. 2404, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.061. Rejection and Acceptance of Bids

(a) If a bidder offers a reasonable and proper price, and less than the price set by the board, the land advertised, or a whole survey or subdivision, may be leased for oil and gas purposes under the terms of this chapter and rules which the board may prescribe, not inconsistent with the provisions of this chapter.

(b) The board may reject all bids and may withdraw any land advertised for lease before receiving and opening bids.

(c) If the board rejects all bids after a bidding by sealed bids, it may offer for sale and sell the oil and gas in the land, in separate whole surveys only or subdivisions of them, by open public auction at a price less than the price offered by the sealed bids.

(d) If there is no sale at public auction, the subsequent procedure for the sale of oil and gas leases is in the manner provided in the previous sections of this subchapter.

(e) If the board determines that a satisfactory bid has been received for the oil and gas, it shall file the bid in the land office.

[Acts 1977, 65th Leg., p. 2404, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.062. Necessary Facilities

The board shall authorize the laying of a pipeline or telephone line and the opening of roads over state park land which it considers reasonably necessary for and incident to the purposes of this chapter.

[Acts 1977, 65th Leg., p. 2405, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 35.063 to 35.100 reserved for expansion]

SUBCHAPTER D. CONDITIONS OF LEASES

§ 35.101. Term of Lease

If oil or gas is discovered in paying quantities on a tract of land covered by a lease, the lease on that tract remains in force, and title to all rights purchased may be held by the owners, as long as oil or gas is produced in paying quantities from the tract. If oil or gas is not produced in paying quantities before the expiration of three years, the lease terminates.

[Acts 1977, 65th Leg., p. 2405, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.102. Assignment of Lease

(a) All rights purchased may be assigned in quantities of not less than 40 acres, unless there are fewer than 40 acres remaining in a survey, in which case the lesser area may be assigned.

(b) An assignment shall be filed in the land office within 100 days after the date of the first acknowledgment, accompanied by 10 cents an acre for each acre assigned. If the assignment is not filed and payment made, the assignment is ineffective.

[Acts 1977, 65th Leg., p. 2405, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.103. Relinquishment of Lease

(a) All rights to a whole survey or to an assigned portion of a survey may be relinquished to the state at any time by recording an instrument of relinquishment in the county or counties in which the area is located and filing it in the land office, accompanied by a \$1 fee for each area assigned.

(b) The assignment does not relieve the owner of an obligation which has already accrued.

[Acts 1977, 65th Leg., p. 2405, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 35.104 to 35.130 reserved for expansion]

SUBCHAPTER E. RENTAL AND ROYALTY
PAYMENTS

§ 35.131. Annual Rental

(a) The lessee shall pay the annual delay rental every year for three years unless there is production in paying quantities on the land.

(b) If the royalties paid equal or exceed the annual rental fixed by the board, the payment of annual rental may be discontinued.

(c) If during the term of a lease issued under the provisions of this chapter the lessee is engaged in actual drilling operations for the discovery of oil and gas on land covered by the lease, no rental is payable on the tract on which the operations are being conducted as long as the operations are proceeding in good faith.

[Acts 1977, 65th Leg., p. 2405, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.132. Due Date for Payment

Royalty and bonus stipulated in the sale shall be paid on or before the last day of each month for the preceding month during the life of the rights purchased.

[Acts 1977, 65th Leg., p. 2406, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.133. Recipient of Payment

Royalty, bonus, delay rental, and other payments made under the provisions of this chapter, and royalty, bonus, delay rental, and other payments derived from park lands operated by local park commissions with the advice and consent of the board of control, shall be paid to the commissioner at Austin. The commissioner shall transmit to the State Treasurer for deposit to the credit of the state park development fund all royalty, bonus, rental, and other payments, including filing assignments and relinquishment fees, and royalty, bonus, rental, and other payments derived from park land operated by local park commissions.

[Acts 1977, 65th Leg., p. 2406, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.134. Statements Accompanying Payment

The payment shall be accompanied by the sworn statement of the owner, manager, or other authorized agent, showing the gross amount of oil produced and saved since the last report and the amount of gas produced and sold off the premises, and the market value of the oil and gas, together with a copy of all daily gauges of tanks, gas meter readings, pipeline receipts, gas line receipts, and other checks and memoranda of the amounts produced and put into pipelines, tanks or pools, and gas lines or gas storage.

[Acts 1977, 65th Leg., p. 2406, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.135. Records Subject to Inspection

The books, accounts, receipts, and discharges of oil wells, tanks, pools, meters, and pipelines, and all contracts and other records relating to producing, transporting, selling, and marketing the oil and gas are subject to inspection and examination at all times by the commissioner, the attorney general, or any member of the Parks and Wildlife Department. [Acts 1977, 65th Leg., p. 2406, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.136. State's Lien

The state has a first lien on all oil and gas produced on the leased area, and on all rigs, tanks, pipelines, telephone lines, machinery, and appliances used in the production and handling of oil and gas produced on the leased area, to secure any amount due from the owner of the lease.

[Acts 1977, 65th Leg., p. 2406, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 35.137 to 35.170 reserved for expansion]

SUBCHAPTER F. DUTIES OF LESSEE

§ 35.171. Duty to Develop and Prevent Drainage

(a) If the area in which oil or gas is sold is contiguous to or adjacent to land which is not state park land, the acceptance of the bid and the sale constitute an obligation on the owner of the lease to adequately protect the land leased from drainage from adjacent land.

(b) If oil or gas is discovered on a tract covered by a lease issued under the provisions of this chapter, or on land adjoining the leased tract, the lessee shall conduct the operations necessary to prevent drainage from the tract covered by the lease and properly develop the tract.

(c) If the oil or gas in the area is sold at a lesser royalty, the owner shall protect the state from drainage from the land leased or sold for lesser royalty.

[Acts 1977, 65th Leg., p. 2406, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.172. Forfeiture of Lease

(a) The board may forfeit a lease by an order entered on the minutes of the board reciting the facts constituting the default and declaring the forfeiture.

(b) A lease is subject to forfeiture if:

(1) the owner of the rights acquired under this chapter fails to protect the land from drainage;

(2) the owner fails or refuses to make the payment of an amount due as rental on the lease or royalty on the production within 30 days after it becomes due;

(3) the owner or his authorized agent makes a false return or false report concerning production, royalty, or drilling;

(4) the owner fails or refuses to drill an offset well or wells in good faith as required by his lease;

(5) the owner or his agent refuses the proper authority access to the records and other data pertaining to the operations under the provisions of this chapter;

(6) the owner or his authorized agent fails or refuses to give correct information to the proper authority, or fails or refuses to furnish the log of a well within 30 days after production is found in paying quantities; or

(7) any of the material terms of the lease are violated.

(c) The board may have suit for forfeiture instituted by the attorney general.

(d) On proper showing by the forfeiting owner within 30 days after the declaration of forfeiture, the board may reinstate the lease on terms which it prescribes.

[Acts 1977, 65th Leg., p. 2407, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 35.173. Suit for Damages or Specific Performance

Forfeiture of the lease is not the exclusive remedy available to the state. If the owner violates the lease contract, the state may institute suit for damages or specific performance.

[Acts 1977, 65th Leg., p. 2407, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 36. BOARD FOR LEASE OF ELEEMOSYNARY AND STATE MEMORIAL PARK LANDS

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36.101. Term of Lease.
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SUBCHAPTER F. DUTIES OF LESSEE

36.171. Duty to Develop and Prevent Drainage.
36.172. Forfeiture of Lease.
36.173. Suit for Damages or Specific Performance.

SUBCHAPTER A. GENERAL PROVISIONS

§ 36.001. Definitions

In this chapter:

(1) "Board" means the Board for Lease of Eleemosynary and State Memorial Park Lands.

(2) "Eleemosynary land" means land under the control and management of the Texas Department of Mental Health and Mental Retardation.

(3) "Commissioner" means the Commissioner of the General Land Office.

(4) "Land office" means the General Land Office.

[Acts 1977, 65th Leg., p. 2408, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 36.002 to 36.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 36.011. Board for Lease of Eleemosynary and State Memorial Lands

A board to be known as the Board for Lease of Eleemosynary and State Memorial Lands is created to perform the duties prescribed in this chapter.

[Acts 1977, 65th Leg., p. 2409, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.012. Members of Board

(a) The board consists of:

(1) the commissioner;

(2) one citizen of the state appointed by the governor with the advice and consent of the senate; and

(3) the chairman of the Texas Board of Mental Health and Mental Retardation.

(b) The appointed member serves for a term of two years.

[Acts 1977, 65th Leg., p. 2409, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.013. Quorum

A majority of the board constitutes a quorum with power to act in all cases except as otherwise provided in this chapter.

[Acts 1977, 65th Leg., p. 2409, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.014. Records of Board

The board shall keep a complete written record of all its proceedings.

[Acts 1977, 65th Leg., p. 2409, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.015. Rules

The board shall adopt proper rules, forms, and contracts that in its judgment will protect the income from land leased under the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2409, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.016. Filing in Land Office

Surveys, files, records, copies of sale and lease contracts, and other records relating to the sales and leases authorized under the provisions of this chapter shall be filed in the land office and constitute archives.

[Acts 1977, 65th Leg., p. 2409, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 36.017 to 36.050 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

§ 36.051. Land Subject to Lease

(a) Subject to the provisions of this chapter, the board may lease to any person land, or a parcel of land, owned by the state as state eleemosynary and state memorial park land for agricultural purposes or for prospecting or exploring for and mining, producing, storing, caring for, transporting, preserving, and disposing of the oil and gas belonging to the state.

(b) The board shall not lease any of the land composing the San Jacinto Battleground State Park or Washington-on-the-Brazos State Park for any purpose.

[Acts 1977, 65th Leg., p. 2409, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.052. Subdivision of Land

The board may have the state eleemosynary and state memorial park land surveyed and subdivided into lots or blocks that will be conducive or convenient to facilitate the advantageous sale of oil and gas leases. The board may identify the lots and blocks by permanent markings on the ground.

[Acts 1977, 65th Leg., p. 2410, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.053. Maps and Plats

The board may make the maps and plats it considers necessary to carry out the purposes of this chapter.

[Acts 1977, 65th Leg., p. 2410, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.054. Abstracts of Title

The board shall obtain abstracts of title to the eleemosynary and state park land.

[Acts 1977, 65th Leg., p. 2410, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.055. Examination and Perfection of Title

(a) The board shall have the abstracts of title examined by the attorney general, who shall file written title opinions.

(b) The board shall take the necessary steps to perfect a marketable title to the land in the State of Texas.

[Acts 1977, 65th Leg., p. 2410, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.056. Filing Abstract of Title and Title Opinion

The abstract of title and the attorney general's title opinion shall be filed in the land office as public documents for the inspection of prospective purchasers of oil and gas leases on the land.

[Acts 1977, 65th Leg., p. 2410, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.057. Placing Lease on Market

If the board determines there is a demand for the purchase of oil and gas leases on a lot or tract of land which will reasonably ensure an advantageous sale, the board shall place the oil and gas in the land on the market in the blocks or lots which the board may designate.

[Acts 1977, 65th Leg., p. 2410, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.058. Advertisement of Lease

(a) The board shall advertise a brief description of the land from which the oil and gas is proposed to be sold. The advertisement shall give notice that sealed bids for the purchase of the oil and gas by lease will be opened at 10 a. m. on a designated day

and that sealed bids received up to that time will be considered.

(b) The board may have the advertisement placed in oil and gas journals in and out of the state and mailed generally to persons the board thinks may be interested.

[Acts 1977, 65th Leg., p. 2410, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.059. Minimum Royalty and Rental

(a) A bid shall not be accepted that offers a royalty of less than one-eighth of the gross production of oil and gas in the land covered by the bid. If all members concur, the board may increase the minimum royalty before the promulgation of the advertisement of the land.

(b) A bid must contain an obligation to pay at least \$1 an acre rental for delay in drilling, with the amount to be set by the board in advance of the advertisement.

[Acts 1977, 65th Leg., p. 2410, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.060. Bids

(a) A bid shall be directed to the board in care of the land office, retained by the commissioner until the day designated for opening the bids, and opened on that day by the board, or a majority of its members, who shall list, file, and register all bids and money received.

(b) A separate bid shall be made for each survey or subdivision of the survey.

(c) The bid shall state the amount of royalty offered and the amount the bidder is willing to pay in addition to the royalty and annual delay rentals provided for in this subchapter.

(d) The bid shall be accompanied by cash or checks, collectible in Austin, to cover the amount which the bid offers in addition to the royalty and delay rentals and a payment equal to the minimum delay rental fixed on the land per acre for delay in drilling if the bid is accepted.

[Acts 1977, 65th Leg., p. 2410, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.061. Rejection and Acceptance of Bids

(a) If a bidder offers a reasonable and proper price, and less than the price set by the board, the land advertised, or a whole survey or subdivision, may be leased for oil and gas purposes under the terms of this chapter and rules the board may prescribe, not inconsistent with the provisions of this chapter.

(b) The board may reject all bids and may withdraw any land advertised for lease before receiving and opening bids.

(c) If the board rejects all bids after a bidding by sealed bids, it may offer for sale and sell the oil and gas in the land, in separate whole surveys only or subdivisions of them, by open public auction at a price less than the price offered by the sealed bids.

(d) If there is no sale at public auction, the subsequent procedure for the sale of oil and gas leases is the manner provided in the previous sections of this subchapter.

(e) If the board determines that a satisfactory bid has been received for the oil and gas, it shall file the bid in the land office.

[Acts 1977, 65th Leg., p. 2411, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.062. Necessary Facilities

The board shall authorize the laying of a pipeline or telephone line and the opening of roads over eleemosynary and state park land it considers reasonably necessary for and incident to the purposes of this chapter.

[Acts 1977, 65th Leg., p. 2411, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.063. Prohibited Drilling Location

The board may not make a lease for oil or gas which permits the drilling for oil or gas within 1,000 feet of a building in which patients are confined.

[Acts 1977, 65th Leg., p. 2411, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 36.064 to 36.100 reserved for expansion]

SUBCHAPTER D. CONDITIONS OF LEASES

§ 36.101. Term of Lease

If oil or gas is discovered in paying quantities on a tract of land covered by a lease, the lease on that tract remains in force, and title to all rights purchased may be held by the owners, as long as oil or gas is produced in paying quantities from the tract. If oil or gas is not produced in paying quantities before the expiration of three years, the lease terminates.

[Acts 1977, 65th Leg., p. 2411, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.102. Assignment of Lease

(a) Rights purchased may be assigned in quantities of not less than 40 acres, unless there are fewer than 40 acres remaining in a survey, in which case the lesser area may be assigned.

(b) An assignment shall be filed in the land office within 100 days after the date of the first acknowledgment, accompanied by 10 cents an acre for each acre assigned. If the assignment is not filed as provided in this section and payment made, the assignment is ineffective.

[Acts 1977, 65th Leg., p. 2411, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.103. Relinquishment of Lease

(a) Rights to a whole survey or to an assigned portion of a survey may be relinquished to the state at any time by recording an instrument of relinquishment in the county or counties in which the area is located and filing it in the land office, accompanied by a \$1 fee for each area assigned.

(b) Such assignment does not relieve the owner of an obligation which already has accrued.

[Acts 1977, 65th Leg., p. 2412, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 36.104 to 36.130 reserved for expansion]

SUBCHAPTER E. RENTAL AND ROYALTY
PAYMENTS

§ 36.131. Annual Rental

(a) The lessee shall pay the annual delay rental every year for five years unless there is production in paying quantities on the land.

(b) If the royalties paid equal or exceed the annual rental fixed by the board, the payment of annual rental may be discontinued.

(c) If during the term of a lease issued under the provisions of this chapter the lessee is engaged in actual drilling operations for the discovery of oil and gas on land covered by the lease, no rental is payable on the tract on which the operations are being conducted as long as the operations are proceeding in good faith.

[Acts 1977, 65th Leg., p. 2412, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.132. Due Date for Payment

The royalty stipulated in the sale shall be paid on or before the last day of each month for the preceding month during the life of the rights purchased.

[Acts 1977, 65th Leg., p. 2412, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.133. Recipient of Payment

The royalty stipulated in the sale shall be paid to the land office for the benefit of the special building fund of the eleemosynary institutions. The payments made under the provisions of this chapter shall be made to the commissioner at Austin, who shall transmit to the State Treasurer for deposit all royalty, delay rentals, and all other payments, including all filing assignments and relinquishment fees.

[Acts 1977, 65th Leg., p. 2412, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.134. Statements Accompanying Payment

The payment shall be accompanied by the sworn statement of the owner, manager, or other authoriz-

ed agent, showing the gross amount of oil produced and saved since the last report and the amount of gas produced and sold off the premises, and the market value of the oil and gas, together with a copy of all daily gauges of tanks, gas meter readings, pipeline receipts, gas line receipts, and other checks and memoranda of the amounts produced and put into pipelines, tanks or pools, and gas lines or gas storage.

[Acts 1977, 65th Leg., p. 2412, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.135. Records Subject to Inspection

The books, accounts, receipts, and discharges of wells, tanks, pools, meters, and pipelines, and all contracts and other records relating to the production, transportation, sale, and marketing of oil and gas are subject to inspection and examination at all times by the commissioner, the attorney general, or any member of the Texas Board of Mental Health and Mental Retardation.

[Acts 1977, 65th Leg., p. 2412, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.136. State's Lien

The state has a first lien on all oil and gas produced on the leased area, and on all rigs, tanks, pipelines, telephone lines, machinery, and appliances used in the production and handling of oil and gas produced on the leased area, to secure any amount due from the owner of the lease.

[Acts 1977, 65th Leg., p. 2413, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 36.137 to 36.170 reserved for expansion]

SUBCHAPTER F. DUTIES OF LESSEE

§ 36.171. Duty to Develop and Prevent Drainage

(a) If the area in which oil or gas is sold is contiguous to or adjacent to land that is not eleemosynary and state park land, the acceptance of the bid and the sale constitute an obligation on the owner of the lease to adequately protect the land leased from drainage from adjacent land.

(b) If oil or gas is discovered on a tract covered by a lease issued under the provisions of this chapter, or on land adjoining the leased tract, the lessee shall conduct the operations necessary to prevent drainage from the tract covered by the lease and properly develop the tract.

(c) If the oil or gas in the area is sold at a lesser royalty, the owner shall protect the state from drainage from the land leased or sold for lesser royalty.

[Acts 1977, 65th Leg., p. 2413, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.172. Forfeiture of Lease

(a) The board may have a lease forfeited by an order entered on the minutes of the board reciting

the facts constituting the default and declaring the forfeiture.

(b) A lease is subject to forfeiture if:

(1) the owner of the rights acquired under this chapter fails to protect the land from drainage;

(2) the owner fails or refuses to make the payment of an amount due as rental on the lease or royalty on the production within 30 days after it becomes due;

(3) the owner or his authorized agent makes a false return or false report concerning production, royalty, or drilling;

(4) the owner fails or refuses to drill an offset well or wells in good faith as required by his lease;

(5) the owner or his agent refuses the proper authority access to the records and other data pertaining to the operations under the provisions of this chapter;

(6) the owner or his authorized agent fails or refuses to give correct information to the proper authority, or fails or refuses to furnish the log of a well within 30 days after production is found in paying quantities; or

(7) any of the material terms of the lease are violated.

(c) The board may have suit for forfeiture instituted by the attorney general.

(d) On proper showing by the forfeiting owner within 30 days after the declaration of forfeiture, the board may reinstate the lease on terms which it prescribes.

[Acts 1977, 65th Leg., p. 2413, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 36.173. Suit for Damages or Specific Performance

Forfeiture of the lease is not the exclusive remedy available to the state. If the owner violates the lease contract, the state may institute suit for damages or specific performance.

[Acts 1977, 65th Leg., p. 2414, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

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SUBCHAPTER A. GENERAL PROVISIONS

§ 51.001. Definitions

In this chapter:

- (1) "Commissioner" means the Commissioner of the General Land Office.
- (2) "Land office" means the General Land Office.
- (3) "Board" means the School Land Board.
- (4) "Comptroller" means the Comptroller of Public Accounts of the State of Texas.
- (5) "State Treasurer" means the Treasurer of the State of Texas.
- (6) "Board of regents" means the board of regents of The University of Texas System.
- (7) "Public school land" means all land of the state that is dedicated to the permanent school fund.
- (8) "Asylum land" means all land of the state that is dedicated to the various asylum funds.
- (9) "Surveyed land" means all or part of any tract of land surveyed either on the ground or by protraction and dedicated to the public school fund which is unsold and for which field notes are on file in the land office or that may be delineated on the maps of that office as such.
- (10) "Unsurveyed land" means any land that is not included in surveys on file in the land office or surveys delineated on maps of that office.

[Acts 1977, 65th Leg., p. 2417, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 51.002 to 51.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY
APPLICABLE TO THE SALE AND LEASE OF
PUBLIC SCHOOL AND ASYLUM LAND§ 51.011. Sale and Lease of Public School and
Asylum Land

Any land that is set apart to the permanent school fund and the various asylum funds under the constitution and laws of this state together with the mineral estate in riverbeds, channels, and the tidelands, including islands, shall be controlled, sold, and leased by the school land board and the commissioner under the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.012. Commissioner's Authority

Subject to the authority of the board and to exceptions and restrictions that may be imposed by the constitution and laws of this state, the commissioner is vested with the authority necessary to carry out the provisions of this chapter relating to the sale and lease of public school and asylum land and to the protection of this land from free use and occupancy and from unlawful enclosure.

[Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.013. Classification and Valuation of Land

(a) As the public interest may require, the commissioner shall classify or reclassify and value or revalue all public school and asylum land and shall designate the land as agricultural, grazing, timber, or a combination of these classifications based on the facts in the particular case.

(b) After the classification and appraisalment is entered on the records of the land office, no further action needs to be taken by the commissioner and no notice is required to be given to the county clerk for the classification and appraisalment to be effective.

[Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.014. Rules

(a) The commissioner may adopt rules necessary to carry out the provisions of this chapter and may alter or amend the rules to protect the public interest.

(b) Before rules are adopted under Subsection (a) of this section, the commissioner shall submit the rules to the governor for his approval.

[Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.015. Forms

The commissioner shall adopt forms that are necessary or proper to transact business that he is required to transact and may request that the attorney general prepare the forms.

[Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.016. Duties of the Attorney General

The attorney general shall furnish the commissioner with advice and legal assistance that may be required to execute the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.017. Furnishing Data to Board of Education

On request, the commissioner shall furnish to the State Board of Education all available data.

[Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.018. Records and Accounts

The commissioner shall keep in his custody as records of his office each application, affidavit, obligation, and paper relating to the sale and lease of public school and asylum land and shall keep accurate accounts with each purchaser or lessee.

[Acts 1977, 65th Leg., p. 2418, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.019. Special Fee

Each bidder on a mineral lease or land sale by the board shall remit by separate check a special sale fee in the amount and in the manner provided in Section 34.061 of this code.

[Acts 1977, 65th Leg., p. 2419, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.020. Refunds

(a) On presentation of proper proof, money paid in good faith to a fund in the State Treasury for public land to which the fund is not entitled shall be refunded by the comptroller in the following instances:

(1) if an error is made in good faith and the refund, stating to whom payment is to be made, is supported by the official signature of the commissioner or the attorney general;

(2) if the payment is made according to law but title cannot issue or possession cannot pass because of a conflict in boundaries, an erroneous sale, an erroneous lease, or other cause;

(3) if there is a sale of leased land;

(4) if lease money is paid on a previous forfeited sale and the sale has been reinstated and the interest paid;

(5) if erroneous timber sales or leases have been made;

(6) if overpayments have been made in final payments to the State Treasurer because of decreased acreage or other cause;

(7) if reduction has been made in acreage of timber sold or leased; or

(8) if payments are made in good faith by claimants of land where the applicants have no right to purchase the land as revealed by investigation of title.

(b) After specific appropriations are made according to law, refunds shall be paid from the funds to which the payments have been credited.

(c) Any claim for refund except a refund covered by Subdivision (1) of Subsection (a) of this section shall be certified by the commissioner, verified by the affidavit of the claimant, and approved by the attorney general as to the correctness and as to whom the refund is due.

(d) In the event of a failure of title or right of possession, money paid by any purchaser or lessee who subsequently sells the land or assigns the lease shall be refunded to the person on whom the loss falls.

[Acts 1977, 65th Leg., p. 2419, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 51.021 to 51.050 reserved for expansion]

SUBCHAPTER C. SALE OF PUBLIC SCHOOL AND ASYLUM LAND

§ 51.051. Sale of Land

Subject to the provisions of Section 32.109 of this code, all sales of land described in Section 51.011 of this code shall be made by or under the direction of the school land board to the applicant who submits the highest bid for the land at a price that is not less than the price set by the board for purchase of the land.

[Acts 1977, 65th Leg., p. 2419, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.052. Conditions for Sale of Land

(a) Land sold under the provisions of this subchapter shall be sold only in whole tracts and without condition of settlement and residence.

(b) Tracts of less than 80 acres shall be sold for cash.

(c) No land may be sold to corporations, and no corporation may purchase land under this subchapter.

[Acts 1977, 65th Leg., p. 2419, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.053. Prohibited Sale of Certain Land

Any surveyed public school land located within five miles of a well producing oil or gas in commercial quantities is subject to lease only and the surface rights shall not be sold.

[Acts 1977, 65th Leg., p. 2420, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.054. Reservation of Minerals

(a) Land dedicated to the permanent school fund shall be sold subject to a reservation of one-eighth of all sulphur and other mineral substances from which sulphur may be derived or produced and one-sixteenth of all other minerals as free royalties to the state.

(b) Land that is set apart for the various asylum funds shall be sold with the oil, gas, coal, and all other minerals reserved to the fund to which the land belongs.

(c) The provisions of this section do not apply to oil and gas sold from public school and asylum land covered by Subchapter F, Chapter 52, of this code.

(d) The provisions of this section do not apply to vacancies covered by Section 51.201 of this code. [Acts 1977, 65th Leg., p. 2420, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.055. Lease of Unsold Land

(a) Unsold public school and asylum land may be leased subject to sale for a term of not more than 10 years and for an amount of not less than five cents an acre a year.

(b) Land leased under this section is subject to sale on any sale date for which it is advertised to be sold.

[Acts 1977, 65th Leg., p. 2420, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.056. Application to Purchase Land

(a) A person who wants to purchase public school or asylum land shall submit to the commissioner a separate written application for each tract applied for as a whole.

(b) Each application shall:

(1) designate the land to be purchased;

(2) state the price offered;

(3) state any mineral reservations; and

(4) include an affidavit that the purchaser is purchasing the land for himself and that no other person or corporation is either directly or indirectly interested in the purchase of the land.

(c) At the time the application is submitted, the applicant shall pay one-fifth of the aggregate price offered for the land and shall submit his obligation in an amount equal to the amount of the unpaid purchase price offered for the land, binding the purchaser to pay to the land office on November 1 of each year until the purchase price is paid one-fortieth of the unpaid balance with interest on the unpaid purchase price at the rate of five percent a year.

(d) The sale of the land is effective from the date of the receipt and filing of the application, affidavit, obligation, and the payment of one-fifth of the price offered.

(e) The application to purchase and the notice of award shall state that the land is sold without condition of settlement and with a reservation of one-eighth of all sulphur and other mineral substances from which sulphur may be produced or derived and one-sixteenth of all minerals as a free royalty to the state.

[Acts 1977, 65th Leg., p. 2420, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.057. Delivery of Applications

(a) An application for the purchase of public school or asylum land shall be delivered to the land office in a sealed envelope addressed to the commis-

sioner with the words "application to buy land" and the date the land is to be sold endorsed on the envelope. Applications that do not have the required endorsements are nevertheless valid.

(b) The envelopes shall remain unopened and the applications unfiled, and the commissioner or his chief clerk shall keep the envelopes and applications in a safe and secure manner until the date of sale. [Acts 1977, 65th Leg., p. 2421, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.058. Method for Making First Payment

(a) An applicant shall submit with his application the required first payment in the form of money or remittance collectible on demand in Austin and convertible at par into money on order of the State Treasurer without liability.

(b) If a remittance is made payable to the commissioner, the payment is not invalid for that reason, but the commissioner shall endorse it to the State Treasurer without incurring liability and the remittance shall be treated as if it were payable to the State Treasurer.

(c) An application is void if the payment is not made as provided in this section. [Acts 1977, 65th Leg., p. 2421, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.059. Opening Applications

(a) On the date of sale, the application envelopes shall be opened and the applications shall be filed and the information entered on the docket of the board as provided in Section 32.108 of this code.

(b) Any person who desires to be present at the time the envelopes are opened may do so. [Acts 1977, 65th Leg., p. 2421, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.060. Recordation of First Payments

(a) After each application envelope is opened and the first payment for the land is in the land office, the commissioner shall have the payment listed on a daily list which shall be made in triplicate, showing the name and address of each applicant and the purpose for which each payment is made and shall transmit to the State Treasurer all of the payments together with two of the lists.

(b) On receiving the payments and the lists, the treasurer shall compare the payments with the lists, and if the treasurer finds that the payments and the lists are correct, he shall receipt one of the lists and return it to the commissioner and shall retain the other list.

(c) On receiving the list from the treasurer, the commissioner shall deliver the third list to the comptroller. [Acts 1977, 65th Leg., p. 2421, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.061. Collection of Remittances

(a) The State Treasurer shall immediately collect all collectible remittances and shall report to the commissioner and comptroller all remittances not collectible in Austin.

(b) Any remittances that cannot be collected shall be returned to the commissioner. [Acts 1977, 65th Leg., p. 2421, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.062. Disposition of First Payments

(a) The State Treasurer shall retain all first payments he has collected until the commissioner notifies him of the final disposition of the applications to purchase land.

(b) After the treasurer is notified, he shall return to each applicant whose application is rejected the amount of his first payment.

(c) A duplicate of the notice to the treasurer of accepted and rejected applications and the amount of the first payment shall be transmitted to the comptroller.

(d) On the last working day of each month, the treasurer shall deposit in the State Treasury to the credit of the proper fund the amount collected by him on accepted applications during that month. [Acts 1977, 65th Leg., p. 2421, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.063. Duplicate High Bids

If two or more applicants submit the same bid for a tract of land and the bids are the highest bids offered on the sale date, the school land board shall reject all of the bids and the land shall be offered for sale on the next sale date. Any subsequent bid for the land may not be considered if it is less than the high bids rejected under this section. [Acts 1977, 65th Leg., p. 2422, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.064. Individual Bids

(a) Any public school or asylum land offered for sale for which no application is made under Section 51.056 of this code may be sold to any person who files a proper application in the land office in the manner provided by law.

(b) A person who files an application under this section is not required to have any memorandum on the envelope containing the application.

(c) If two or more applications are filed under this section on the same day for the same land, the person offering the highest price shall have his offer accepted, but if two or more persons offer the same price for the land, the commissioner and the school land board shall proceed in the manner provided by this chapter for the first filing. [Acts 1977, 65th Leg., p. 2422, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.065. Notice and Record of Sale

(a) The commissioner shall notify the county clerk of the proper county of the sale of each tract of land, the name and address of the purchaser, and the price of the land.

(b) After being informed of any sale of public school or asylum land, the county clerk shall enter in his books opposite the description of the land sold, the name of the purchaser and the date of the sale.

(c) The notice of sale and the book containing the entry are public records.

[Acts 1977, 65th Leg., p. 2422, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.066. Notice of Award

(a) The commissioner shall prepare and issue a notice of award for each tract of land sold.

(b) Each notice of award shall be appropriately numbered and shall be worded in a manner that will constitute a receipt for the first payment after it is signed by the commissioner.

(c) One copy of the notice of award shall be retained in the land office and the other copy shall be sent to the purchaser.

[Acts 1977, 65th Leg., p. 2422, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.067. Information Required With Payments

A person who is making a payment of principal, interest, or lease rental on land shall give the name of the original purchaser or lessee and shall sufficiently designate the land.

[Acts 1977, 65th Leg., p. 2422, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.068. Fund Accounts

(a) Payments of principal, interest, and lease rental shall be accounted for in a similar form but separate from first payments on land.

(b) The state treasurer shall deposit 80 percent of all these payments received each month to the probable fund to which they belong as indicated by the commissioner and shall hold the remaining 20 percent on deposit receipts furnished by the comptroller until definite notice is received from the commissioner as to the proper fund. After definite notice is received, the State Treasurer shall credit the full amount to the proper fund.

(c) The commissioner shall give definite notice to the State Treasurer and comptroller immediately after he issues receipts to the persons making the payments.

(d) The commissioner, State Treasurer, and comptroller shall keep an account with each fund according to advices given by them and shall retain the advices as permanent records.

[Acts 1977, 65th Leg., p. 2423, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.069. Disposition of Payments on Public School Land

(a) Payments on public school land received by the commissioner shall be transmitted to the State Treasurer to be credited to the proper fund.

(b) The State Treasurer shall credit payments received on the purchase price of public school land to the permanent school fund and payments received as interest on the purchase of public school land to the available school fund.

[Acts 1977, 65th Leg., p. 2423, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.070. Unpaid Interest on Public School Land

(a) Unpaid and delinquent interest on sales of public school land shall bear interest at a rate of five percent compounded annually as it accrues on November 1 of each year.

(b) No patent may be issued for any public school land until all compounded interest is paid to the time of issuing the patent.

[Acts 1977, 65th Leg., p. 2423, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.071. Forfeiture of Land

(a) If interest on a sale of land is not paid when due, the land is subject to forfeiture by the commissioner by entry on the wrapper containing the papers "Land Forfeited" or similar words, the date of the forfeiture, and the official signature of the commissioner.

(b) After the entry is made on the wrapper, the land and all payments that have been made for it are forfeited to the state, and the land may be offered for sale on a subsequent sale date.

[Acts 1977, 65th Leg., p. 2423, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.072. Effect of Forfeiture

In cases of forfeiture, the original obligations and penalties are as binding as if no forfeiture occurred.

[Acts 1977, 65th Leg., p. 2423, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.073. Classification and Sale of Leased and Forfeited Land

(a) Before it is sold, the commissioner shall classify and value land on which leases have been cancelled or have expired and land forfeited to the state.

(b) Except as provided in Section 51.064 of this code, no land may be sold until it is advertised.

[Acts 1977, 65th Leg., p. 2423, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.074. Reinstatement of Land Purchases

(a) If no rights of third persons have intervened, the purchasers or their vendees, heirs, or legal repre-

sentatives, who claim land that has been forfeited for nonpayment of interest, may have the claim reinstated on written request by paying into the State Treasury the amount of interest due on the claim up to the date of reinstatement.

(b) The right to reinstate a claim under this section is limited to the last purchaser from the state, or his vendees, heirs, or legal representatives, and must be exercised within five years from the date of the forfeiture.

(c) If there is a valid outstanding grazing lease that prevents reinstatement within the time provided in Subsection (b) of this section, the claim may be reinstated within 60 days after the grazing lease expires if the application for reinstatement together with the payment for all past due interest has been filed in the land office within five years from the date of forfeiture.

[Acts 1977, 65th Leg., p. 2423, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.075. Forfeiture of a Deceased Purchaser's Land

(a) If a purchaser of land dies, the heirs or legal representatives of the deceased have one year following November 1 after the purchaser's death in which to make payment before the commissioner declares the land to be forfeited.

(b) If the forfeiture is declared by the commissioner within the time period stated in Subsection (a) of this section, it will be set aside on proper proof of death if no rights of third parties have intervened. [Acts 1977, 65th Leg., p. 2424, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.076. Legal Proceedings

None of the provisions of Sections 51.071 through 51.072 and 51.074 through 51.075 of this code shall prevent the state from instituting legal proceedings necessary:

- (1) to enforce a forfeiture;
- (2) to recover the full amount of interest and penalties that may be owed to the state at the time the forfeiture occurred; or
- (3) to protect another right to the land.

[Acts 1977, 65th Leg., p. 2424, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.077. Lien

To secure the payment of principal and interest due on a sale of public school land, university land, and asylum land, the state has an express lien for the use and benefit of the fund to which the land belongs. The lien is in addition to any right and remedy that the state has for enforcement of the payment of principal or interest due and unpaid. [Acts 1977, 65th Leg., p. 2424, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.078. Transfer of Indebtedness

(a) If a person or the Federal Farm Loan Bank, with the consent of the owner of land covered by Section 51.077 of this code, pays to the state the principal and interest due on any obligation given for the land, the commissioner, on written request of the owner, may execute, acknowledge, and deliver to the person or the Federal Farm Loan Bank a written transfer of the indebtedness held by the state. The written request of the owner shall be acknowledged in the manner required for the conveyance of real estate and shall be accompanied by an affidavit of ownership.

(b) The person or the Federal Farm Loan Bank is subrogated to all the rights, liens, and remedies held by the state to secure and enforce the payment of the principal and interest that was paid to the state.

(c) If the land claimed by a person claiming to be the owner is held under evidence of title that the law or rules of the land office do not authorize to be filed in the land office, the commissioner may admit the owner to be the person that the person or the Federal Farm Loan Bank paying the indebtedness admits to be the owner, and on making this admission the instrument of transfer shall be executed.

(d) None of the provisions of this section shall change any part of the law or rules that apply to the land office with relation to titles to land and issuance of patents.

[Acts 1977, 65th Leg., p. 2424, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.079. Transfers Generally

(a) An owner of public school land or asylum land purchased from the state may sell the land or a definite portion of the land in any size tract.

(b) If land to be sold is separated from another portion of land but is not sufficiently designated by metes and bounds in the papers offered to be filed so that it may be identified with certainty, the commissioner shall require that proper field notes accompany the papers before he files them and separates the land.

[Acts 1977, 65th Leg., p. 2425, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.080. Personal Transfers

(a) A vendee who obtains through personal transfer a whole survey or a whole portion of a survey purchased from the state as a whole or who obtains through personal transfer a portion of a survey purchased from the state as a whole or in a quantity less than the whole survey is entitled to become a substitute purchaser directly from the state in the manner provided in this section.

(b) With the approval of the commissioner, the vendee may file in the land office a complete chain of title through personal transfers that have been

duly executed and recorded in the counties in which the land or a part of the land is located and shall pay the fees provided by law.

(c) After the papers are filed in the land office, the substituted purchaser shall have his portion of land separated from the other portion of land, if any, on the records of the land office and shall assume and be liable to the state for all unpaid principal and interest due the state for the land conveyed by the deeds that are filed, together with all obligations and penalties attaching to the original purchase.

(d) The obligation of the original purchaser and the obligation of all vendors of the substituted purchaser are enforceable against the substituted purchaser as if he were the original purchaser from the state, and the obligation of the vendor or vendors of the substituted purchaser are canceled.

[Acts 1977, 65th Leg., p. 2425, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.081. Transfers Other Than Personal Transfer

A person who claims title through a source other than by personal transfer to a definite portion of a survey that is less than the whole survey purchased from the state, with the approval of the commissioner, may have the portion of land that he claims separated from the other portion of the survey on the records of the land office by filing in the land office evidence of claims that may be required by the commissioner and by paying the fees provided by law for papers filed as evidence of the claim or a right to a separation of the area.

[Acts 1977, 65th Leg., p. 2425, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.082. Liability of Vendee

After a separation of land is made on the records of the land office, the portion that is separated shall be charged and credited with its pro rata part of the principal and interest due and paid to November 1 preceding the date of the filing of the transfers or other papers.

[Acts 1977, 65th Leg., p. 2425, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.083. Patent on Part of a Tract

(a) If an owner or claimant of land whose ownership or claim is shown on the records of the land office desires a patent on a portion of the whole tract, the owner or claimant, with the approval of the commissioner, may file field notes for the portion of the tract on which the patent is desired, together with the filing fee required by law, and may obtain a patent for the portion of the tract after the full price is paid, together with all fees required by law.

(b) If the ownership of the tract is evidenced by personal transfer, the patent shall be issued to the owner and his assigns, but if the claimant claims title through other evidence than by personal transfer, the patent shall be issued in the name of the person and his assigns who hold title by original purchase or in the name of the person and his assigns who appear on the records to hold title through the last personal transfer.

(c) If a patent is issued in the name of any person other than the legal owner, the patent and the rights granted in the patent inure to the benefit of the legal owner.

[Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.084. Sale Without Condition of Residence

No sale made without condition of settlement may be questioned by the state or any person after one year from the date of the sale.

[Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.085. Time for Purchase of Land

Each purchaser of land has the option of paying the purchase price in full at any time, together with all fees, and obtaining a patent for the land.

[Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 51.086 to 51.120 reserved for expansion]

SUBCHAPTER D. LEASE OF LAND

§ 51.121. Lease of Unsold Land

Except as otherwise provided, unsold public school and asylum land may be leased for a term of not more than 10 years and for an amount of not less than five cents an acre, payable annually in advance, but the land that is leased but remains unsold is subject to sale or trade pursuant to the laws governing the sale or trade of unsold land.

[Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.122. Advertisement of Leases

Leases under the provisions of this subchapter may be advertised in the manner provided in Section 32.107 of this code.

[Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.123. Lease Application

A person who desires to lease land shall submit a written application to the commissioner specifying and describing the particular land he desires to lease.

[Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.124. Award of Lease

(a) A lease shall be awarded to the highest responsible bidder.

(b) The lease shall be awarded under the rules and in the quantities the board considers to be in the best interest of the state and not inconsistent with the equities of the occupant.

[Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.125. Rejection of Bid or Offer to Lease

Any bid or offer to lease may be rejected by the board for fraud, collusion, or other good and sufficient cause before the lease is signed.

[Acts 1977, 65th Leg., p. 2426, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.126. Notification of Acceptance and Execution of Lease

After the applications are received, the commissioner shall give written notification to the successful applicant that his bid or offer to lease is accepted and execute a lease to the applicant in the name and by the authority of the State of Texas.

[Acts 1977, 65th Leg., p. 2427, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.127. Recording Lease

(a) After the lessee has paid the rent for the land for a year in advance, the commissioner shall deliver the lease to the clerk of the county in which the land is located.

(b) When a lease is filed for record, the clerk shall prepare a memorandum or abstract of the lease and shall record the memorandum or abstract in a well-bound book or on microfilm kept in his office.

(c) The memorandum or abstract shall contain:

- (1) the number of the survey leased;
- (2) the name of the original grantee;
- (3) the amount of land leased;
- (4) the name of the lessee;
- (5) the date of the lease; and
- (6) the term of years the lease is to run.

(d) On payment of the fee required by law, the clerk shall deliver the lease to the lessee.

(e) Except for the record made under this section, no other record of a lease is required.

[Acts 1977, 65th Leg., p. 2427, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.128. Cancellation of Lease

(a) If a lessee fails to pay the annual rent within 60 days after it is due, the commissioner shall cancel the lease with a written document signed by him with his seal attached.

(b) The commissioner shall file the document with the other papers relating to the lease, and the lease shall terminate immediately.

[Acts 1977, 65th Leg., p. 2427, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.129. Lien

(a) During the continuance of the lease and after forfeiture, the state has a lien on all property owned by the lessee which is located on the leased premises to secure payment of rent due.

(b) The lien is superior to all other liens.

(c) A reservation of the lien in the lease is not essential to preserve its validity.

[Acts 1977, 65th Leg., p. 2427, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.130. Removal of Improvements

An improvement made by a lessee on land leased by him may be removed by the lessee on the expiration of the lease or, at the discretion of the commissioner, may become the property of the state if, in the original lease, the commissioner and the lessee agree on adequate credit to be applied to the rental to be paid the state by the lessee, thereby allowing the lessee an agreed consideration.

[Acts 1977, 65th Leg., p. 2427, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 51.131 to 51.170 reserved for expansion]

SUBCHAPTER E. SALE AND LEASE OF VACANCIES

§ 51.171. Sale and Lease of Vacant Land

Vacant and unsurveyed public school land except riverbeds, channels, islands, lakes, bays, and other areas in tidewater limits shall be sold and leased under the provisions of this subchapter.

[Acts 1977, 65th Leg., p. 2427, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.172. Definitions

In this subchapter:

(1) "Good-faith claimant" and "claimant" mean any person:

(A) who occupies or uses or has previously occupied or used or whose predecessors in interest have occupied or used a vacancy for purposes other than exploring for or removing oil, gas, sulphur, or other minerals from the vacancy; and

(B) who has himself or whose predecessors in interest had the vacancy enclosed or within definite recognized boundaries and in possession for a period of 10 years with a good-faith belief that the vacancy was in-

cluded inside the boundaries of the survey or surveys that were previously titled, awarded, or sold under circumstances that would have vested title in the vacancy if it were actually located within the boundaries of the survey or surveys whose boundaries are recognized boundaries in the community.

(2) "Vacancy" means an area of unsurveyed public school land that:

(A) is not in conflict on the ground with land previously titled, awarded, or sold;

(B) has not been listed on the records of the land office as public school land; and

(C) was, on the date of filing, neither subject to an earlier subsisting application to purchase or lease by a discoverer or claimant nor involved in pending litigation brought by the state to recover the land.

(3) "Applicant" means any person, other than a good-faith claimant, who discovers and files an application to purchase or lease a vacancy.

[Acts 1977, 65th Leg., p. 2428, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.173. Persons Eligible to Purchase and Lease Land

(a) A vacancy may be sold to a good-faith claimant whether or not the vacancy is located within five miles of a well producing oil, gas, or other minerals in commercial quantities, but a person who is not a good-faith claimant may not purchase a vacancy that is located within five miles of a well producing oil or gas in commercial quantities.

(b) If there is no good-faith claimant or if the claimant fails to exercise his preferential right, a vacancy located within five miles of a well producing oil or gas in commercial quantities shall be available only for lease.

[Acts 1977, 65th Leg., p. 2428, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.174. Purchase of Vacancy by Adjoining Landowner

If the owner of the land adjoining an alleged vacancy files an application to purchase the vacancy and no application to purchase or lease the vacancy has been previously filed, the owner of the adjoining land, who otherwise qualifies as a good-faith claimant, shall be considered a good-faith claimant regardless of the length of time he has owned the adjoining land or has enclosed the vacancy or has had it within definite recognized boundaries and in possession with the belief that the vacancy was included within his survey.

[Acts 1977, 65th Leg., p. 2428, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.175. Application to Purchase or Lease a Vacancy

(a) An applicant who claims that a vacancy exists and who desires to purchase or lease the vacancy shall file with the county surveyor in the county in which any part of the vacancy is located a sworn written application in duplicate to purchase or lease the vacancy.

(b) The application shall:

(1) describe the land that is claimed to be vacant;

(2) state the desire of the applicant to purchase or lease the land under the provisions of this chapter;

(3) give the names and addresses of any owners or claimants of land or any interest in land or of leases on, adjoining, overlapping, or including the land claimed to be vacant as far as can be determined from the records of the land office and the county clerk's office in the county in which the land is located and the tax records of the county in which the land is located;

(4) give the names and addresses of any persons who, from facts known to the applicant, assert any right to the alleged vacant land; and

(5) state that the applicant knows of no other claimants than those listed.

[Acts 1977, 65th Leg., p. 2428, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.176. Filing Fee

At the time the application is filed, the applicant shall pay to the county surveyor a filing fee of \$5.

[Acts 1977, 65th Leg., p. 2429, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.177. Filing Application With County

(a) The county surveyor shall mark the exact date and hour of filing on the original and duplicate copy of each application and shall return one copy of the application to the applicant and shall record the other copy in a book kept for that purpose.

(b) If the county does not have a county surveyor, the preliminary filing of the application shall be with the county clerk. The county clerk shall record the application in a book kept for that purpose and not in the deed records.

[Acts 1977, 65th Leg., p. 2429, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.178. Filing Application With Commissioner

(a) Within 10 days after the application is filed with the county surveyor, the copy of the application that is returned to the applicant shall be filed with the commissioner.

(b) The commissioner shall mark the date of filing on the application.

(c) The applicant shall pay to the commissioner a filing fee of \$100.

(d) Failure to file the application with the commissioner in the time provided by this section and to pay the filing fee constitutes a waiver of all rights under the application.

(e) As between applicants, priority dates from the time of filing the application with the county surveyor.

[Acts 1977, 65th Leg., p. 2429, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.179. Deposit

(a) The commissioner shall notify the applicant by letter of the estimated cost of proceeding under the application, and within 30 days after the date of the commissioner's letter, the applicant shall make a deposit with the commissioner to pay the cost of the work that may be necessary to comply with the request contained in the application.

(b) On failure to make the deposit required under this section, all rights under the application are lost. [Acts 1977, 65th Leg., p. 2429, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.180. Insufficient Deposit

(a) If the deposit is insufficient, the applicant shall be requested by letter to make a further deposit of an amount determined by the commissioner.

(b) If the further deposit is not made within 30 days after the date of the letter, work shall be discontinued and the application canceled with the cancellation endorsed on the application.

(c) On cancellation, the right to purchase or lease the vacancy under the application is lost.

[Acts 1977, 65th Leg., p. 2429, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.181. Appeal of Amount of Deposit

(a) The applicant is entitled to appeal the estimated cost determined by the commissioner to a district court in Travis County by giving written notice to the commissioner within 15 days after receiving the estimated cost from the commissioner as provided in Sections 51.179 through 51.180 of this code.

(b) The applicant has 15 days after the district court enters its decision in which to pay the amount ordered by the court's decision.

[Acts 1977, 65th Leg., p. 2430, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.182. Deposits as Trust Fund

Deposits provided under Sections 51.179 through 51.180 of this code shall be a special trust fund to be used only for the purpose authorized by this subchapter.

[Acts 1977, 65th Leg., p. 2430, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.183. Statement and Refund of Remaining Deposit

As soon as the total expense properly charged against the deposit is determined, the commissioner shall render a complete statement to the applicant together with any balance remaining from the deposit.

[Acts 1977, 65th Leg., p. 2430, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.184. Notice of Intention to Survey

(a) After the application is filed with the commissioner and the deposit is made, the commissioner shall mail a notice of intention to survey to all persons named as interested persons in the application at the addresses provided in the application and to the attorney general.

(b) The notices shall be deposited in the post office in Austin at least 10 days before the date set for the beginning of the survey.

[Acts 1977, 65th Leg., p. 2430, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.185. Appointment of Surveyor

(a) The commissioner shall appoint a surveyor to make the survey in accordance with the notice of intention to survey.

(b) The surveyor shall be a surveyor licensed by the state or the county surveyor of the county in which the vacancy or part of the vacancy is located.

(c) The fees and expenses paid for the survey shall be the same as provided by law, and if the fees and expenses are not provided by law, the commissioner and surveyor shall make an agreement as to fees and expenses that shall not be more than an amount that is reasonable for the work performed.

(d) The fees and expenses shall be paid by the applicant.

[Acts 1977, 65th Leg., p. 2430, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.186. Survey Report

(a) Except as provided in Subsection (b) of this section, a written report of the survey, together with field notes describing the land and the lines and corners surveyed and a plat showing the results of the survey, shall be filed in the land office within 120 days from the filing of the application.

(b) The commissioner may extend the time for filing the survey if good cause is shown. The cause for extension of time shall be stated in writing and filed as part of the record of the proceedings. An extension of time may not be more than 60 days.

(c) The survey report shall give the names and post-office addresses of all persons who have possession of the land described in the application and of all persons found by the surveyor who have or claim any interest in the land.

[Acts 1977, 65th Leg., p. 2430, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.187. Personal Survey

Any interested party at his own expense may have any surveying done that he considers desirable.

[Acts 1977, 65th Leg., p. 2431, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.188. Hearing and Notice

(a) Within 60 days after the surveyor makes his report, a hearing may be held before the commissioner to determine whether or not there is a vacancy.

(b) The date for the hearing shall be provided in the notice that the commissioner shall give to all persons thought to be interested parties and to all persons shown by the record of the proceeding to be interested parties, including the attorney general.

(c) The notice of the hearing shall be deposited at the post office in Austin at least 10 days before the date set for the hearing.

(d) At the hearing, the state and each interested party, whether or not he received notice, is entitled to be heard.

[Acts 1977, 65th Leg., p. 2431, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.189. Determination of Vacancy by Commissioner

(a) If it appears to the commissioner that the alleged vacancy is not in conflict with land previously titled, awarded, or sold by the state, he shall give prompt notice of this finding to the applicant and to all persons who were previously identified as interested parties.

(b) After the notice is given under Subsection (a) of this section, and subject to the preferential right of a good-faith claimant, the applicant is entitled for 120 days to purchase or lease the portion of the land that is determined to be vacant at a price set by the board as provided in this code and with the same royalty reservation as provided in Section 51.201 of this code.

(c) No award may be made by the commissioner unless a hearing is held, and no presumption may obtain in a suit involving the existence of a vacancy as a result of the action of the commissioner in this respect.

[Acts 1977, 65th Leg., p. 2431, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.190. Purchase or Lease by Applicant

(a) If there is no good-faith claimant or if no good-faith claimant exercises his preferential right within the time allowed, the applicant is entitled to purchase or lease, according to his application, the vacancy for which he made application and which is found to exist.

(b) Consideration shall be determined by the board as provided in this subchapter, but without consideration of potential mineral value.

[Acts 1977, 65th Leg., p. 2431, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.191. Suit to Recover Land

A good-faith claimant of a vacant or unsurveyed tract of land has 90 days after the sale or lease of the land by the commissioner to institute suit to set aside the sale or lease of the land. If the suit is not instituted within the 90-day period by the good-faith claimant, he loses all preferential rights to purchase or lease the land.

[Acts 1977, 65th Leg., p. 2431, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.192. Denial of Vacancy by Commissioner

(a) If the commissioner decides that the area alleged to be vacant is not vacant, he shall endorse this decision on the application and file it with his finding.

(b) The commissioner shall promptly notify the applicant of his decision by registered mail and shall file all reports and papers received in connection with the application.

(c) After the commissioner takes all action provided under Subsections (a) and (b) of this section, he shall take no further action with respect to the application unless the existence of the alleged vacancy is determined by a court of competent jurisdiction.

(d) Within 90 days after the commissioner's decision is mailed, unless the applicant files suit in a district court in a county in which part of the alleged vacancy is located to litigate the question of the existence of a vacancy, the applicant's application and all preference rights acquired to purchase or lease the alleged vacancy become null and void.

[Acts 1977, 65th Leg., p. 2432, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.193. Preferential Right of Good-Faith Claimant

(a) A good-faith claimant who ascertains that a vacancy exists or that a claimed vacancy may exist or who has been notified by the commissioner that a vacancy has been found to exist on land claimed by him shall have a preferential right to purchase or lease the vacancy at any time until 90 days after a decision of the commissioner declaring the existence of a vacancy.

(b) The good-faith claimant may purchase or lease the vacancy by submitting a written application to the commissioner for the purchase or lease of the vacancy and by furnishing to the commissioner satisfactory proof that he is a good-faith claimant.

(c) The good-faith claimant is entitled to purchase or lease the portion of the land that is vacant at the price set by the board subject to the royalty reservations provided in this subchapter which are effective on the date the application is filed.

[Acts 1977, 65th Leg., p. 2432, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.194. Term of Preferential Right

A good-faith claimant has a preferential right to purchase the land alleged or adjudicated to be vacant until 90 days after the final judicial determination of the existence of the vacancy.

[Acts 1977, 65th Leg., p. 2432, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.195. Effect of Good-Faith Claimant's Application

The application of a good-faith claimant may not be used or considered as an admission on his part that a vacancy exists.

[Acts 1977, 65th Leg., p. 2432, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.196. Procedure for Purchase or Lease by Good-Faith Claimant

(a) On the date a good-faith claimant's application is filed, if there is no valid and subsisting application previously filed by an applicant covering the alleged vacancy, the application of the good-faith claimant shall be filed and shall be accompanied by:

(1) a \$1 filing fee;

(2) a written report of a surveyor licensed by the state or by the county surveyor of any county in which all or part of the alleged vacancy is located;

(3) field notes describing the land and the lines and corners surveyed;

(4) a plat showing the results of the survey; and

(5) any proof that will show to the satisfaction of the commissioner that the applicant is a good-faith claimant.

(b) The good-faith claimant may file his application to purchase or lease and within 120 days from the date of filing the application with the commissioner have a survey made of the alleged vacancy and file the report, field notes, and plat in the land office together with proof that he is a good-faith claimant.

(c) If it appears to the commissioner that the alleged vacancy is not in conflict with land previously titled, awarded, or sold by the state, the commissioner shall grant the application under the provisions of this subchapter. Before the application is granted, the commissioner may hold a hearing at which interested persons may appear.

[Acts 1977, 65th Leg., p. 2432, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.197. Failure to Exercise Preferential Right Within Certain Time

(a) If the good-faith claimant does not exercise his preferential right to purchase within 90 days after a decision of the commissioner under the provisions of this subchapter, the applicant shall be awarded an oil, gas, and mineral lease on not more than seven-eighths of the minerals.

(b) The consideration for the lease shall not be less than \$1 an acre, and the lease shall be for a primary term of five years.

(c) The lease shall be subject to other consideration and terms required by the board and the preferential right of a good-faith claimant until 90 days after final judicial determination under Section 51.194 of this code.

[Acts 1977, 65th Leg., p. 2433, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.198. Repayment of Applicant's Expenses

Within 90 days after the commissioner declares the vacancy to exist, the good-faith claimant shall repay to the applicant the expenses incurred in determining the existence of a vacancy, except filing fees, as provided in this subchapter or the good-faith claimant will lose all preferential rights to purchase or lease the land.

[Acts 1977, 65th Leg., p. 2433, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.199. Judicial Determination of Good-Faith Claimant

If the commissioner fails to determine whether or not there is a good-faith claimant or if his decision is questioned by an applicant or by a person asserting to be a good-faith claimant, the issue shall be determined in any suit brought under this subchapter to determine the existence of the alleged vacancy.

[Acts 1977, 65th Leg., p. 2433, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.200. Rights of Holders of Title and Holders of Interests in Title of a Claimant

(a) If all owners holding title under the claimant or an interest in the title under which the claimant claims to be a good-faith claimant accept the provisions of this section and contribute their proportionate part of the royalty reserved to the state and the royalty awarded to the applicant, the purchase by the good-faith claimant under the preferential right inures distributively to their benefit.

(b) The royalty reservations shall be deducted distributively and proportionately from the mineral interest of each owner including mineral leases if the area is under a mineral lease.

(c) As a condition of this subchapter, the good-faith claimant receiving the patent or award or for whose benefit a patent or award is received shall

recognize the proportionate interests of other owners who benefit by the award of the preferential right.

(d) The consideration for the purchase shall be determined by the board without considering the potential value of minerals or any improvements located on the vacancy but shall not be less than \$1 an acre. The state retains the right to recover from the party or parties liable the market value when produced of all oil, gas, sulphur, or other minerals that may have been produced from the area before the effective date of the patent or award less an offset to the operator for the actual cost of development and production.

(e) No mineral lease executed by a good-faith claimant before filing the vacancy claim may give the lessee any interest in or to the vacancy.

(f) No title to land or to a mineral interest in land acquired from the state under a preferential right may be held to pass as after-acquired title because of any covenant of general warranty, description, or other provision contained in any conveyance executed before the date of award under the preferential right.

[Acts 1977, 65th Leg., p. 2433, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.201. Reservation of Minerals

(a) If a good-faith claimant purchases a vacancy located within five miles of a well producing oil, gas, or other minerals in commercial quantities, a free royalty of one-eighth of all oil, gas, sulphur, and other minerals shall be reserved to the state.

(b) If a vacancy that is not covered by Subsection (a) of this section is sold, a free royalty of one-sixteenth of all oil and gas production and one-eighth of all sulphur and other minerals shall be reserved to the state.

(c) If a good-faith claimant fails to exercise his preferential right to purchase a vacancy within 90 days after the commissioner determines the existence of the vacancy, the royalty reserved by the state shall be one-eighth of the oil and gas and one-sixth of the sulphur and other minerals.

(d) The state shall reserve as a free royalty at least one-eighth of all oil, gas, sulphur, and other minerals on vacancies that are leased by the state as determined by the board.

[Acts 1977, 65th Leg., p. 2434, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.202. Mineral Reservations Under Sale Made to Claimant After 90-Day Deadline

(a) If a good-faith claimant does not exercise his preferential right to purchase until after 90 days after the decision of the commissioner determining the existence of a vacancy, the sale made to the claimant shall be subject to a reservation to the

state of a free royalty of one-eighth of all oil, gas, sulphur, and other minerals and subject to any lease made by the state to the applicant of not more than thirteen-sixteenths mineral interest as provided in this chapter.

(b) If the commissioner has previously executed a mineral lease on a larger portion of the minerals under the land, the lease shall be amended to cover only thirteen-sixteenths of the minerals so that it will conform to preferential rights given to good-faith claimants.

[Acts 1977, 65th Leg., p. 2434, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.203. Royalty for Applicant

If there is a valid subsisting application previously filed by an applicant on the date that the good-faith claimant files his application to purchase under a preferential right, and if the good-faith claimant exercises his preferential right to purchase within 90 days after the commissioner's decision under this subchapter, a free royalty of one-sixteenth of all oil, gas, sulphur, and other minerals that may be produced from the land shall be added to the free royalty interest reserved to the state and shall be awarded by the state to the applicant. The free royalty shall be deducted proportionately from the good-faith claimant's award.

[Acts 1977, 65th Leg., p. 2434, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.204. Lease of Vacancy for Mineral Development

(a) The instrument of sale for a vacancy shall provide that the purchaser is entitled to execute oil, gas, and mineral leases on the vacancy without the joinder or approval of the commissioner or the board.

(b) Bonus money and rentals paid under a lease executed under this section shall be paid to and shall be the property of the purchaser of the land.

(c) Any lease executed under the provisions of this section shall reserve to the state the free royalty provided in Section 51.201 of this code.

[Acts 1977, 65th Leg., p. 2435, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.205. Appeal

(a) A person who is aggrieved by any action taken by the commissioner under the provisions of this subchapter or with reference to any application to purchase or lease a vacancy may institute suit in the district court of any county in which part of the land is located to try the issues of boundary, title, ownership of any alleged vacancy involved, and preferential rights of the person.

(b) Within 30 days after the suit is filed, the plaintiff shall have a certified copy of the original

petition served on the attorney general and the commissioner by the sheriff or a constable of Travis County and shall have the officer's return filed with the papers in the suit.

(c) Whether the attorney general answers or intervenes in the suit or institutes a suit, the venue of all suits following the filing of the application shall be in the county in which the land or part of the land is located.

(d) If the litigation is prosecuted to a final judgment, the judgment is binding on the state.

(e) The attorney general must intervene on behalf of the state in suits brought under this section. [Acts 1977, 65th Leg., p. 2435, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 51.206 to 51.240 reserved for expansion]

SUBCHAPTER F. PATENTS

§ 51.241. Issuance of Patent

The commissioner shall issue a patent when the records of his office reflect that full payment for land has been made where required and fees that are due on the land have been paid to the land office and have not been withdrawn, including the fee for recording the patent in the county or counties in which the land is located.

[Acts 1977, 65th Leg., p. 2435, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.242. Patent Fees

When a person applies for a patent, he shall pay to the land office in addition to all other required payments \$1 for each county in which all or a part of the land is located and shall give the name and address of the owner or agent.

[Acts 1977, 65th Leg., p. 2435, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.243. Requisites of a Patent

(a) Each patent for land from the state shall be issued in the name and by authority of the state under the seal of the state and the land office and shall be signed by the governor and countersigned by the commissioner.

(b) Before the patent is delivered to the person who is entitled to it, it shall be registered in the land office patent book.

[Acts 1977, 65th Leg., p. 2436, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.244. Delivery of Patent

(a) When a patent is ready for delivery, the commissioner shall send it, together with the check for payment of the fee required by Section 51.242 of this code and the name and address of the owner or his

agent, by registered mail to the clerk of the proper county.

(b) On receiving the patent, the clerk shall record it and shall send the patent, together with the name and address of the owner or his agent and the remaining recording fees, by registered mail to the clerk of another proper county until the patent has been recorded in each county in which all or part of the land is located.

(c) After the patent is recorded in all the proper counties, it shall be sent by registered mail to the proper party.

[Acts 1977, 65th Leg., p. 2436, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.245. Deceased Patentee

A patent issued in the name of a person who is deceased at the time the patent is issued conveys and secures valid title to the heirs or assignee of the deceased person.

[Acts 1977, 65th Leg., p. 2436, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.246. Acquisition of Deed of Acquittance to Excess Acreage

(a) If the area of a tract of land that is titled or patented exceeds the quantity provided in the title or patent and if under the existing law the title to all or a part of the tract may be affected by the existence of the excess acreage, the person who owns the survey or portion of the survey or has an interest in it may pay for the total excess acreage in the survey or the total excess in a given tract out of the patented or titled survey at the price fixed by the board.

(b) Any person who owns an interest in a titled or patented survey or any portion of a titled or patented survey in which excess acreage is located and who desires to pay for the excess acreage shall file with the commissioner a request for an appraisal of the land with corrected field notes in the form provided by law, together with a sworn statement of facts relating to his right to purchase and other evidence of his right to purchase which may be required by the commissioner. The corrected field notes shall describe the patented tract, and if purchasing excess in a portion of a tract, shall include a description of the portion in which the applicant is making application to purchase excess.

(c) If it appears that excess acreage actually exists and that the applicant is entitled to obtain it under the law, the commissioner shall execute a deed of acquittance covering the land in the name of the original patentee or his assignees with a mineral reservation or with no mineral reservation accordingly as may have been the case when the survey was titled or patented.

(d) The transfer shall inure distributively to the benefit of the lawful owners of the land in proportion to their holdings.

[Acts 1977, 65th Leg., p. 2436, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.247. Patents for Land That Cannot be Patented by Other Methods

(a) Any headright survey, homestead donation, preemption survey, scrip survey, or other survey awarded or sold before August 20, 1931, which has been held and claimed in good faith by a person for 10 years before the date of application for a patent but which cannot be patented under existing law may be patented on payment to the commissioner of the purchase price as set by the board.

(b) The patent shall be issued to the owner of record as shown in the records of the land office and shall inure distributively to the legal owners of the land.

(c) If a tract of school land has been occupied by mistake as part of another tract, the occupant shall have a preference right for a period of six months after discovery of the mistake to purchase the land at the same price paid or contracted to be paid for the land actually conveyed to him.

[Acts 1977, 65th Leg., p. 2436, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.248. Doubtful Claim

If it appears to the commissioner from the records of his office or from information given to him under oath that there is an illegality in a claim, the commissioner, if he considers it necessary, shall refer the matter to the attorney general, and the attorney general's written decision is sufficient authority for the commissioner to issue or withhold the patent.

[Acts 1977, 65th Leg., p. 2437, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.249. Conflicting Surveys

If conflicts exist between surveys, the commissioner shall issue patents to the portions of the surveys that are free from conflict.

[Acts 1977, 65th Leg., p. 2437, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.250. Conflicting Title

(a) If a patent to land is issued by mistake on any valid claim for land and is afterwards found to be in conflict with an older title, the owner of the patent or any part of the land embraced by the patent which is in conflict may return the patent to the commissioner for cancellation. If the owner of the land that is the subject of the conflict cannot obtain the patent, he shall return to the commissioner legal evidence of his title to the patent or part of the patent.

(b) The person returning the patent or filing the evidence also shall make and file with the commissioner an affidavit stating that he is still the owner of the land and has not sold or transferred it.

(c) If the land office records or a duly certified copy of a judgment of a court of competent jurisdiction that has adjudicated the title reflects that a conflict exists, the commissioner may cancel the patent or the part of a patent that appears to belong to the party making the application.

[Acts 1977, 65th Leg., p. 2437, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.251. Partial Conflict of Title

If there is only a partial conflict of title under a patent, the commissioner in the manner provided in Section 51.250 of this code may cancel any patent presented to him and issue a patent to the applicant for the portion of the land that is covered by his original patent but that is not in conflict with the older title if the area can be determined from the field notes.

[Acts 1977, 65th Leg., p. 2437, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.252. Refund of Purchase Money

(a) If a patent cannot be issued for land because of a conflict, erroneous survey, or illegal sale or if a patent is issued for land and is later canceled, the comptroller, on proper proof, may issue his warrant to the proper parties for amounts paid in good faith to the State Treasury for taxes, lease payments, or purchase payments on this land.

(b) Proof of these good-faith payments may be shown by the certificate of the commissioner if the records of the land office show that a patent cannot be issued because of conflict, erroneous survey, or illegal sale or that a patent has been canceled.

(c) The provisions of this section do not apply to surveys on which the errors may be corrected.

[Acts 1977, 65th Leg., p. 2437, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 51.253 to 51.290 reserved for expansion]

SUBCHAPTER G. EASEMENTS

§ 51.291. Grants of Easements

The commissioner may execute grants of easements for rights-of-way across unsold public school land, the portion of the Gulf of Mexico within the jurisdiction of the state, and all islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits for telephone, telegraph, electric transmission, and powerlines, for oil pipelines, including pipelines connecting the onshore storage facilities with the offshore facilities of a deepwater port, as defined by the federal Deepwater

Port Act of 1974 (33 U.S.C.A. Section 1501 et seq.), gas pipelines, sulphur pipelines, and other electric lines and pipelines of any nature, and for irrigation canals, laterals, and water pipelines.

[Acts 1977, 65th Leg., p. 2438, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.292. Easements and Leases for Certain Facilities

The commissioner may execute grants of easements or leases for electric substations, pumping stations, loading racks, and tank farms to be located on state land other than land owned by The University of Texas System.

[Acts 1977, 65th Leg., p. 2438, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.293. Easements on University Land

(a) The Board of Regents of The University of Texas System may continue to execute all right-of-way easements under authority already granted across land that belongs to the state but is dedicated to the support and maintenance of The University of Texas System for telephone, telegraph, electric transmission, and powerlines, for oil pipelines, gas pipelines, sulphur pipelines, and other electric lines and pipelines of any nature, and for irrigation canals, laterals, and water pipelines.

(b) The board of regents may continue to execute under authority already granted grants of easements or leases for the erection and maintenance of electric substations, pumping stations, loading racks, and tank farms on university land.

[Acts 1977, 65th Leg., p. 2438, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.294. Forms for Grant

Easements granted under Sections 51.291 through 51.293 of this code shall be granted on forms approved by the attorney general.

[Acts 1977, 65th Leg., p. 2438, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.295. Conditions for Easement

Telephone, telegraph, electric transmission, powerline, and pipeline right-of-way easements and easements or rights-of-way for irrigation canals, laterals, and water pipelines shall be executed on terms to be determined by the commissioner or the board of regents, but no easement for an oil, gas, or sulphur pipeline or a telephone, telegraph, electric transmission, or powerline easement may be granted that does not provide for the annual privilege fee of not less than two and one-half cents a lineal rod a year.

[Acts 1977, 65th Leg., p. 2438, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.296. Term of Easements

(a) Except as provided in Subsection (b) of this section, no grant of easement or lease enumerated under Sections 51.291 through 51.293 of this code may be granted for a term that is longer than 10 years, but an easement may be renewed by the officials responsible for execution of grants of easement and leases under this subchapter.

(b) A right-of-way easement for a pipeline connecting onshore storage facilities with the offshore facilities of a deepwater port, as defined by the Deepwater Port Act of 1974 (33 U.S.C.A. Section 1501 et seq.), may be granted for a term coincident with the term of the license issued by the secretary of transportation pursuant to the Deepwater Port Act of 1974 (33 U.S.C.A. Section 1501 et seq.), and the easement may be renewed for additional terms of up to 10 years coincident with the term for each renewal of the license.

[Acts 1977, 65th Leg., p. 2439, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.297. Recording Easements

(a) Each easement granted under Sections 51.291 through 51.293 of this code shall be recorded in the county clerk's office of the county in which the land is located, and the recording fee shall be paid by the person who obtains the easement.

(b) The person who obtains the easement shall furnish to the commissioner a certificate showing that the easement has been recorded.

[Acts 1977, 65th Leg., p. 2439, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.298. Annual Privilege Fee

(a) A person who occupies or uses any unsold public school land, any islands, saltwater lakes, bays, inlets, marshes, or reefs owned by the state within tidewater limits, any portion of the Gulf of Mexico within the jurisdiction of the state, or any unsold public land dedicated to The University of Texas System as a right-of-way for a telephone, telegraph, electric transmission, or powerline, for an oil pipeline, gas pipeline, or sulphur pipeline, or for an irrigation canal, lateral, or water pipeline shall pay annually in advance to the commissioner an amount equal to two and one-half cents a lineal rod a year for each rod of telephone, telegraph, electric transmission, or powerline, or each rod of oil or gas pipeline.

(b) The annual privilege fee shall be paid by those persons who have not previously paid this fee on all oil pipelines, gas pipelines, and telephone, telegraph, electric transmission, and powerlines that are in existence and located on public land mentioned in Subsection (a) of this section.

(c) The fee shall be paid annually unless the grant of the easement makes some other provision.

(d) A higher annual privilege fee may be set by contract between the authorized officials and the grantee of the easement.

[Acts 1977, 65th Leg., p. 2439, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.299. Fees for Certain Facilities

The rent to be charged for an easement or lease for an electric substation site, pumping station, loading rack, or tank farm shall be an amount agreed to between the lessee and the board of regents with respect to university land and the commissioner with respect to other state land.

[Acts 1977, 65th Leg., p. 2439, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.300. Disposition of Income

Income received by the commissioner under this subchapter from public school land shall be credited to the available school fund, and income received from university land shall be credited to the available university fund. Other income received by the commissioner on other land under this subchapter shall be credited to the General Revenue Fund.

[Acts 1977, 65th Leg., p. 2439, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.301. Interest on Past-Due Payments

(a) Payments under this subchapter that are past due shall bear interest at a rate of 10 percent a year.

(b) If no date for payment is provided in the contract or if no written contract has been executed, the unpaid annual fees shall bear interest at a rate of 10 percent calculated from January 1 following the year for which the annual privilege fee was due.

[Acts 1977, 65th Leg., p. 2440, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.302. Prohibition and Penalty

(a) No person may construct any of the facilities listed in Sections 51.291 through 51.293 of this code on or across any section or part of a section of land of the character enumerated in Sections 51.291 through 51.293 of this code and owned by the state, nor may any person who has not acquired a proper easement as provided in this subchapter and who owns or possesses any of the facilities listed in Sections 51.291 through 51.293 of this code that are now located on or across any section or part of a section of land of the character enumerated in Sections 51.291 through 51.293 of this code and owned by the state continue in possession of the land unless he obtains from the commissioner or the board of regents a grant of a right-of-way easement or other easement for the land on which the facility is to be constructed or is located.

(b) A person violating the provisions of Subsection (a) of this section shall be liable to a penalty of \$100

a day for each day that a violation occurs. The penalty shall be recovered by the attorney general.

[Acts 1977, 65th Leg., p. 2440, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.303. Venue

The venue for suits by the state under Sections 51.291 through 51.302 of this code or for violation of provisions of Sections 51.291 through 51.302 of this code shall be in Travis County.

[Acts 1977, 65th Leg., p. 2440, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.304. Easements for Soil Conservation and Flood Prevention

The commissioner may execute grants of easements on unsold public school land to conservation and reclamation districts for soil conservation and flood prevention projects authorized by the Watershed Protection and Flood Prevention Act (16 U.S.C. Section 1001 et seq.), as amended.

[Acts 1977, 65th Leg., p. 2440, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.305. Terms and Form of Grant

The grant of the easement may contain any provisions that the commissioner considers necessary to protect the interests of the state and may be perpetual or for a term of years.

[Acts 1977, 65th Leg., p. 2440, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.306. Consideration

The consideration paid to the state for the grant of the easement under Section 51.304 of this code shall be determined by the commissioner to compensate the state for any damage to the land or to the use of the land caused by the easement, but if the commissioner determines that the benefits resulting from the grant of the easement are more than the damage, the commissioner may waive the consideration for the easement.

[Acts 1977, 65th Leg., p. 2440, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.307. Reservation of Mineral Rights

Mineral rights together with the right to explore for, produce, and market the minerals in land granted as an easement under Section 51.304 of this code shall be reserved to the state and shall be subject to lease for minerals in the same manner as other unsold public school land.

[Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 51.308 to 51.340 reserved for expansion]

SUBCHAPTER H. SALE OF TIMBER, GAYULE,
AND LECHUGUILLA

§ 51.341. Definition

In this subchapter, "timbered land" means land that is valued chiefly for the timber located on it. [Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.342. Sale of Timber

Timber located on public land shall be sold in full tracts for cash at its fair market value. [Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.343. Rules

Subject to the provisions of this chapter, the commissioner shall adopt rules for the sale of timber which are considered necessary and judicious. [Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.344. Application to Purchase Timber

An application to purchase timber shall be made in the manner provided for filing an application to purchase land. [Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.345. Ingress and Egress From Land

The purchaser of timber without the land is entitled to ingress and egress on the land for a period of five years after the date of the award to remove or protect the timber on the land. [Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.346. Reversion of Title to Timber

After the five-year period provided in Section 51.345 of this code, title to the timber reverts to the fund to which the land belongs and is subject to sale by the state. [Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.347. Sale of Gayule and Lechuguilla

The board may sell the gayule or lechuguilla growing or found on the public school land, exclusive of timber. [Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.348. Conditions of Sale

The sale of gayule and lechuguilla may be on any terms and conditions and with any limitations that the board considers most advantageous and in the best interest in protecting the public school fund and the state. [Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.349. Contracts

The board may enter into any contract including an executory contract of sale which they consider wise for the purpose of having the commercial properties and value of gayule and lechuguilla determined, but it may not spend any public money or incur any liability on behalf of the state through these contracts.

[Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 51.350. Replacement Value for Unlawful Use

(a) If a person without authority or right cuts or removes any mineral, gayule, or lechuguilla from land that belongs to the permanent school fund, a judgment shall be rendered against the person on behalf of the state in an amount that is equal to the value of the substance that was cut or removed.

(b) The judgment shall be collected in the same manner as a collection is made under execution.

(c) After the judgment is collected, the money shall be paid to the State Treasurer, who shall credit the money to the public school fund.

[Acts 1977, 65th Leg., p. 2441, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 52. OIL AND GAS

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SUBCHAPTER A. GENERAL PROVISIONS

§ 52.001. Definitions

In this chapter:

- (1) "Commissioner" means the Commissioner of the General Land Office.
 - (2) "Land office" means the General Land Office.
 - (3) "Board" means the school land board.
- [Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 52.002 to 52.010 reserved for expansion]

SUBCHAPTER B. LEASE OF PUBLIC
SCHOOL AND GULF LAND

§ 52.011. Area Subject to Lease

Under the provisions of this subchapter, the board may lease to any person for the production of oil and natural gas:

- (1) islands, saltwater lakes, bays, inlets, marshes, and reefs owned by the state within tidewater limits;
- (2) the portion of the Gulf of Mexico within the jurisdiction of the state; and
- (3) all unsold surveyed and unsurveyed public school land.

[Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.012. Conditions for Lease

Oil and gas shall only be leased together and shall be leased separately from other minerals.

[Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.013. Determination of Lease Price and Delay Rentals

The board shall determine the price at which areas under this subchapter shall be leased and the amount of delay rentals that shall be charged.

[Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.014. Date for Lease and Notice

(a) The date for lease of areas covered by this subchapter shall be set and notice of the date shall be given in the manner provided in Sections 32.105 and 32.107 of this code.

(b) Notice of areas being offered for lease shall be advertised for a period of 30 days before the lease date.

[Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.015. Application for Lease

(a) Each application for a separate area and the first payment shall be delivered to the land office on or before the day and hour on which the area is subject to lease.

(b) The application and payment shall be delivered in a sealed envelope endorsed with "application to lease oil and gas" and the date on which the area is subject to lease.

(c) Any application received up to the hour in which the applications are to be opened shall be considered to be properly delivered regardless of whether it is opened or sealed or endorsed or unendorsed.

[Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.016. Special Fee

Each bidder on a lease under this subchapter shall remit by separate check a special sale fee in the amount and in the manner provided in Section 34.061 of this code.

[Acts 1977, 65th Leg., p. 2445, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.017. Keeping and Opening Bids

The envelopes shall be kept securely and unopened by the commissioner or his chief clerk until the day on which the applications are to be opened, and at that time, the board shall open the envelopes in the presence of any persons who desire to be present.

[Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.018. Void Application

An application that includes two or more areas or that is for a price that is less than the fixed royalty and price per acre is void.

[Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.019. Tie Bids

(a) If the highest bid for an area is made by more than one applicant, all applications shall be rejected and the board shall set a date for lease of the area that shall not be later than the 15th day of the following month.

(b) The area will be subject to lease in the same manner as it was originally subject to lease.

(c) No bids for a lease shall be considered if the price is less than the highest bid offered in the original application.

[Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.020. Return of Payments on Rejected Applications

The State Treasurer shall return all amounts paid on rejected applications.

[Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.021. Term of Lease

A lease granted under this subchapter shall be for a primary term of five years and for as long after that time as oil or gas is produced from the leased area.

[Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.022. Royalty and Delay Rentals

(a) In addition to the cash amount bid for a lease, the area included in the lease shall be leased for not less than one-eighth of the gross production of oil produced and saved, or its value, and not less than one-eighth of the gross production of gas produced and sold off the area or its value, plus an amount determined by the board, until production is secured.

(b) If production is secured in commercial quantities and the payment of royalty begins and continues to be paid, the lessee is exempt from further delay rental payments on the acreage.

(c) If production ceases and royalty is not paid, the lessee shall pay at the end of the lease year in which the royalty ceased to be paid and annually after that time in advance, an amount determined by the board for as long as the lessee desires to maintain the rights acquired under the lease, but not for more than five years from the date of the lease.

[Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.023. Lease Provisions for Drilling and Reworking

Each lease shall provide that:

(1) if the production of oil or gas on premises leased under this subchapter ceases for any reason at or after the expiration of the primary term, the lease will not terminate if the lessee commences additional drilling or reworking operations within 60 days after the cessation of production;

(2) the lease shall remain in effect as long as the drilling and reworking operations continue in good faith and in a workmanlike manner for a period of more than 60 days without interruption; and

(3) if the drilling or reworking operations result in the production of oil or gas, the lease shall remain in effect as long as oil or gas is produced from the premises in paying quantities or payment of shut-in gas royalties or compensatory royalties is made as provided by law.

[Acts 1977, 65th Leg., p. 2446, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.024. Lease Provisions for Shut-In Gas Royalty and Compensatory Royalty

Each lease shall provide that:

(1) if at the expiration of the primary term or at any time after the expiration of the primary term a well or wells capable of producing gas in paying quantities are located on the leased premises but gas is not being produced for lack of a suitable market and the lease is not being maintained in force and effect, before the expiration of the primary term or if the primary term has expired, within 60 days after the lessee ceases to produce gas from the well, the lessee may pay as a shut-in gas royalty an amount equal to double the annual rental provided in the lease but not less than \$1,200 a year for each well capable of producing gas in paying quantities;

(2) if the shut-in gas royalty is paid, the lease shall be considered to be a producing lease and the payment shall extend the term of the lease for a period of one year from the end of the primary term or from the first day of the month next succeeding the month in which production ceased and after that if no suitable market for the gas exists, the lessee may extend the lease for four additional and successive periods of one year by paying the same amount each year on or before the expiration of the extended term;

(3) if, during the period the lease is kept in effect by payment of the shut-in gas royalty, gas is sold and delivered in paying quantities from a well located within 1,000 feet of the leased premises and completed in the same pro-

ducing reservoir or in any case in which drainage is occurring, the right to continue to extend the lease by paying the shut-in gas royalty shall cease, but the lease shall remain effective for the remainder of the year for which the royalty has been paid and for an additional period of not more than five years from the expiration of the primary term by the lessee paying compensatory royalty at the royalty rate provided in the lease of the value at the well of production from the well which is causing the drainage or which is completed in the same producing reservoir and within 1,000 feet of the leased premises;

(4) the compensatory royalty is to be paid monthly to the commissioner beginning on or before the last day of the month next succeeding the month in which the gas is sold and delivered from the well located within 1,000 feet of or draining the leased premises and completed in the same reservoir;

(5) if the compensatory royalty paid in any 12-month period is in an amount less than the annual shut-in gas royalty, the lessee shall pay an amount equal to the difference within 30 days from the end of the 12-month period; and

(6) none of these provisions will relieve the lessee of the obligation of reasonable development nor the obligation to drill offset wells as provided in Section 52.034 of this code.

[Acts 1977, 65th Leg., p. 2447, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.025. Disposition of Lease Payments

The State Treasurer shall credit the permanent school fund with amounts received from unsurveyed school land and with two-thirds of the amount received from other areas and shall credit the General Revenue Fund with the remaining one-third of the payments for the other areas.

[Acts 1977, 65th Leg., p. 2448, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.026. Lease Transfer

(a) A lessee of an area under this subchapter may transfer his lease at any time.

(b) The transfer of the lease shall be recorded in any county in which all or part of the leased area is located.

(c) Within 90 days after the execution of the transfer, the recorded transfer or a certified copy of the recorded transfer accompanied by a \$5 filing fee shall be filed in the land office.

(d) The transferee shall succeed to all rights and be subject to all obligations and penalties of the original lessee.

[Acts 1977, 65th Leg., p. 2448, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.027. Lease Relinquishment

(a) A lessee may relinquish his lease to the state at any time by recording the relinquishment in each county in which all or part of the leased area is located.

(b) Within 90 days after the execution of the relinquishment, the recorded relinquishment or a certified copy of the recorded relinquishment together with a \$5 filing fee shall be filed in the land office.

(c) After the lessee relinquishes the area, he is relieved of any further obligations to the state, but the relinquishment does not release the lessee from any obligations or liabilities previously accrued in favor of the state.

[Acts 1977, 65th Leg., p. 2448, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.028. Suspension of Oil and Gas Leases

(a) If an oil and gas lease issued by the commissioner is involved in litigation relating to its validity or to the authority of the commissioner to lease the land, the primary term of the lease shall be suspended and all obligations imposed by the lease set aside during the period of the litigation.

(b) If the litigation is instituted at least six months before the expiration of the primary term, after final judgment is rendered, the primary term provided in the lease shall begin to run again and shall continue to run for the remainder of the period specified in the lease and all obligations and duties imposed by the lease shall be operative.

(c) The lessee shall pay all annual delay rentals and any royalties that accrue during the period of litigation in the same manner as they are paid during the period of an extended primary term. The delay rentals paid during the period of litigation shall be held and returned to the lessee if the state is unsuccessful in the litigation.

[Acts 1977, 65th Leg., p. 2448, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.029. Forfeiture of Rights

The provisions of Subchapter F of this chapter governing the forfeiture and reinstatement of rights apply to forfeiture and reinstatement of leases issued under this subchapter, and on forfeiture of a lease, the area covered by the lease may be leased, after advertisement, by any other person.

[Acts 1977, 65th Leg., p. 2448, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.030. Refund of Lease Money in Certain Situations

(a) If a lessee is prevented from exploring, developing, drilling, or producing oil and gas from the tract leased to him as a result of the action of any agency of the United States or of this state during

the entire primary term of the lease, he is entitled to a refund of all money paid for bonus, delay rentals, and other fees under the lease as provided by legislative appropriation.

(b) A refund shall be made only on verification of the claim by the board or on the judgment of a court of competent jurisdiction.

(c) A lessee who has a claim under this section is given permission to bring suit against the state within two years after the expiration of the lease in any court of competent jurisdiction to recover the money paid.

[Acts 1977, 65th Leg., p. 2448, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.031. Extension of Lease by Commissioner

(a) At the expiration of the primary term of a lease made under the provisions of this subchapter, if production of oil or gas has not been obtained on the leased premises but drilling operations are being conducted in good faith and in good and workmanlike manner, the lessee may file in the land office on or before the expiration of the primary term a written application to the commissioner for a 30-day extension of the lease accompanied by \$3,000 for 640 acres or less or \$6,000 for more than 640 acres.

(b) The commissioner shall extend the lease in writing for a 30-day period from the expiration of the primary term and as long after that time as oil or gas is produced in paying quantities.

(c) As long as drilling operations are being conducted, the lessee may submit an application and payment during any 30-day extended period for an additional extension of 30 days. On receiving the application and payment, the commissioner shall again extend the lease in writing so that it will remain effective for an additional 30-day period and as long after that time as oil or gas is produced in paying quantities.

(d) No lease may be extended under this section for more than 390 days after the expiration of the primary term unless production is obtained in paying quantities.

[Acts 1977, 65th Leg., p. 2449, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.032. Regulation of Development and Operations

(a) Development and operations on areas covered by this subchapter shall be done insofar as practicable in a manner that will prevent the pollution of water, destruction of fish, oysters, and other marine life, and obstruction of navigation.

(b) The commissioner shall adopt and enforce rules that may be necessary for the purposes stated in Subsection (a) of this section.

(c) Any rules and changes of rules adopted under this section shall be submitted to the attorney general for his written approval before the rules or their changes become effective.

[Acts 1977, 65th Leg., p. 2449, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.033. Access to Land

(a) If it is necessary for the lessee to enter the enclosed land of another person for the purpose of ingress and egress to and from the area leased from the state and if the lessee and the owner cannot agree on the place or the conditions of entry and exit, the lessee or his agent may petition the commissioners court of the county in which all or part of the enclosure is located to open the places of ingress and egress that may be necessary.

(b) On filing the petition, the commissioners court shall delineate the roads necessary for the stated purpose in the manner provided for delineating third-class public roads.

[Acts 1977, 65th Leg., p. 2449, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.034. Offset Wells

(a) If oil or gas is produced in commercial quantities from a well located on a privately owned area and the well is located within 1,000 feet of an area leased under this subchapter, the lessee of the state area shall begin in good faith and prosecute diligently the drilling of an offset well or wells on the area leased from the state within 60 days after the initial production on the privately owned area.

(b) An offset well shall be drilled to a depth and the means shall be employed which may be necessary to prevent undue drainage of oil or gas from beneath the state area.

(c) Within 30 days after an offset well has been completed or abandoned, a log of each well shall be filed in the land office.

[Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 52.035 to 52.070 reserved for expansion]

SUBCHAPTER C. DEVELOPMENT OF RIVERBEDS AND CHANNELS

§ 52.071. Authority Over Riverbeds and Channels

The riverbeds and channels belonging to the state are subject to development by the state and to lease or contract for recovery of oil and gas.

[Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.072. State Policy

(a) With regard to leases and contracts for the development of riverbeds and channels, it is the policy of the state that activities of the state and all lessees and contracting parties or their heirs, successors, or assigns under a lease or contract shall comply with laws of the state and rules and orders of any state agency that are applicable to development of oil and gas bearing land in the state by persons other than the state.

(b) Each lease and contract issued under the provisions of this subchapter is subject to the provisions of Subsection (a) of this section.

[Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.073. Area Subject to Lease

Riverbeds and channels that belong to the state may be leased to any person by the board under the provisions of this subchapter.

[Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.074. Size of Tract

Subject to the conditions in this subchapter, riverbeds and channels shall be leased in tracts of the size determined by the board.

[Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.075. Board Meetings

(a) The board may transact business only at a meeting attended by two or more of its members.

(b) The member calling the meeting shall give written notice of the meeting to the other members.

[Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.076. Duty to Advertise

(a) The board shall advertise for proposals:

(1) to lease riverbeds and channels for oil and gas development;

(2) to drill riverbeds and channels on consideration involving compensation with oil and gas or money so that the state will receive a portion of the oil and gas as it is produced or advanced royalties paid in money; and

(3) to purchase oil and gas in place or recoverable without requiring mineral development.

(b) The board shall advertise the proposals as provided in Section 32.107 of this code.

[Acts 1977, 65th Leg., p. 2450, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.077. Bids

(a) The board may receive bids on all proposals listed in Section 52.076 of this code.

(b) The board may accept any bid it considers to be in the best interest of the state, or it may reject any and all bids.

[Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.078. Special Fee

Each bidder on a lease under this subchapter shall remit by separate check a special sale fee in the amount and in the manner provided in Section 34-061 of this code.

[Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.079. Contract to Drill Wells

(a) If the board considers it advisable to reject all bids, it may give additional notice for bids or it may enter into a contract for drilling of the wells.

(b) A well that is drilled by order of the board shall be done under a contract let on competitive bids to the lowest and best bidder for a completed well.

(c) A contractor drilling under a contract with the board shall carry workmen's compensation insurance for all employees engaged in the drilling operation.

[Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.080. Forms for Lease and Contract

Leases and contracts for the development of riverbeds and channels shall be executed on forms approved by the attorney general and the board.

[Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.081. Procedure for Orders and Contracts

Orders and contracts made or entered into by the board shall be authorized at a meeting of the board and shall be signed by two members of the board. The orders and contracts shall be approved as to their legality by the attorney general.

[Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.082. Term of Lease

A lease granted under this subchapter shall be for a primary term of five years and for as long after that time as oil or gas is produced from the leased area.

[Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.083. Conditions of Lease

Oil and gas shall only be leased together and separately from other minerals.

[Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.084. Special Lease Provisions

Each lease shall include the provisions required by Sections 52.023 and 52.024 of this code.

[Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.085. Prevention of Pollution

(a) Each lease and contract shall require the lessee or contracting party or his successors or assigns to use the highest degree of care and all proper safeguards to prevent pollution of streams.

(b) If the lessee or contracting party fails to meet the requirements in Subsection (a) of this section, the state is entitled to take charge of the property immediately and to cancel the lease.

[Acts 1977, 65th Leg., p. 2451, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.086. Development of Riverbeds and Channels More Than Two Miles From a Well

(a) The board may not lease or contract for the development or drilling of any riverbed or channel located at the time the lease or contract is to be executed more than two miles from a well producing or capable of producing oil or gas in paying quantities unless the owner of the leasehold or mineral interest in the oil or gas estate in land located adjacent to or within two miles of the riverbed or channel desires to drill a test well in, under, or within two miles of the riverbed or channel.

(b) The owner of the interest desiring to drill the test well shall apply to the board for an oil and gas lease on the available portions of the riverbed or channel he desires to lease, indicating the site in or within two miles of the riverbed or channel where he desires to drill the well.

(c) Within 60 days after the date the application is received, the board shall lease the riverbed or channel to the highest bidder for oil and gas development.

(d) The leased area shall be limited to the portion of the riverbed or channel which is within two miles of a point therein at the end of a line drawn from the designated well site perpendicular to the general course of the riverbed or channel.

(e) The lease shall expire at the end of two years from the date of its delivery to the highest bidder unless oil or gas is produced in paying quantities from the portion of the riverbed or channel covered by the lease or from adjacent or nearby land with which the leased land or a portion of it has been lawfully pooled or unitized so that royalties payable under the lease are accruing to the state on that date.

[Acts 1977, 65th Leg., p. 2452, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.087. Determination of Lease Price and Delay Rentals

The board shall determine the price at which riverbeds and channels shall be leased and the amount of delay rentals that shall be charged. [Acts 1977, 65th Leg., p. 2452, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.088. Royalty and Delay Rentals

(a) In addition to the cash amount bid for a lease, the board shall lease the area for not less than one-eighth of the gross production of oil produced and saved or its value and not less than one-eighth of the gross production of gas produced and sold off the area or its value plus an amount determined by the board until production is secured.

(b) If production is secured in commercial quantities and the payment of royalty begins and continues to be paid, the lessee is exempt from further delay rental payments on the acreage.

(c) If production ceases and royalty is not paid, the lessee shall pay at the end of the lease year in which the royalty ceased to be paid and annually after that time in advance, in an amount determined by the board as long as the lessee desires to maintain the rights acquired under the lease, but not for more than five years from the date of the lease. [Acts 1977, 65th Leg., p. 2452, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.089. Mineral Development Fund

(a) Money collected by the board under the provisions of this subchapter shall be deposited in the State Treasury and shall be credited to the mineral development fund.

(b) The board may make disbursements from the mineral development fund to carry out the provisions of this subchapter and the necessary amounts for disbursement are appropriated from the fund.

(c) Any portion of the fund not needed for the purposes stated in Subsection (b) of this section shall be paid from time to time to the General Revenue Fund, but any portion of the mineral development fund that belongs to the public school fund shall be paid to that fund. [Acts 1977, 65th Leg., p. 2452, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.090. Extension of Lease

A lease may be extended in the manner provided in Section 52.031 of this code. [Acts 1977, 65th Leg., p. 2453, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.091. Refund of Lease Money in Certain Situations

A lessee under this subchapter is entitled to a refund of all money paid for bonus, delay rentals,

and other fees for the reasons and in the manner provided in Section 52.030 of this code.

[Acts 1977, 65th Leg., p. 2453, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.092. Power of Eminent Domain

The board or any person including a leaseholder or assignee, who has a contract with the board for the development of oil and gas resources in riverbeds and channels may exercise the power of eminent domain to condemn land as provided in the general laws of this state for the purposes stated in Section 52.093 of this code.

[Acts 1977, 65th Leg., p. 2453, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.093. Eminent Domain Purposes

The board and any person, including a leaseholder or assignee, who has a contract with the board for the development of oil and gas resources in riverbeds and channels may exercise the power of eminent domain for the following purposes:

(1) to secure additional adjoining land that may be necessary to erect power machinery and to construct storage tanks and slush pits for the operation of the river or channel development and to prevent or lessen the dangers of pollution involved in the drilling of any well in the riverbed or channel; and

(2) to secure a right-of-way to and from any well that is drilled in the riverbed or channel so that the board or any of the leaseholders or contracting parties may go to and from the well and may transport any materials necessary to develop the riverbed or channel and to transport oil and gas away from the well.

[Acts 1977, 65th Leg., p. 2453, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.094. Drilling Offset Well on Condemned Land

(a) If the landowner or other interested party and the board or the lessee of the riverbed or channel cannot agree on the amount of damages, if any, and it is necessary to commence condemnation proceedings and if it is necessary for the landowner or other interested party to drill an offset well within the area to be condemned, the mineral rights of the condemned party are superior to the surface rights of the condemning party.

(b) If there is any conflict surrounding the drilling of an offset well under a permit from the Railroad Commission of Texas, the condemning party is required to move any interference or hindrance or to go around any offset well, and if he fails or refuses to immediately move the interference or hindrance on demand, the owner of the mineral rights is entitled to do so immediately without liability.

[Acts 1977, 65th Leg., p. 2453, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.095. Rights of Parties to Condemnation

It is the intent of this subchapter that the mineral rights of the owner are superior to the surface rights of the condemning party.

[Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.096. Exclusion From Damages in Condemnation

In determining the damages resulting from condemnation, the commissioners or any other tribunal shall not consider the value of oil or gas located beneath the rights-of-way of the condemned property.

[Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.097. Injunction

(a) No injunction may be granted against the board, its agents, or persons with whom it has contracted, to restrain the board from enforcing its orders or contracts or from carrying out any development that has begun or was contemplated by the board until notice is given to the board and its agents or the contracting parties and a hearing is held.

(b) Before an injunction or restraining order is issued or becomes effective, the court shall require the complaining party to execute a bond payable to the governor with good and sufficient sureties authorized to do business in this state in an amount determined by the court to be sufficient to protect the state from loss from drainage of the riverbed or channel, of lease or bonus or consideration, or from any other reason. In determining the amount of the bond, the court shall consider the probable and possible loss to the state by granting the injunction.

(c) The attorney general shall bring suit on the bond to recover any loss to the state caused by the suit for injunction.

[Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.098. Appeal

(a) Either party to the suit for an injunction or restraining order is entitled to appeal from the final judgment.

(b) The appeal shall be returnable to the appellate court at once and shall have precedence in that court over all pending cases, proceedings, and causes of a different character.

(c) The court of civil appeals shall decide the questions involved in the appeal at as early a date as possible.

(d) If any question is certified to the supreme court or if writ of error is requested or granted, the supreme court shall set the cause for hearing immediately, and the cause shall have precedence over all

other cases, proceedings, and causes of a different character. The supreme court shall decide the cause at as early a date as possible.

[Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.099. Venue

The venue for any suit arising from this subchapter either by or against the board and regardless of the kind or nature shall be in Travis County.

[Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.100. Effect of Subchapter

The provisions of this subchapter do not repeal or supersede Chapter 138, Acts of the 41st Legislature, Regular Session, 1929 (Article 5414a, Vernon's Texas Civil Statutes), which validated, relinquished, quit-claimed, and granted to patentees and awardees and their assignees land and minerals that are included in surveys lying across or partly across watercourses and navigable streams in the state and that have been patented or awarded as provided in that chapter.

[Acts 1977, 65th Leg., p. 2454, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 52.101 to 52.130 reserved for expansion]

SUBCHAPTER D. ROYALTIES

§ 52.131. Payment of Royalty Generally

(a) Royalties due under a lease of state land or minerals that are required to be paid to the land office shall be due and shall be paid as provided in this section.

(b) Royalty on oil is due and payable on or before the 5th day of the second month succeeding the month of production and royalty on gas is due and payable on or before the 15th day of the second month succeeding the month of production.

(c) Royalty payments shall be accompanied by:

(1) an affidavit of the owner, manager, or other authorized agent, completed in the form and manner required by the land office and showing the gross amount and disposition of all oil and gas produced and the market value of the oil and gas;

(2) a copy of all documents, records, or reports confirming the gross production, disposition, and market value, including gas meter readings, pipeline receipts, gas line receipts, and other checks or memoranda of amount produced and put into pipelines, tanks, pools, and gas lines or gas storage;

(3) a check stub, schedule, summary, or other remittance advice showing by the assigned land

office lease number the amount of royalty being paid on each lease; and

(4) other reports or records that the land office may require to verify the gross production, disposition, and market value.

(d) The lessee has the responsibility for paying royalties or having royalties paid by the date provided for payment in this section.

(e) Any royalty not paid or affidavits and supporting documents not filed when due shall become delinquent and a delinquency penalty of one percent for each 30-day period of delinquency or fractional part of that period shall be added to the amount owed, however, no penalty may be less than \$5. Payment of this penalty in no way operates to prohibit the state's right of forfeiture as provided by law and does not postpone the date on which royalties were originally due. The penalty does not apply in cases of title dispute as to the state's portion of the royalty or to that portion of the royalty in dispute as to fair market value.

[Acts 1977, 65th Leg., p. 2455, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.132. Form of Payment

Except as provided in Section 52.133 of this code, royalty payments shall be made in cash, by bank draft drawn on a state or national bank in Texas, by a post-office or express money order, or in any other form that the law may provide for making payments to the State Treasury and are payable to the commissioner in Austin.

[Acts 1977, 65th Leg., p. 2455, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.133. Payment of Royalty in Kind

(a) In this section, "royalty" means royalty payable in a sum of money equal to the market value for the general area where produced and when run or royalty that may be collected in kind.

(b) Each oil or gas lease covering land leased by the board, by a board for lease other than the Board for Lease of University Lands, or by the surface owner of land under which the state owns the minerals, commonly referred to as Relinquishment Act land, which shall be subject to approval by the commissioner before it is effective, shall include a provision granting the board authorized to lease the land or the owner of the soil of Relinquishment Act land and the commissioner authority to take their royalty in kind, and the commissioner and the boards for lease may include any other reasonable provisions that are not inconsistent with this section.

(c) The option to take the royalty in kind may be exercised at any time or from time to time on not less than 60 days' notice to the holder of the lease.

(d) The board, the commissioner, each board for lease other than the Board for Lease of University

Lands, or the owner of the soil under Subchapter F of this chapter may negotiate and execute sales contracts or any other instruments or agreements necessary to dispose of their portion of the royalty taken in kind.

(e) This section does not apply to or have any effect on the Board for Lease of University Lands or any lease executed on university land.

(f) This section shall not be construed to surrender or in any way affect the right of the state or the owner of the soil under existing or future leases to receive royalty from its lessee on the basis of the fair market value produced from state public land or land under the provisions of Subchapter F of this chapter.

[Acts 1977, 65th Leg., p. 2455, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.134. Filing Contracts and Agreements

Copies of contracts for the sale or processing of gas and subsequent agreements and amendments to those contracts shall be filed in the land office within 30 days after the contracts, agreements, or amendments are made. These contracts and agreements received by the land office shall be held in confidence by the land office unless otherwise authorized by the lessee.

[Acts 1977, 65th Leg., p. 2456, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.135. Inspections and Examinations

The books and accounts, receipts, and discharges of all lines, tanks, pools, and meters and all contracts and other records relating to the production, transportation, sale, and marketing of the oil and gas are subject at any time to inspection and examination by the commissioner and the attorney general and governor or their representatives.

[Acts 1977, 65th Leg., p. 2456, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.136. Lien

The state has a first lien on all oil and gas produced on any lease area to secure payment of unpaid royalty and other amounts due.

[Acts 1977, 65th Leg., p. 2456, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 52.137 to 52.150 reserved for expansion]

SUBCHAPTER E. UNITIZATION OF LEASED AREAS

§ 52.151. Authorization to Operate Areas as Units

(a) The commissioner on behalf of the state or any fund that belongs to the state may execute agreements that provide for operating areas as a unit for the exploration, development, and production of oil

or gas or both and to commit to the agreements the royalty interests in oil or gas or both reserved to the state or any fund of the state by law, in a patent, in a contract of sale, or under the terms of an oil and gas lease legally executed by an official, board, agent, agency, or authority of the state.

(b) The commissioner must find that the agreement is in the best interest of the state.

[Acts 1977, 65th Leg., p. 2456, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.152. Approval of Unit Agreements

(a) An agreement that commits the royalty interest in land belonging to the permanent school fund or the asylum funds in riverbeds, inland lakes, and channels, or in an area within tidewater limits, including islands, lakes, bays, inlets, marshes, reefs, and the bed of the sea must be approved by the board and executed by the owner of the soil if the agreement covers land leased for oil and gas under Subchapter F of this chapter.

(b) An agreement that commits the royalty interest in any land or an area not listed in Subsection (a) of this section must be approved by the board, official, agent, agency, or authority of the state which has the authority to lease or to approve the lease of the land for oil and gas.

[Acts 1977, 65th Leg., p. 2457, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.153. Agreement Provisions

(a) The agreement to operate areas as units may provide:

(1) that operations incident to drilling a well on any portion of a unit shall be considered for all purposes to be conduct of the operations on each separately owned tract in the unit by the several owners;

(2) that production allocated by the agreement to each tract included in the unit when produced shall be considered for all purposes to have been produced from the tract;

(3) that the agreement and lease, with respect to the interest of the state, shall be effective as long as oil or gas or both are produced from the unit in paying quantities and royalties are paid to the state; and

(4) that royalties reserved to the state or to any fund of the state on production from any tract or portion of a tract included in the unit shall be paid only on the portion of the production allocated to the tract by the agreement.

(b) The agreement may include any other provision which the board, official, agent, agency, or authority of the state which has the authority to lease or to approve the leasing of the land may

consider necessary for the protection of the interests of the state.

[Acts 1977, 65th Leg., p. 2457, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 52.154 to 52.170 reserved for expansion]

SUBCHAPTER F. RELINQUISHMENT

§ 52.171. School and Asylum Lands

The state hereby constitutes the owner of the soil its agent for the purposes herein named, and in consideration therefor, relinquishes and vests in the owner of the soil an undivided fifteen-sixteenths of all oil and gas which has been undeveloped and the value of the same that may be upon and within the surveyed and unsurveyed public free school land and asylum lands and portions of such surveys sold with a mineral classification or mineral reservation, subject to the terms of this law. The remaining undivided portion of said oil and gas and its value is hereby reserved for the use of and benefit of the public school fund and the several asylum funds.

[Acts 1977, 65th Leg., p. 2457, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.172. Sale and Lease by Agent

The owner of said land is hereby authorized to sell or lease to any person, firm, or corporation the oil and gas that may be thereon or therein upon such terms and conditions as such owner may deem best, subject only to the provisions hereof, and he may have a second lien thereon to secure the payment of any sum due him. All leases and sales so made shall be assignable. No oil or gas rights shall be sold or leased hereunder for less than 10 cents per acre per year plus royalty, and the lessee or purchaser shall in every case pay the state 10 cents per acre per year of sales and rentals; and in case of production shall pay the state the undivided one-sixteenth of the value of the oil and gas reserved herein, and like amounts to the owner of the soil.

[Acts 1977, 65th Leg., p. 2457, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.173. Offset Wells

If oil and/or gas should be discovered in commercial quantities on lands not included in this law and within 1,000 feet of and draining land that is so included, or in any case where land so included in this law is being drained by production of oil or gas from land not so included, the owner, lessee, sublessee, receiver, or other agent in control of land included herein shall in good faith begin the drilling of a well or wells upon such land within 100 days after such well or wells on lands not so included commence to produce in commercial quantities, and shall prosecute such drilling with diligence to reasonably

develop the land included hereunder and to protect such land against drainage by wells on other lands in the locality.

[Acts 1977, 65th Leg., p. 2458, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.174. Failure to Drill Offset

If such persons fail or refuse to begin the drilling of such well or wells within the time required or to prosecute such drilling as necessary for the purpose intended herein, any lease of such land executed under the provisions of this law shall be subject to forfeiture by the Commissioner of the General Land Office, and he shall forfeit same when he is sufficiently informed of the facts which authorize a forfeiture, and shall, on the wrapper containing the papers relating to such lease, write and sign officially words declaring such forfeiture, and the lease and all rights thereunder shall thereupon be forfeited together with all payments made thereunder. Notice of such action shall forthwith be mailed to the persons shown by the records of the General Land Office to be the owners of the surface and the owners of the forfeited lease at their last known addresses as shown by the records of said office. Upon proper showing by the owner of the forfeited lease within 30 days after the declaration of forfeiture, the lease may, at the discretion of the commissioner and upon the terms of this subchapter and such other terms as he may prescribe, be reinstated. If such lease be not reinstated within such time, or if the commissioner finds that any unleased land included in this law is being drained, the commissioner shall notify the person at his last known address, as shown by records of the General Land Office to be the surface owner, that the oil and gas is subject to sale or lease by the owner of the soil in accordance with this law, and that drilling is required. If such owner shall fail or refuse to obtain the commencement of such a well within 100 days after the date of such notice, the relinquishment herein granted and the rights acquired thereunder shall be subject to forfeiture by the commissioner by endorsing on the file wrapper containing the papers relating to the sale of the land, words indicating such forfeiture, and such rights shall thereupon be forfeited, and notice of such forfeiture shall be forwarded to the county clerk of the county wherein the land is situated. The rights of any owner of the soil which may have ipso facto terminated under prior laws shall be reinstated and are hereby reinstated, together with all rights acquired thereunder except where rights of third parties may have intervened. All rights herein reinstated shall be subject to the terms and provisions of this subchapter.

[Acts 1977, 65th Leg., p. 2458, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.175. Lease of Oil and Gas After Forfeiture

When the relinquishment herein granted has been so forfeited by the commissioner, the land shall be subject to lease for oil and gas under the procedure provided by law for the leasing of unsold surveyed public school lands. No lease shall be executed which provides for a royalty of less than one-eighth, payable to the state for the benefit of the permanent free school fund, and the lessee shall in every case pay to the surface owner amounts equal to the bonus money and the delay rentals paid to the state, and in case of production such lessee shall pay to the surface owner amounts equal to one-half of all royalty above the reserved one-eighth. Upon the termination or expiration of a lease so executed by the Commissioner of the General Land Office, or if no acceptable offer is received for such lease after due advertisement, the rights of the surface owner to act under this law shall be ipso facto reinstated.

[Acts 1977, 65th Leg., p. 2459, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.176. Forfeiture of Rights

If any person, firm, or corporation operating under this law shall fail or refuse to make the payment of any sum within 30 days after it becomes due, or if such one or an authorized agent should knowingly make any false return or false report concerning production or drilling, or if such one should fail to file reports in the manner required by law or fail to comply with General Land Office rules and regulations or refuse the proper authority access to the records pertaining to the operations, or if such one or an authorized agent should knowingly fail or refuse to give correct information to the proper authority, or knowingly fail or refuse to furnish the land office a correct log of any well, or if any lease is assigned and the assignment is not filed in the General Land Office as required by law, the rights acquired under the permit or lease shall be subject to forfeiture by the commissioner, and he shall forfeit same when sufficiently informed of the facts which authorize a forfeiture, and the oil and gas shall be subject to sale in the manner provided for the sale of other forfeited rights hereunder, except that the owner of the soil shall not thereby forfeit his interest in the oil and gas. Such forfeiture may be set aside and all rights theretofore existing shall be reinstated at any time before the rights of another intervene, upon satisfactory evidence of future compliance with the provisions of this subchapter.

[Acts 1977, 65th Leg., p. 2459, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.177. Rights of Subsequent Purchaser

If one acquires a valid right by permit or lease to the oil and gas in any unsold public free school or asylum land under any other law, a subsequent purchaser of such land shall not acquire any rights

to any of the oil and gas that may be therein, but when the rights under such permit or lease terminate in the manner provided in the law under which they were obtained, then the owner of the soil shall become the owner of that portion of the oil and gas herein relinquished, and shall be thereafter subject to the provisions of this law. A forfeiture of the purchase of any survey or tract for any cause shall operate as a forfeiture of the minerals therein to the state. A relinquishment to the state of a lease producing oil or gas in paying quantities shall not operate to relinquish or convey to the owner of the soil any interest whatever in the oil and gas that may be in the land included in said lease.

[Acts 1977, 65th Leg., p. 2459, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.178. Operation Under Permit

The owner of a permit or combination of permits shall have 18 months from the date or average date thereof in which to begin drilling a well for oil and gas on some portion of the land included therein. The drilling on one permit shall be sufficient protection against forfeiture of all the permits included in a combination. Owners of permits or combination of permits included herein shall have three years after the date or average date thereof in which to complete the development of oil and gas thereon, and if oil and gas should not be found in paying quantities and a lease applied for within said time all rights in such permit or combination of permits shall terminate, and the oil and gas in such land shall become subject to the provisions of this law relating to the relinquishment of oil and gas to the owner of the soil.

[Acts 1977, 65th Leg., p. 2460, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.179. Lease Under Permit

If oil or gas should be produced in paying quantities upon any land included in this law, the owner of the permit shall report the development to the commissioner within 30 days thereafter and apply for a lease upon such whole surveys or tracts in each permit as the owner or owners of a combination of permits may desire to be leased, and accompany the application with a log of the wells, and the correctness of the log shall be sworn to by the owner, manager, or driller, and thereupon a lease shall be issued without the payment of any additional sum of money and for a period not to exceed 10 years, subject to renewal or renewals.

[Acts 1977, 65th Leg., p. 2460, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.180. Payments Under Permit

The owner of a permit or combination of permits who desires to avail himself of the terms of this law, shall pay the state 10 cents per acre, annually in

advance, for the second and third years, and shall likewise pay the owner of the soil 10 cents per acre for the first year of such permit, before availing himself of the privileges hereof, and a like sum thereafter annually in advance. A failure to make either of said payments shall subject the permit or permits to forfeiture by the commissioner, and when sufficiently informed of the facts which subject the permits to forfeiture, said commissioner shall forfeit the same by an endorsement of forfeiture upon the wrapper containing the papers relating to the permits and sign it officially. The payment of 10 cents per acre to the owner of the soil may be made to him or to the county clerk of the county in which the land is situated, and said clerk shall deposit such payment as he receives, in some bank at the county seat to the credit of the record owner of such land. If the owner of the soil refuses to accept such payment, said clerk shall withdraw such deposit and return it to the owner of the permit. The payment, or the tender of payment, shall be evidenced by the receipt of the owner or part owner or county clerk filed among the papers in the land office relating to such permits.

[Acts 1977, 65th Leg., p. 2460, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.181. Relinquishment Under Permit

The owner of a permit or combination of permits may relinquish to the state a permit or combination of permits or any whole survey or whole tract included in a permit at any time before obtaining a lease therefor by having such relinquishment recorded in the counties in which the land or part thereof is situated, and by filing it in the land office within 60 days after its execution, with \$1 as a filing fee.

[Acts 1977, 65th Leg., p. 2460, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.182. Damages to Soil

The payment of the 10 cents per acre and the obligation to pay the owner of the soil one-sixteenth of the production and the payment of same when produced and the acceptance of same by the owner, shall be in lieu of all damages to the soil.

[Acts 1977, 65th Leg., p. 2461, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.183. Effective Date of Lease

No mineral lease executed by the owner of the land or minerals under this subchapter is effective until a certified copy of the lease is filed in the land office.

[Acts 1977, 65th Leg., p. 2461, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.184. Statement of Consideration

No lease executed under this subchapter after September 17, 1939, is binding on the state unless it

recites the actual and true consideration paid or promised.

[Acts 1977, 65th Leg., p. 2461, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.185. University Land

The provisions of this subchapter relating to a combination of permits and extension of time for beginning development and time for development applies to permits on university land.

[Acts 1977, 65th Leg., p. 2461, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 52.186 to 52.220 reserved for expansion]

SUBCHAPTER G. PERMITS AND LEASES

§ 52.221. Definitions

In this subchapter:

(1) "Surveyed land" includes any tract for which there are approved field notes filed in the land office and 80-acre tracts and multiples of these tracts in these surveys.

(2) "Unsurveyed areas" includes all areas for which there are no approved field notes filed in the land office.

[Acts 1977, 65th Leg., p. 2461, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.222. Application for Prospect and Development of Surveyed Land

(a) A person who desires to obtain the right to prospect for and develop oil and gas on surveyed land shall file with the county clerk of the county in which the tract or a portion of the tract is located or with the county clerk of the county to which the county is attached for judicial purposes a written application which designates the land sufficiently to identify it.

(b) On receiving \$1 as a filing fee, the county clerk shall file and record the application and shall note the filing and recording together with the time of filing on his record of surveys opposite the entry of the proper survey.

(c) The application shall be filed with the land office within 30 days after it is filed with the county clerk.

[Acts 1977, 65th Leg., p. 2461, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.223. Limitations on Surveyed Areas for Prospect and Development

(a) If an applicant under Section 52.222 of this code obtains four sections or their equivalent that are eligible to be included in one permit, he shall not obtain any more land within two miles of the permitted land, but if the applicant obtains less than

four sections that are eligible to be included in one permit, he may obtain any additional area within two miles of the other area which will equal the four sections.

(b) No applicant may obtain more than 1,000 acres of land located within one mile of a well that is producing oil.

[Acts 1977, 65th Leg., p. 2461, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.224. Application for Prospect and Development of Unsurveyed Areas

(a) A person who desires to obtain the right to prospect for and develop oil and gas in an unsurveyed area shall file with the county surveyor of the county in which the area or part of the area is located a written application for each area for which application is made, designating the area sufficiently to identify it.

(b) The area shall be surveyed within 90 days and the application, field notes, and plat shall be filed in the land office within 100 days after the date of filing the application with the county surveyor.

(c) Unsurveyed areas for which application is made under this section shall not exceed 2,560 acres.

(d) On receipt of \$1 as a filing fee, the county surveyor shall file and record the application.

[Acts 1977, 65th Leg., p. 2462, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.225. Filing Documents and Issuing Permit

(a) When the commissioner receives an application that was filed with the county clerk or surveyor, the field notes and plat, a \$1 filing fee plus 10 cents an acre for each acre for which application is made, and an affidavit made by the applicant indicating interests he has in any other permit, lease, or patent issued under this subchapter and in good standing, he shall file these documents.

(b) If examination of the application and the field notes are found to be correct and the area for which application is made is covered by the provisions of this subchapter, the commissioner shall issue to the applicant or his assignee a permit conferring on him an exclusive right to prospect for and develop oil and gas within the designated area for a period of not more than two years.

[Acts 1977, 65th Leg., p. 2462, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.226. Annual Permit Fee

The permittee shall pay each year 10 cents an acre for each acre which he holds under a permit.

[Acts 1977, 65th Leg., p. 2462, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.227. Independent Development of Areas

The area covered by each permit shall be developed independently of other areas.

[Acts 1977, 65th Leg., p. 2462, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.228. Extension of Permit

A permit may be extended for a term of five years from its effective date conditioned on the payment in advance of the annual fee provided by law. [Acts 1977, 65th Leg., p. 2462, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.229. Suspension of Annual Fee

After production of oil and gas is obtained in paying quantities and the payment of royalty begins, the permittee is not required to pay any further annual rental fee.

[Acts 1977, 65th Leg., p. 2462, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.230. Conditions for Development

(a) Within 12 months after the effective date of the permit, the permittee shall begin in good faith actual work necessary to the physical development of the area.

(b) If oil and gas are not developed in commercial quantities within the 12-month period provided in Subsection (a) of this section, the permittee or manager shall file in the land office within 30 days after the expiration of the 12-month period an affidavit supported by two disinterested credible persons stating:

- (1) that actual work was begun within the 12-month period;
- (2) that a bona fide effort to develop the area was made during the 12-month period preceding the filing of the affidavit; and
- (3) what work was done, what expenditures were incurred, and whether or not oil or gas was discovered in commercial quantities.

(c) A permit is subject to forfeiture for failure to file the affidavit within the specified time or for filing an affidavit that is false in material matters. [Acts 1977, 65th Leg., p. 2462, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.231. Right to Lease

After production of oil and gas is obtained in paying quantities and subject to the provisions of this subchapter, the permittee is entitled to a lease that shall run as long as the area covered by the lease produces oil or gas in paying quantities.

[Acts 1977, 65th Leg., p. 2463, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.232. Removal of Oil and Gas

(a) Except as provided in Subsection (b) of this section, no permittee may take, carry away, or sell any oil or gas before a lease is obtained.

(b) Before a lease is obtained, the quantity of oil or gas necessary for continued development of the area may be used without accounting for it.

[Acts 1977, 65th Leg., p. 2463, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.233. Issuance and Renewal of Lease

On payment of \$2 an acre for each acre covered by the permit, a lease shall be issued for a term of not more than 10 years, as desired by the permittee, and the lease shall include an option to renew for an equal or shorter period.

[Acts 1977, 65th Leg., p. 2463, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.234. Areas Covered by Applications, Permits, and Leases

(a) A separate written application shall be made for the area desired in a permit.

(b) No permit or lease may cover areas included in two or more applications.

(c) No application, permit, or lease shall cover a divided area.

[Acts 1977, 65th Leg., p. 2463, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.235. Application Without Field Notes

Application may be made for whole tracts of surveyed land either as a whole or in 80-acre tracts or multiples of 80-acre tracts without furnishing field notes for the tracts.

[Acts 1977, 65th Leg., p. 2463, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.236. Rental and Royalty

On expiration of the first year after the effective date of the lease, \$2 an acre shall be paid during the term of the lease, and in addition to the \$2 an acre, the lessee shall pay a royalty of one-eighth of the value of the gross production of oil and a royalty of one-tenth of the value of the meter output of all gas disposed of off the premises of a gas well.

[Acts 1977, 65th Leg., p. 2463, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.237. Application of Fee to Certain Land

The provisions of Section 52.236 of this code relating to the payment of \$2 an acre during the lease period and the life of the lease do not apply to leases of bays, marshes, reefs, saltwater lakes, or other submerged land that contains as much as 100 acres but not in excess of 500 acres on which as many as five wells have been drilled and on which as much as \$100,000 has been spent. The drilling of the wells and the expenditure of the stated amount shall be established to the satisfaction of the commission.

[Acts 1977, 65th Leg., p. 2463, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.238. Terms of Permits and Leases

Each permit and lease shall contain the terms on which it is issued including authority for the commissioner to require drilling of wells necessary to offset wells drilled on adjacent private land and any

other provisions that the commissioner considers important to the rights of the permittee, lessee, or the state.

[Acts 1977, 65th Leg., p. 2463, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.239. Compensation of Surface Owner

(a) If the surface of an area covered by the provisions of this subchapter is acquired by a person before an application is filed under the provisions of this subchapter, the area shall still be subject to permit and lease, but the permittee or lessee shall pay annually in advance to the owner of the surface 10 cents an acre during the term of the lease.

(b) The amount paid to and accepted by the surface owner shall be full compensation for all damages to the surface.

[Acts 1977, 65th Leg., p. 2464, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.240. Statement of Interests

A person who applies for a permit or lease shall file with his application an affidavit showing any interest the applicant has in another permit or lease issued by the state that is in good standing on the date of the application.

[Acts 1977, 65th Leg., p. 2464, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.241. Disposition of Proceeds

(a) Proceeds arising from activities under this subchapter that affect land which belongs to the public school fund or the asylum funds shall be credited to the permanent funds of these institutions.

(b) Except for funds required to be credited to the permanent university fund by the constitution, proceeds paid or collected from activities under this subchapter affecting the land that belongs to the permanent fund of The University of Texas shall be credited by the State Treasurer to the available fund of that institution. These funds shall be held by the Board of Regents of The University of Texas System in a special building fund and shall be spent only for constructing buildings and equipping the buildings and for other permanent improvements.

(c) Proceeds arising from the activities affecting land other than that belonging to the public school fund, The University of Texas, and the asylums shall be credited to the same fund.

(d) Funds apportioned by this section do not include proceeds and royalties derived from the sand, gravel, and shell fund whose disposition is determined by another law.

[Acts 1977, 65th Leg., p. 2464, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.242. Abandoning Tracts; Leasing Remaining Tracts

A person who desires a lease may abandon one or more whole tracts in a permit by relinquishment filed in the land office as provided in this subchapter and may obtain a lease on the remaining area if the area is in a solid body.

[Acts 1977, 65th Leg., p. 2464, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.243. Relinquishment Procedure

(a) A permittee or lessee may relinquish his permit or lease at any time by having the deed of relinquishment acknowledged, recorded by the proper county clerk, and filed in the land office accompanied by a \$1 filing fee.

(b) The commissioner shall mail notice to the proper county clerk of the filing of the relinquishment and as soon as the notice has had time through the due course of mail to reach the clerk, the area shall be subject to applications as in the first instance.

[Acts 1977, 65th Leg., p. 2464, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.244. Transfer of Rights

(a) A permittee or lessee under this subchapter may sell his permit or lease and the rights secured by the permit or lease at any time.

(b) A permittee or lessee may give a lien of any kind on his permit or lease to any person who may be qualified to receive a permit or lease under this subchapter.

(c) The instrument evidencing the sale or lien shall be recorded in the county in which the area or part of the area is located or in the county to which the county may be attached for judicial purposes.

(d) The instrument shall be filed also in the land office within 60 days after the date it is filed with the county accompanied by a filing fee of \$1.

(e) If the instrument is not filed as provided in this section, the contract evidenced by the instrument shall be void and the obligations in the contract assumed by the parties are not enforceable.

(f) A sublease contract does not have to be filed with the land office.

[Acts 1977, 65th Leg., p. 2464, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.245. Transfer of University Land

(a) A permittee or lessee of university land may sell and transfer his permitted or leased land or area in whole or in tracts of not less than 40 acres.

(b) On payment of \$1 filing fee for each transfer and an additional fee of 10 cents an acre for each acre in the transfer, the assignee may have the instruments evidencing the transfer filed in the land

office and may have the portion transferred separated from the parent tract or parent subdivision of a permit or lease on the records of the land office.

(c) When considered necessary, the commissioner may require field notes before filing a transfer.

(d) Before offering a transfer in the land office, the transfer shall be recorded in the county or counties in which the area or part of the area is located.

(e) The \$1 filing fee shall be deposited in the State Treasury to the credit of the General Revenue Fund and the acreage fee shall be deposited in the State Treasury to the credit of the available fund of the state university.

[Acts 1977, 65th Leg., p. 2465, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.246. Dissolution of Combined Permits and Leases

(a) Permittees and lessees that have permits and leases which have been combined may dissolve the combinations in a manner that is satisfactory to the permittees and lessees.

(b) Dissolution of the combination shall be conditioned on:

(1) the payment of the fees prescribed in this subchapter at the time transfers are presented for filing in the land office; and

(2) recording the dissolution in the county or counties in which the area or part of the area is located.

[Acts 1977, 65th Leg., p. 2465, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.247. Acreage Fee Exemption

No acreage fee may be charged under Sections 52.245 through 52.246 of this code if the transfer includes a whole permit or a whole lease or a whole tract in a permit or lease.

[Acts 1977, 65th Leg., p. 2465, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.248. Application to Single and Combination Permits and Leases

The provisions of Sections 52.245 through 52.247 of this code apply to permits and leases that may be held singly or in combination with other permits or leases.

[Acts 1977, 65th Leg., p. 2465, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.249. Status of Assignees

After transfers provided in Sections 52.245 through 52.246 of this code are filed in the land office, the assignee or assignees in the transfer are substituted for the original permittee or lessee and assume the obligations, pains, and penalties that the law has imposed on the original permittee or lessee.

[Acts 1977, 65th Leg., p. 2465, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.250. Forfeiture of Rights

(a) A permit or lease is subject to forfeiture if:

(1) it is issued on a statement by the applicant that is false or untrue in material matters;

(2) the permittee fails or refuses to begin in good faith necessary work to develop the area in the time required;

(3) the permittee fails or refuses to proceed in good faith and with reasonable diligence in a bona fide effort to develop an area included in his permit after having begun the development;

(4) the permittee fails or refuses to apply for a lease within the required time;

(5) the lessee fails or refuses to make proper remittances in payment of royalty or other payments;

(6) the lessee fails or refuses to make the proper statement;

(7) the lessee fails or refuses to furnish the required evidence of the output and market value and material matters relating to them on request; or

(8) the lessee fails to make the annual payment on the area on request to do so.

(b) After the commissioner is informed sufficiently of the facts, he may declare the permit or lease forfeited by proper entry on the duplicate of the permit or lease in his office.

(c) The commissioner shall mail a notice of the forfeiture to the proper county clerk, and the area shall be subject to the application of other persons than the forfeiting permittee or lessee after the notice has had time to reach the county clerk through regular mail.

(d) The commissioner may exercise great discretion in requiring persons to develop gas wells.

(e) Forfeitures may, in the discretion of the commissioner, be set aside and rights reinstated before the rights of another person intervene.

[Acts 1977, 65th Leg., p. 2466, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.251. Pollution of Streams

(a) Development in water or on islands or in river beds and channels shall be done under rules that will prevent the pollution of the water, and to prevent the pollution, the commissioner may request the Parks and Wildlife Department for assistance in the adoption and enforcement of rules for protection of the water from pollution.

(b) The commissioner may cancel a permit or lease for a failure or refusal of the owner to comply with the rules that are adopted.

[Acts 1977, 65th Leg., p. 2466, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.252. Property Taxable

The rights acquired under this subchapter are subject to taxation as is other property.

[Acts 1977, 65th Leg., p. 2466, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 52.253 to 52.290 reserved for expansion]

SUBCHAPTER H. LEASE LIMITATIONS**§ 52.291. Coverage**

The following persons, agencies, and entities are subject to the provisions of Sections 52.292 through 52.293 of this code:

- (1) the commissioner;
- (2) the board;
- (3) boards for lease of land owned by a department, board, or agency of the state created by Chapter 34 of this code;
- (4) the Board for Lease of University Lands;
- (5) the Board of Regents of Texas A & M University;
- (6) the Board of Regents of Texas Tech University;
- (7) the Board of Directors of Texas A & I University;
- (8) the Board of Regents, State Senior Colleges;
- (9) the Board of Regents of the University of Houston;
- (10) any other board of regents or other governing board of a state-supported institution of higher learning having authority to execute oil, gas, and mineral leases on land owned by the institution;
- (11) an owner of land or minerals in this state whose authority to lease the land or minerals as agent for the state arises in whole or in part from what is commonly known as the Relinquishment Act, codified in Subchapter F of this chapter;
- (12) the Board for Lease of State Park Lands;
- (13) the Board for Lease of the Texas Department of Corrections; and
- (14) the commissioners court of any county in this state.

[Acts 1977, 65th Leg., p. 2466, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.292. Prohibited Leases

It is illegal for any person included in Section 52.291 of this code to execute an oil, gas, or mineral lease on land on which he is authorized by law to execute the lease unless the lease includes the terms provided in Section 52.293 of this code.

[Acts 1977, 65th Leg., p. 2467, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.293. Prerequisite to Sale Outside State

No natural gas or casinghead gas, including both associated and nonassociated gas, produced from the mineral estate subject to this lease may be sold or contracted for sale to any person for ultimate use outside the state unless the Railroad Commission of Texas, after notice and hearing as provided in Title 3 of this code, finds that:

(1) the person, agency, or entity that executed the lease in question does not require the natural gas or casinghead gas to meet its own existing needs for fuel;

(2) no private or public hospital, nursing home, or other similar health-care facility in this state requires the natural gas or casinghead gas to meet its existing needs for fuel;

(3) no public or private school in this state that provides elementary, secondary, or higher education requires the natural gas or casinghead gas to meet its existing needs for fuel;

(4) no facility of the state or of any county, municipality, or other political subdivision in this state requires the natural gas or casinghead gas to meet its existing needs for fuel;

(5) no producer of food and fiber requires the natural gas or casinghead gas necessary to meet the existing needs of irrigation pumps and other machinery directly related to this production; and

(6) no person who resides in this state and who relies on natural gas or casinghead gas to provide in whole or part his existing needs for fuel or raw material requires the natural gas or casinghead gas to meet those needs.

[Acts 1977, 65th Leg., p. 2467, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.294. Prerequisite to Filing Leases

The commissioner shall not receive and file an oil, gas, and mineral lease required to be filed by law unless the lease includes the terms and conditions provided in Section 52.293 of this code.

[Acts 1977, 65th Leg., p. 2467, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.295. Certain Leases Null, Void, and of No Force and Effect

An oil, gas, and mineral lease executed or received and filed in violation of the provisions of this subchapter is null, void, and of no force and effect.

[Acts 1977, 65th Leg., p. 2468, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 52.296. Granting Exceptions to Subchapter

After notice and hearing as provided in Title 3 of this code, the commission may grant exceptions to the provisions of this subchapter if it finds and

determines that enforcement of the provisions of this subchapter:

- (1) would cause physical waste as defined in Title 3 of this code; or
- (2) would unreasonably deny to the lessee an opportunity to produce economically hydrocarbons from the land subject to the lease in question.

[Acts 1977, 65th Leg., p. 2468, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 53. MINERALS

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53.001. Definitions.

SUBCHAPTER B. PROSPECT AND LEASE ON STATE LAND

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- 53.061. Authority to Lease Certain Minerals.
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SUBCHAPTER A. GENERAL PROVISIONS

§ 53.001. Definitions.

In this chapter:

- (1) "Commissioner" means the Commissioner of the General Land Office.
- (2) "Land office" means the General Land Office.

[Acts 1977, 65th Leg., p. 2469, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 53.002 to 53.010 reserved for expansion]

SUBCHAPTER B. PROSPECT AND LEASE ON STATE LAND

§ 53.011. Land Subject to Prospect

Any tract of land that belongs to the state, including islands, salt and freshwater lakes, bays, inlets, marshes, and reefs owned by the state within tide-water limits, the part of the Gulf of Mexico within the state's jurisdiction, unsold surveyed public school land, rivers and channels that belong to the state, and land sold with a reservation of minerals to the state are subject to prospect by any person for all minerals except:

- (1) oil and gas;
- (2) coal, lignite, sulphur, salt, and potash;
- (3) shell, sand, and gravel; and
- (4) fissionable minerals other than uranium and thorium on land sold with a reservation of minerals to the state.

[Acts 1977, 65th Leg., p. 2469, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.012. Application for Right to Prospect

(a) A person who desires to prospect land covered by this subchapter shall file an application with the commissioner designating the area to be prospected.

(b) Each area covered by an application may not be in excess of 640 acres with a 10 percent tolerance for tracts, sections, and surveys that include more than 640 acres.

(c) Each application shall be accompanied by a rental payment of not less than 25 cents an acre.

[Acts 1977, 65th Leg., p. 2469, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.013. Conditions of Permit

(a) The commissioner shall issue to the first applicant a permit to prospect the area designated in his application for a period of one year from the date his application is filed.

(b) The commissioner may extend the permit for a period of one year on payment of an annual rental of 25 cents an acre.

(c) No permit may be extended for a period of more than five consecutive years from the date of its issuance.

[Acts 1977, 65th Leg., p. 2470, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.014. Assignment Prohibited

No permit issued under this subchapter may be assigned.

[Acts 1977, 65th Leg., p. 2470, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.015. Application for Lease

(a) At any time during the term of the permit, the permittee may file an application to lease the area or a designated portion of the area covered by the permit for the purpose of mining or producing the minerals covered by the permit.

(b) The application shall be accompanied by the first lease payment of not less than \$2 an acre.

(c) If the area designated for lease in the application is less than the area covered by the permit, the applicant shall include with his application field notes prepared by the county surveyor or by a licensed state land surveyor describing the land designated.

[Acts 1977, 65th Leg., p. 2470, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.016. Issuance of Lease

(a) The lease shall be issued by the commissioner under the provisions of this subchapter and shall be for a primary term of five years and as long after that time as the minerals are produced in paying quantities.

(b) The commissioner may include in the lease any other provision he considers necessary for protection of the interests of the state.

[Acts 1977, 65th Leg., p. 2470, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.017. Annual Lease Payment

The annual lease payment after the first year and during the primary term of the lease shall not be less than \$1 an acre, which is payable unless production in paying quantities is obtained and royalty is being paid to the state.

[Acts 1977, 65th Leg., p. 2470, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.018. Royalty

The royalty under the lease shall not be less than one-sixteenth of the value of the minerals produced under the lease.

[Acts 1977, 65th Leg., p. 2470, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.019. Payments

Lease payments and royalty shall be paid to the commissioner at Austin, and all payments shall be credited to the account of the permanent school fund.

[Acts 1977, 65th Leg., p. 2470, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.020. Assignment of Lease

(a) A lease may be assigned in quantities of not less than 40 acres, but if there are fewer than 40 acres remaining in the tract originally leased, the lesser area may be assigned.

(b) The assignment shall be recorded in the county in which the land is located, and within 90 days after it is recorded a certified copy of the assignment, certified by the county clerk from his records, shall be sent to the land office, together with a \$1 filing fee for each tract affected.

[Acts 1977, 65th Leg., p. 2470, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.021. Forfeiture of Lease

(a) A lease is subject to forfeiture by act of the commissioner if:

(1) the lessee fails or refuses to pay any amount which is due either as a lease payment or royalty;

(2) the lessee or his authorized agent knowingly makes any false return or false report concerning the lease;

(3) the lessee or his agent refuses the commissioner or his authorized representative access to the records or other data relating to operations under the lease; or

(4) a material term of the lease is violated.

(b) Any area forfeited under this section is subject to application for a permit under the same terms as the original application.

[Acts 1977, 65th Leg., p. 2471, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.022. Effect of Subchapter

None of the provisions of this subchapter shall apply to, alter, or affect any rights existing on June 22, 1955, under a valid permit issued by the commissioner under the provisions of Section 12, Chapter 271, General Laws, Acts of the 42nd Legislature, Regular Session, 1931, as amended (Article 5421c, Vernon's Texas Civil Statutes), but if the permittee desires that his lease continue as long as production is obtained in paying quantities, he shall pay lease payments and royalty provided in this subchapter.

[Acts 1977, 65th Leg., p. 2471, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 53.023 to 53.060 reserved for expansion]

SUBCHAPTER C. LEASE OF COAL, LIGNITE, SULPHUR, POTASH, URANIUM, AND THORIUM

§ 53.061. Authority to Lease Certain Minerals

(a) The state constitutes the owner of the surface its agent to lease to any person the coal, lignite, sulphur, potash, uranium, thorium, and any minerals produced in conjunction with these which may be within all or part of a survey previously sold with all minerals reserved to the state.

(b) The lease shall be made on terms and conditions that may be prescribed by the school land board.

[Acts 1977, 65th Leg., p. 2471, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.062. Lease of Minerals Separately and Together

Minerals covered by the provisions of this subchapter may be leased either separately or together.

[Acts 1977, 65th Leg., p. 2471, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.063. Forms

The owner of the surface may lease to any person the minerals covered by this subchapter on lease forms prepared by the land office.

[Acts 1977, 65th Leg., p. 2471, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.064. Prerequisites for Effectiveness of Lease

(a) No lease executed by the owner of the surface is binding on the state unless it recites the actual consideration paid or promised for the lease.

(b) No lease is effective until a certified copy is filed in the land office and the bonus accruing to the state is paid to the commissioner. The commissioner is entitled to reject for filing any lease submitted to him that he feels is not in the best interest of the state.

[Acts 1977, 65th Leg., p. 2471, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.065. Payments Under Lease

(a) Under a lease executed under this subchapter, the lessee shall pay to the state 60 percent of all bonuses agreed to be paid for the lease and 60 percent of all rentals and royalties that are payable under the lease.

(b) The lessee shall pay to the owner of the surface 40 percent of all bonuses agreed to be paid for the lease and 40 percent of all rentals and royalties payable under the lease.

(c) If production is obtained, the state shall receive not less than one-sixteenth of the value of the minerals produced.

[Acts 1977, 65th Leg., p. 2472, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.066. Damages to Surface

Payments made by the lessee to the owner of the surface as provided in this subchapter and acceptance of the payments by the owner of the surface are in place of all damages to the soil.

[Acts 1977, 65th Leg., p. 2472, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.067. Payment Procedure

Royalties and other payments accruing to the state under this subchapter shall be paid to the commissioner in Austin and shall be deposited in the fund to which the minerals belong.

[Acts 1977, 65th Leg., p. 2472, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.068. Production Report and Records

(a) Each payment shall be accompanied by an affidavit of the lessee or his authorized agent indicating:

(1) the amount of minerals produced and marketed during the month;

(2) the person to whom the minerals were sold; and

(3) the selling price for the minerals as shown by copies of the smelter, mint, mill, refinery, or other returns or documents attached to the affidavit.

(b) Books, accounts, weights, wage contracts, correspondence, and other documents or papers relating to production under this subchapter are open at all times to inspection by the commissioner or his authorized representatives.

[Acts 1977, 65th Leg., p. 2472, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.069. Forfeiture of Lease

(a) A lease and all rights under a lease are subject to forfeiture by action of the commissioner if the lessee or his assignee, sublessee, receiver, or other agent in control of the lease:

(1) fails or refuses to pay any royalty within 30 days after it becomes due;

(2) fails or refuses to the proper authorities access to the records relating to the operations; or

(3) knowingly fails or refuses to give correct information to the proper authorities.

(b) The commissioner may declare the forfeiture when he is sufficiently informed of the facts that authorize the forfeiture. He shall write on the wrapper containing the papers relating to the lease words declaring the forfeiture and shall sign it officially. Then the lease and all rights under the lease together with payments made under it are forfeited.

(c) Notice of the forfeiture shall be mailed to the person shown by the records of the land office to be

the owner of the surface and the owner of the forfeited lease at their last known addresses as shown in the land office records.

[Acts 1977, 65th Leg., p. 2472, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.070. Reinstatement of Lease

(a) If the owner of the forfeited lease complies with the provisions of this subchapter within 30 days after the declaration of forfeiture, the commissioner may reinstate the lease under the terms of this subchapter and other terms that he may prescribe.

(b) If the lease is not reinstated within the 30-day period, the owner of the surface, as agent of the state, is entitled to lease the minerals.

[Acts 1977, 65th Leg., p. 2473, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.071. Lien

The state has a first lien on all minerals produced from any lease to secure the payment of unpaid royalty or other amounts that are due under this subchapter.

[Acts 1977, 65th Leg., p. 2473, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.072. Effect of Certain Laws

Any rights acquired under Articles 5388 through 5403, Revised Civil Statutes of Texas, 1925, before March 15, 1967, are not affected by the repeal of those articles, and the rights, powers, duties, and obligations conferred or imposed by those articles are governed by those repealed articles.

[Acts 1977, 65th Leg., p. 2473, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.073. Certain Minerals and Laws Exempt From Subchapter

The provisions of this subchapter do not apply to or affect oil and gas and do not affect the provisions of Subchapter F, Chapter 52 of this code or Subchapter B of this chapter.

[Acts 1977, 65th Leg., p. 2473, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 53.074 to 53.110 reserved for expansion]

SUBCHAPTER D. UNITIZATION OF SULPHUR PRODUCTION

§ 53.111. Authority to Operate an Area as a Unit for Production of Sulphur

Subject to the provisions of this subchapter, the commissioner, on behalf of the state or any of its funds, may execute agreements that provide for the operation of areas as a unit for the exploration, development, and production of sulphur and may commit to the agreements the royalty interests in

sulphur reserved to or provided for the state or any fund of the state, in or in connection with any patent, award, mining claim, or contract of sale or under any lease made by an official, board, agent, agency, or authority of the state.

[Acts 1977, 65th Leg., p. 2473, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.112. Approval of Certain Agreements by School Land Board

An agreement authorized by Section 53.111 of this code that commits royalty interests in land dedicated to the permanent free school fund and the asylum funds, in riverbeds, inland lakes, channels, and areas within tidewater limits including islands, lakes, bays, inlets, marshes, reefs, and the bed of the sea must be approved by the school land board and must be executed by the owners of the surface if the agreements cover land leased for sulphur under Subchapter C of this chapter.

[Acts 1977, 65th Leg., p. 2473, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.113. Approval of Other Agreements

Agreements that commit the royalty interest in land that is not covered by Section 53.112 of this code must be approved by the board, official, agent, agency, or authority of the state which has the authority to lease or to approve a lease of the land or area for sulphur.

[Acts 1977, 65th Leg., p. 2473, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.114. Commissioner's Approval

An agreement authorized by Section 53.111 of this code must be found by the commissioner to be in the best interest of the state.

[Acts 1977, 65th Leg., p. 2474, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.115. Provisions of Agreement

(a) An agreement executed under this subchapter may include the following provisions:

(1) that operations incident to the drilling of a well on any portion of the unit are considered for all purposes to be the conduct of the operations on each tract in the unit;

(2) that the production allocated by the agreement to each tract included in the unit shall be considered for all purposes after production to be produced from the tract;

(3) that the royalty interest reserved to or provided for the state or any of its funds on production from any tract included in the unit shall be paid only on that portion of the production from the unit which is allocated to the tract under the agreement; and

(4) that each lease included in the unit shall remain in effect so long as the agreement remains in effect and that on termination of the agreement each lease shall continue in effect under the terms and provisions of the lease.

(b) The agreement may include any other terms, conditions, and provisions the commissioner or any board, official, agent, agency, or authority of the state that has the authority to lease or to approve a lease of the land or area for sulphur may consider to be in the best interest of the state.

[Acts 1977, 65th Leg., p. 2474, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.116. Application to University Land

None of the provisions of this subchapter apply to any land under the control and management of the Board of Regents of The University of Texas System.

[Acts 1977, 65th Leg., p. 2474, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 53.117. Construction of Subchapter

(a) Agreements and operations under this subchapter are necessary to prevent waste and conserve the natural resources of the state and are not a violation of the provisions of Chapter 15, Business & Commerce Code, as amended.

(b) If a court finds a conflict between the provisions of this subchapter and the code cited in the previous subsection, this subchapter is intended as a reasonable exception to those laws which is necessary to prevent waste and conserve the natural resources.

(c) If a court finds that a conflict exists between this subchapter and the laws cited in Subsection (a) of this section and that this subchapter is not a reasonable exception to those laws, it is the intent of the legislature that this subchapter or any conflicting portion of this subchapter be declared invalid and that the previously cited laws remain valid.

[Acts 1977, 65th Leg., p. 2474, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

SUBTITLE E. BEACHES AND DUNES

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SUBCHAPTER A. GENERAL PROVISIONS

§ 61.001. Definitions

In this chapter:

- (1) "Department" means the Parks and Wildlife Department.
- (2) "Line of vegetation" means the extreme seaward boundary of natural vegetation which spreads continuously inland.
- (3) "Highest wave" means the highest swell of the surf with such regularity that vegetation cannot grow and does not refer to the extraordinary waves which temporarily extend above the line of vegetation during storms and hurricanes.
- (4) "Littoral owner" means the owner of land adjacent to the shore and includes anyone acting under the littoral owner's authority.
- (5) "Public beach" means any beach area, whether publicly or privately owned, extending inland from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico to which the public has acquired the right of use or easement to or over the area by prescription, dedication, presumption, or has retained a right by virtue of continuous right in the public since time immemorial, as recognized in law and custom.

[Acts 1977, 65th Leg., p. 2477, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 61.002 to 61.010 reserved for expansion]

SUBCHAPTER B. ACCESS TO PUBLIC BEACHES

§ 61.011. Public Policy

It is declared and affirmed to be the public policy of this state that the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned

beaches bordering on the seaward shore of the Gulf of Mexico, or if the public has acquired a right of use or easement to or over an area by prescription, dedication, or has retained a right by virtue of continuous right in the public, the public shall have the free and unrestricted right of ingress and egress to the larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico.

[Acts 1977, 65th Leg., p. 2477, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.012. Definition

In this subchapter, "beach" means state-owned beaches to which the public has the right of ingress and egress bordering on the seaward shore of the Gulf of Mexico or any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

[Acts 1977, 65th Leg., p. 2477, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.013. Prohibition of Obstructions

It is an offense against the public policy of this state for any person to create, erect, or construct any obstruction, barrier, or restraint that will interfere with the free and unrestricted right of the public, individually and collectively:

(1) to enter or to leave any state-owned beach bordering on the seaward shore of the Gulf of Mexico, or any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public; or

(2) to use lawfully and legally any property abutting on or contiguous to the state-owned beach bordering on the seaward shore of the Gulf of Mexico on which the public has acquired a prescriptive right.

[Acts 1977, 65th Leg., p. 2478, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.014. Denial of Access by Posting

(a) As used in this section, "public beach" means the area extending from the line of mean low tide of the Gulf of Mexico to the line of vegetation bordering on the Gulf of Mexico, or to a line 200 feet inland from the line of mean low tide, whichever is nearer the line of mean low tide, if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

(b) Any person who displays or causes to be displayed on any public beach any sign, marker, or warning, or who shall make or have made any written or oral communication which states that the public beach is private property or who states in any other manner that the public does not have the right of access to the public beach in violation of the lawful access rights of the public guaranteed by this subchapter, shall be fined not less than \$10 nor more than \$200.

(c) Each day that the communication is made constitutes a separate offense.

(d) Any person who violates the provisions of this section shall be prosecuted in the county in which the public beach is located.

(e) This section does not apply to any island or peninsula that is not accessible by public road or common carrier ferry facility so long as the condition exists.

[Acts 1977, 65th Leg., p. 2478, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.015. Satisfaction of Ingress and Egress Requirement

The requirement of free and unrestricted right of ingress and egress over an area landward of the line of vegetation is considered fully satisfied by access roads or ways which are in existence now and available to the public or which by or with the approval of any governmental authority having jurisdiction may be provided in the future.

[Acts 1977, 65th Leg., p. 2478, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.016. Boundaries for Areas With No Marked Vegetation Line

(a) To determine the elevation reached by the highest waves of the Gulf of Mexico, in any area in which there is no clearly marked vegetation line (for instance, a line immediately behind well-defined dunes or mounds of sand and at a point where vegetation begins) recourse shall be to the nearest clearly marked line of vegetation on each side of the unmarked area.

(b) The "line of vegetation" for the unmarked area shall be the line of constant elevation connecting the two clearly marked lines of vegetation on each side.

(c) If the elevation of the two points on each side of the area are not the same, the extension defining the line reached by the highest waves of the Gulf shall be the average elevation as between the two points, but if there is no clearly marked line of vegetation, the extended line shall not extend inland further than 200 feet from the seaward line of mean low tide.

[Acts 1977, 65th Leg., p. 2478, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.017. Line of Vegetation Unaffected by Certain Conditions

(a) The "line of vegetation" is not affected by the occasional sprigs of salt grass on mounds and dunes or seaward from them and by artificial fill, the addition or removal of turf, or by other artificial changes in the natural vegetation of the area.

(b) If the changes listed in Subsection (a) of this section are made and the vegetation line is obliterated or is created artificially, the line of vegetation shall be determined in the same manner as in those areas covered by Section 61.016 of this code, but if there is a vegetation line consistently following a line more than 200 feet from the seaward line of mean low tide, the 200-foot line shall constitute the landward boundary of the area subject to public easement until a final court adjudication establishes the line in another place.

[Acts 1977, 65th Leg., p. 2479, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.018. Suit to Remove Obstructions

(a) The attorney general or any county attorney, district attorney, or criminal district attorney shall file in a district court of Travis County, or in the county in which the property is located, a suit to obtain either a temporary or permanent court order or injunction to remove any obstruction or barrier or to prohibit any restraint or interference which restricts the right of the public, individually or collectively, to free and unrestricted ingress and egress to and from any area described in Section 61.012 of this code or any property abutting on or contiguous to the state-owned beach on which the public has acquired a prescriptive right.

(b) In the same suit, the attorney general, county attorney, district attorney, or criminal district attorney may seek recovery of the costs of removing any obstruction or barrier if it is removed by public authorities pursuant to an order of the court.

[Acts 1977, 65th Leg., p. 2479, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.019. Declaratory Judgment Suits

(a) A littoral owner whose rights are determined or affected by this subchapter may bring suit for a declaratory judgment against the state to try the issue or issues.

(b) Service of citation on the state shall be made by serving the citation on the attorney general.

[Acts 1977, 65th Leg., p. 2479, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.020. Prima Facie Evidence

In a suit brought or defended under this subchapter or whose determination is affected by this subchapter, a showing that the area in question is located in the area from mean low tide to the line of vegetation is prima facie evidence that:

(1) the title of the littoral owner does not include the right to prevent the public from using the area for ingress and egress to the sea; and

(2) there is imposed on the area, subject to proof of easement, a prescriptive right or easement in favor of the public for ingress and egress to the sea.

[Acts 1977, 65th Leg., p. 2479, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.021. Area Not Covered by Subchapter

None of the provisions of this subchapter apply to beaches on islands or peninsulas that are not accessible by a public road or ferry facility for as long as the condition exists.

[Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.022. Exemption for Certain Structures

The provisions of this subchapter do not prevent any agency, department, institution, subdivision, or instrumentality of this state or of the federal government from erecting or maintaining any groin, seawall, barrier, pass, channel, jetty, or other structure as an aid to navigation, protection of the shore, fishing, safety, or other lawful purpose authorized by the constitution or laws of this state or the United States.

[Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.023. Effect on Land Titles and Property Adjacent to and on Beaches

The provisions of this subchapter shall not be construed as affecting in any way the title of the owners of land adjacent to any state-owned beach bordering on the seaward shore of the Gulf of Mexico or to the continuation of fences for the retention of livestock across sections of beach which are not accessible to motor vehicle traffic by public road or by beach.

[Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.024. Effect of Subchapter on Definition of Public Beach

None of the provisions of this subchapter shall reduce, limit, construct, or vitiate the definition of public beaches which has been defined from time immemorial in law and custom.

[Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 61.025 to 61.060 reserved for expansion]

SUBCHAPTER C. MAINTENANCE OF THE PUBLIC BEACHES

§ 61.061. Purpose

It is the purpose of this subchapter to allocate responsibility for cleaning the beaches of this state and to preserve and protect local initiative in the maintenance and administration of beaches.

[Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.062. Public Policy

It is the public policy of this state that the public, individually and collectively, shall have the free and unrestricted right of ingress and egress to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico if the public has acquired a right of use or easement to or over the area by prescription, dedication, or continuous use. This creates a responsibility for the state, in its position as trustee for the public to assist local governments in the cleaning of beach areas which are subject to the access rights of the public as defined in Subchapter B of this chapter.

[Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.063. Definition

In this subchapter, "clean and maintain" means the collection and removal of litter and debris and the supervision and elimination of sanitary and safety conditions that would pose a threat to personal health or safety if not removed or otherwise corrected and includes the employment of lifeguards, beach patrols, and litter patrols.

[Acts 1977, 65th Leg., p. 2480, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.064. Application of Subchapter

This subchapter applies to home-rule cities with a population of more than 60,000 that are located or border on the Gulf of Mexico and to all counties that are located or border on the Gulf of Mexico if the city or county that makes application for funds under this subchapter has within its boundaries public beaches.

[Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.065. Duty of Cities

(a) It is the duty and responsibility of the governing body of any incorporated city, town, or village located or bordering on the Gulf of Mexico to clean and maintain the condition of all public beaches within the corporate boundaries.

(b) The duty to clean and maintain the condition of public beaches does not extend to any public beach within the corporate boundaries that is owned by the county in which it is located.

[Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.066. Duty of County

It is the duty and responsibility of the commissioners court of any county located or bordering on the Gulf of Mexico to clean and maintain the condition of all public beaches located inside the county but outside the boundaries of any incorporated city located or bordering on the Gulf of Mexico and all public beaches owned by the county and located inside the boundaries of an incorporated city, town, or village.

[Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.067. Duty of State

It is the duty and responsibility of the state to clean and maintain the condition of all public beaches located within state parks designated by the department.

[Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.068. Application Requirement

A city or county that seeks state funds under this subchapter to clean the public beaches must submit an application to the department.

[Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.069. Contents of Application

To be approved, the application must provide:

(1) for the administration or supervision of the public beaches of the city or county by a beach park board of trustees, county parks board, commissioners court, or other administrative body that the legislature may from time to time authorize, and provide that the board or agency will have adequate authority to administer an effective program of keeping clean the public beaches within its jurisdiction;

(2) for the receipt by the city or county treasurer or other officer exercising similar functions, if there is no city or county treasurer, of all funds paid to the city or county under this subchapter and provide for the proper safeguarding of the funds by the officer, provide that the funds will be spent solely for the purposes for which they are paid, and provide for the repayment by the city or county of any funds lost or diverted from the purposes for which paid;

(3) that the governing body of the city or county will make reports as to amounts and categories of expenditures that the department may from time to time require;

(4) that entrance to all public beaches under the jurisdiction of the governing body of the city or county is free of charge; and

(5) for the establishment, maintenance, and administration of at least one beach park by the city or county which meets the minimum requirements of size and facilities available to the public as determined by the department.

[Acts 1977, 65th Leg., p. 2481, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.070. Parking and Use Fees

Subsection (4), Section 61.069 of this code shall not be construed to prohibit the assessment of a reasonable fee for off-beach parking or for the use of facilities provided for the use and convenience of the public.

[Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.071. Compliance Before Approval

The department shall not approve any application that fails to meet the conditions specified in Section 61.069 of this code.

[Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.072. State Funds

The department shall pay to each city or county that has an application approved under Sections 61.068 through 61.070 of this code from appropriations that are made available the state share for cleaning and maintenance of public beaches.

[Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.073. Conditions for Payments

No payments shall be made under this section until the department finds that:

(1) there will be available in the budget of the city or county not less than \$20,000 to clean and maintain public beaches within its jurisdiction for the state fiscal year for which reimbursement is sought; and

(2) there will be available in the budget of the city or county for the purpose of cleaning and maintaining the public beaches within its jurisdiction for the state fiscal year for which reimbursement is sought an amount not less than the total amount spent by the city or county to clean the beaches in the state fiscal year ending August 31, 1969.

[Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.074. Submission of Proposed Expenditures

A city or county that seeks reimbursement under the provisions of this subchapter shall submit to the department proposed expenditures for cleaning and maintaining the public beaches.

[Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.075. Fair Distribution of Funds

The department shall distribute the state share to the cities and counties in a fair and impartial manner and under procedures and accounting methods to be adopted by the department.

[Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.076. Limitation on State Share

(a) No city or county may receive as its state share an amount that is greater than two-thirds of the amount the city or county spends for the purpose of cleaning and maintaining public beaches within its jurisdiction during the state fiscal year for which reimbursement is sought.

(b) The department shall allocate the state share to eligible cities and counties taking into account the frequency with which public beaches within the jurisdiction of the cities and counties are used.

[Acts 1977, 65th Leg., p. 2482, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.077. Funds for Administrative Purposes and Emergencies

(a) The department may use for administrative purposes not more than 10 percent of the appropriated funds for any state fiscal year.

(b) The department may withhold a portion of the appropriated funds to maintain a reserve emergency fund to be used for cleaning beaches in the event of a catastrophe, such as an oil spill, an influx of seaweed, or other major interference with public recreational use of public beaches.

[Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.078. Authority to Spend County Funds

The commissioners court of any county located or bordering on the Gulf of Mexico may spend from any available fund the amount it considers necessary to carry out the responsibilities provided in this subchapter.

[Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.079. Notice of Ineligibility

After reasonable notice and opportunity for a hearing to a city or county that is receiving funds under the provisions of this subchapter, if the department finds that the city or county no longer complies with the requirements of this subchapter, it shall notify the city or county that further payments will not be made until the department is satisfied that there is no longer any failure to comply.

[Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.080. Public Beaches in Ineligible City

(a) The governing body of any incorporated city located or bordering on the Gulf of Mexico that is not entitled to receive funds under this subchapter may contract with the commissioners court of the county in which the city is located to allow the county to clean the beaches within the corporate limits of the city.

(b) The city may apply to the department for rebates of 40 percent of the contract price, and the city is not required to meet the terms and conditions imposed in Section 61.069 of this code unless otherwise provided by law.

(c) The department shall make the rebates at the close of each fiscal year on a showing by the city that entrance to all public beaches under the jurisdiction of the city is free of charge.

(d) This section shall not be construed to prohibit the assessment of a reasonable fee for off-beach parking or the use of facilities provided for the use and convenience of the public.

[Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.081. Public Beaches in Ineligible County

(a) The commissioners court of a county that is not entitled to receive funds under this subchapter may contract with the commissioners court of any adjacent county that is entitled to receive funds under this subchapter to allow the adjacent county to clean the public beaches of the ineligible county.

(b) The contracting county that is not entitled to receive funds under this subchapter may apply to the department for rebates of 40 percent of the contract price, but the ineligible county is not required to meet the terms and conditions imposed in Section 61.069 of this code.

(c) The department shall make the rebates at the close of each state fiscal year on a showing by the ineligible county that entrance to all public beaches under the jurisdiction of the county is free of charge.

(d) This section shall not be construed to prohibit the assessment of a reasonable fee for off-beach parking or for the use of facilities provided for the use and convenience of the public.

[Acts 1977, 65th Leg., p. 2483, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.082. Authority of Local Governments

(a) The provisions of this subchapter shall not be construed to interfere with local initiative and responsibility in the cleaning, maintenance, and supervision of public beaches.

(b) The administration of public beaches, the selection of personnel, and the determination of the best uses of the funds insofar as is consistent with

the purposes of this subchapter are reserved to the several political subdivisions receiving funds under this subchapter.

[Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.083. Exemptions From Subchapter

None of the provisions of this subchapter apply to any beach area that does not border on the Gulf of Mexico or to any island or peninsula that is not accessible by a public road or common carrier ferry facility as long as that condition exists.

[Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 61.084 to 61.120 reserved for expansion]

SUBCHAPTER D. REGULATION OF TRAFFIC AND LITTER

§ 61.121. Definition

In this subchapter, "beach" shall have the same definition as provided in Section 61.012 of this code.
[Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.122. Regulation of Traffic and Prohibition of Litter

The commissioners court of a county bordering on the Gulf of Mexico or its tidewater limits, by order, may regulate motor vehicle traffic on any beach within the boundaries of the county and may prohibit the littering of the beach and may define the term "littering."

[Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.123. Notice of Hearing

(a) Before the commissioners court adopts an order under Section 61.122 of this code, it must publish notice of the intention to adopt the order in at least one newspaper with general circulation in the county.

(b) The notice shall state the time and place of the public hearing on the proposed order and that interested persons may obtain copies of the proposed order from the commissioners court.

[Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.124. Copies of Order

The commissioners court shall make copies of the proposed order available to interested persons.

[Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.125. Public Hearing

(a) Not less than one month but more than two weeks after notice is published, the commissioners court shall conduct a hearing at the time and place stated in the notice.

(b) At the hearing, the commissioners shall allow all interested persons to express their views on the proposed order.

[Acts 1977, 65th Leg., p. 2484, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.126. Traffic Regulations

If the order includes a traffic regulation, the order shall provide for signs that are designed and posted in compliance with the current provisions of the Texas Manual on Traffic Control Devices for Streets and Highways, stating the applicable speed limit, parking requirement, or that vehicles are prohibited.

[Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.127. Criminal Penalties

In any order adopted under this subchapter, the commissioners court may adopt the following criminal penalties for violation of the order:

- (1) for a first conviction, a fine of not more than \$50;
- (2) for a second conviction, a fine of not more than \$200;
- (3) for any subsequent convictions after the second conviction, a fine of not more than \$500 or confinement in the county jail for not more than 60 days, or both.

[Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.128. Order Prevails Over State Law

If an order adopted under this subchapter conflicts with the general law of the state, the order shall control over the state law, and in cases of violation, prosecution may be maintained only under the order.

[Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.129. Ordinance Prevails Over Order and State Law

(a) This subchapter does not limit the power of an incorporated city, town, or village bordering on the Gulf of Mexico or any adjacent body of water to regulate motor vehicle traffic and prohibit littering on any beach within its corporate limits.

(b) If these regulatory ordinances are adopted by a city, town, or village and the ordinance conflicts with the general law of the state or with an order of the commissioners court adopted under this subchapter, the ordinance shall control over the state law

and the order, and in cases of violation, prosecution may be maintained only under the ordinance.

[Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.130. Rights of the Public

The right of the public to use the public beaches defined in this subchapter is inviolate and is subject only to orders adopted by a commissioners court under this subchapter and to ordinances enacted by an incorporated city, town, or village.

[Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.131. Effect of Subchapter on Definition of Public Beach

None of the provisions of this subchapter shall reduce, limit, construct, or vitiate the definition of public beaches which has been defined from time immemorial in law and custom.

[Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 61.132 to 61.160 reserved for expansion]

SUBCHAPTER E. LICENSES FOR BUSINESS ESTABLISHMENTS

§ 61.161. Public Policy

It is the public policy of this state that the state-owned beaches bordering on the seaward shore of the Gulf of Mexico, and any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico, if the public has acquired a right of use or easement to or over the area by the prescription or dedication or has retained a right by virtue of continuous right in the public, shall be used primarily for recreational purposes, and any use which substantially interferes with the enjoyment of the beach area by the public shall constitute an offense against the public policy of the state. Nothing in this subchapter prevents any agency, department, political subdivision, or municipal corporation of this state from exercising its lawful authority under any law of this state to regulate safety conditions on any beach area subject to public use.

[Acts 1977, 65th Leg., p. 2485, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.162. Findings

(a) The legislature finds that the operation and maintenance of business establishments at fixed or permanent locations on the public beaches of this state bordering on the seaward shore of the Gulf of Mexico constitute a potential public health hazard and a substantial interference with the free and unrestricted rights of ingress and egress of the

public, both individually and collectively, to and from the state-owned beaches bordering on the seaward shore of the Gulf of Mexico or any larger area extending from the line of mean low tide to the line of vegetation bordering on the Gulf of Mexico if the public has acquired a right of use or easement to or over the area by prescription, dedication, or has retained a right by virtue of continuous right in the public.

(b) The legislature finds that a reasonable number of mobile business establishments which traverse the public beach while doing business are beneficial to the public interest and do not interfere with the free and unrestricted rights of ingress and egress of the public as provided in this subchapter.

[Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.163. Definition

In this subchapter, "business establishment" means any structure or vehicle where any commodity including memberships in any private club or other similar organization is offered to the public for sale or lease but does not include any structure or vehicle where only services are offered to the public for sale.

[Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.164. Application

A person who desires to operate a mobile business establishment on a public beach located outside the municipal limits of an incorporated city shall submit a written application to the department.

[Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.165. Contents of Application

The application shall include:

- (1) the name and street address of the applicant;
- (2) the commodity to be sold or leased; and
- (3) the limits of the territory within which the mobile business establishment will operate.

[Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.166. Filing Fee

(a) The application shall be accompanied by a filing fee in an amount determined by the department, not to exceed \$25.

(b) The filing fee shall be deposited in the state treasury in the Land and Water Recreation and Safety Fund 63, and the department may pay from this fund the expenses of carrying out the provisions of this subchapter.

[Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.167. Separate Applications

Any applicant who plans to operate more than one mobile business establishment must file a separate application accompanied by a separate filing fee for each mobile business establishment that he seeks to have licensed.

[Acts 1977, 65th Leg., p. 2486, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.168. Granting License

(a) On finding that the issuance of a license is consistent with recreational needs and the public welfare, and that the mobile business establishment would not create a traffic or safety hazard, and on compliance with this subchapter by the applicant, the department shall grant the license.

(b) The license shall be valid for one year from the day it is issued.

(c) If the license is not granted, the department shall return the filing fee to the applicant.

[Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.169. Applications Not to be Granted

The department shall not grant an application:

- (1) for a business establishment located at a fixed or permanent location on a public beach;
- (2) for a business establishment that does not traverse the beach while doing business; or
- (3) that does not otherwise meet the terms and provisions of this subchapter.

[Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.170. License Prohibition Against Glass Containers

(a) Each license granted under this subchapter authorizing the sale of commodities on a public beach shall include a prohibition against the sale of any commodity in a glass container.

(b) Any person selling a commodity in a glass container on a public beach outside the boundaries of any incorporated city shall have his rights conferred by the license immediately terminated and revoked as provided in Section 61.172 of this code.

[Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.171. Assignment

No license issued under this subchapter may be assigned.

[Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.172. Termination and Revocation of License

(a) The failure or refusal of the licensee to comply with the terms and conditions of a license shall

operate as an immediate termination and revocation of all rights conferred in or claimed under the license.

(b) The termination and revocation of the license is not effective until notice is delivered by mail to the address of the licensee listed on the application for the license.

[Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.173. Maximum Territorial Limits

(a) If territorial limitations are applied uniformly to all applicants seeking to operate mobile business establishments in the territory, the department may establish maximum territorial limits over which mobile business establishments may operate.

(b) A license to sell or lease only surfboards and related equipment may not be limited as to the territory over which the mobile business establishment may operate.

[Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.174. Additional Standards

In addition to other standards provided in this subchapter, it is the intention of the legislature that the department exercise the authority delegated to it under this subchapter according to the following considerations:

(1) that the number of mobile business establishments licensed by the department should not constitute a substantial interference with the free and unrestricted rights of ingress and egress of the public provided in this subchapter;

(2) that the number of licenses issued by the department under this subchapter are sufficient to ensure free and unrestricted competition in selling or leasing of commodities to the public; and

(3) that no person should be allowed to operate any mobile business establishment on any public beach in restraint of trade or competition by which the person controls all or substantially all the business establishments on the public beach licensed by the department.

[Acts 1977, 65th Leg., p. 2487, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.175. Rules, Procedures, and Conditions

The department may establish additional rules, procedures, and conditions necessary or appropriate to carry out the purposes of this subchapter.

[Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.176. Areas Exempt From Subchapter

This subchapter does not apply to a public beach that is within the boundaries of a state park desig-

nated by the department or to a remote beach on any island or peninsula which is not accessible by public road or common carrier ferry facility as long as that condition exists.

[Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.177. Penalty

A person, who for himself or on behalf of or under the direction of another person, operates any business establishment, whether mobile or at a fixed or permanent location, on any public beach outside the boundaries of any incorporated city without first obtaining a license to operate the business establishment from the department shall be fined not less than \$10 nor more than \$200.

[Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 61.178 to 61.210 reserved for expansion]

SUBCHAPTER F. REMOVAL OF SAND, MARL, GRAVEL, AND SHELL

§ 61.211. Findings

The legislature finds that the unregulated excavation, taking, removal, and carrying away of sand, marl, gravel, and shell from islands and peninsulas bordering on the Gulf of Mexico and from the public beaches of the state constitute a substantial interference with public enjoyment of Texas beaches and a hazard to life and property.

[Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.212. Exemptions From Subchapter

(a) The provisions of this subchapter do not apply:

(1) to excavating, taking, removing, or carrying away sand, marl, gravel, or shell made for the purpose of constructing improvements on real property if the improvements are constructed on the property on which the excavating, taking, removing, or carrying away occurs;

(2) to any landowner who desires to shift sand, marl, gravel, or shell from one location to another on land wholly owned by him; or

(3) to any agency of the federal or state government or any county, city, or other political subdivision or any of their agents or officers acting in their official capacities.

(b) Any person who holds a lease that was issued by the state under Chapter 377, Acts of the 57th Legislature, Regular Session, 1961 (Article 5415e, Vernon's Texas Civil Statutes), before it was repealed shall be treated as an owner of the land and shall be entitled to excavate, take, remove, and carry away sand, marl, gravel, or shell for the purposes

provided in Subsection (a) of this section without obtaining a permit from the commissioners court. [Acts 1977, 65th Leg., p. 2488, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.213. Application

Before a person excavates, takes, removes, or carries away sand, marl, gravel, or shell from land located on an exposed island or peninsula bordering on the Gulf of Mexico or from land located within 1,500 feet of a mainland public beach that is located outside the boundaries of an incorporated city, town, or village, he must submit a written application to the commissioners court of the county in which the excavation, taking, removal, or carrying away is to take place.

[Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.214. Contents of Application

The application shall include:

- (1) the name of the applicant;
- (2) the location and dimensions of the proposed excavation;
- (3) the property interest or contractual right that enables the applicant to excavate, take, remove, or carry away sand, marl, gravel, or shell; and
- (4) certification by the county treasurer, or other official exercising similar authority if there is no county treasurer, that the applicant has deposited a filing fee of \$50.

[Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.215. Prerequisites to Issuance of Permit

No permit may be issued by the commissioners court under this subchapter to excavate, take, remove, or carry away sand, marl, gravel, or shell from land owned by the state, public beach, or privately owned land that is subject to this subchapter and that is not located on a public beach, unless the applicant is the owner of the land on which the proposed excavating, taking, removing, or carrying away is to take place or unless the applicant is acting with the knowledge and consent of the owner.

[Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.216. Notice of Applications Received

(a) The commissioners court shall give public notice of all applications received for permits to excavate, take, remove, or carry away sand, marl, gravel, or shell.

(b) The notice shall be published once in a newspaper of general circulation in the county.

(c) The notice shall include the name of the applicant and the location and dimensions of the proposed activity.

[Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.217. Public Hearing

(a) The commissioners court shall hold a public hearing if the hearing is requested by any citizen within 10 days after notice is published under Section 61.216 of this code.

(b) The hearing may not be held less than 30 days from the date of the first publication of notice under Section 61.218 of this code.

[Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.218. Notice of Public Hearing

Notice of the public hearing shall be published at least once a week for at least two weeks in a newspaper of general circulation in the county.

[Acts 1977, 65th Leg., p. 2489, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.219. Issuance of Permit

(a) On a finding that the proposed excavating, taking, removing, or carrying away would not create hazardous conditions or imperil lives or property by exposing the island or peninsula or public beach to the ravages of storm water, the commissioners court may issue a permit to the applicant, and it shall be valid for six months from the date of its issuance.

(b) The decision to issue a permit shall be made with the advice and counsel of the county engineer in counties in which the commissioners court employs a county engineer.

(c) None of the provisions of this subchapter prohibit a commissioners court from issuing a permit to a person who holds a right-of-way easement granted by the commissioner for a pipeline to cross state land, provided the applicant complies with the provisions of this subchapter relating to the issuance of permits.

[Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.220. Return of Filing Fee

If the commissioners court refuses to issue the permit, the applicant may recover his filing fee from the county treasurer or other official exercising similar authority if there is no county treasurer.

[Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.221. Assignment of Permits

No permit may be assigned without the approval of the commissioners court.

[Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.222. Termination and Revocation of Permit

Failure or refusal of the permittee to comply with the terms and conditions of the permit operates as an immediate termination and revocation of all rights conferred by or claimed under the permit.

[Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.223. Suits for Orders and Injunctions

The attorney general, any county attorney, district attorney, or criminal district attorney of the state shall file in a district court in the county in which the conduct take place, a suit seeking temporary or permanent court orders or injunctions to prohibit any excavating, taking, removing, or carrying away of any sand, marl, gravel, or shell from land located on an exposed island or peninsula bordering on the Gulf of Mexico or from land located within 1,500 feet of a public beach of this state if the land is located outside the boundaries of an incorporated city, town, or village in violation of the provisions of this subchapter.

[Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.224. Penalty

A person who for himself or on behalf of or under the direction of another person excavates, takes, removes, or carries away sand, marl, gravel, or shell from land located on an exposed island or peninsula bordering on the Gulf of Mexico or from land located within 1,500 feet of a public beach of this state, if the land is located outside the boundaries of any incorporated city, town, or village, in violation of the provisions of this subchapter shall be fined not less than \$10 nor more than \$200. Each day a violation occurs constitutes a separate offense.

[Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.225. Sand, Marl, Gravel, or Shell From Public Beaches Within Incorporated Cities, Towns, or Villages

No incorporated city, town, or village having within its boundaries a public beach may authorize a person to excavate, take, remove, or carry away any sand, marl, gravel, or shell from the public beach except for the construction of a publicly owned and operated recreational facility or for the construction of a shoreline protection structure.

[Acts 1977, 65th Leg., p. 2490, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.226. Application of Subchapter to Certain Islands and Peninsulas

The provisions of this subchapter do not apply to any island or peninsula that is not accessible by a public road or common carrier ferry facility as long as that condition continues.

[Acts 1977, 65th Leg., p. 2491, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 61.227. Authority of Parks and Wildlife Department

None of the provisions of this subchapter may be construed to repeal or modify the provisions of Chapter 86, Parks and Wildlife Code, which relate to the powers and duties of the Parks and Wildlife Department over matters pertaining to the sale, taking, carrying away, or disturbing of sand, marl, gravel, or shell of commercial value and gravel, shells, mud shell, and oyster beds and their protection from free use and unlawful disturbing or appropriation, nor may this subchapter be construed to create additional or supplemental requirements or procedures to those provided in Chapter 86, Parks and Wildlife Code.

[Acts 1977, 65th Leg., p. 2491, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 62. BEACH PARK BOARD OF TRUSTEES

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SUBCHAPTER A. GENERAL PROVISIONS

§ 62.001. Applicability

(a) The provisions of this chapter apply to counties that are located or border on the Gulf of Mexico and have within their boundaries beaches that are suitable for park purposes. The suitability of a beach for park purposes is established conclusively when the commissioners court of the county makes a finding that the beach located within its boundaries, but not located within the boundaries of an incorporated city, is suitable for park purposes.

(b) As long as an island or peninsula is not accessible by a public road or common carrier ferry facility, the provisions of this chapter do not apply to that island or peninsula.

(c) The provisions of this chapter do not interfere with, preempt, or in any manner restrict or usurp the authority of the land office over state-owned beaches.

(d) The provisions of this chapter do not prohibit the creation of, or limit the lawful actions of, a beach park board of trustees of a home-rule city as provided in Chapter 33, Acts of the 57th Legislature, 3rd Called Session, 1962, as amended (Article 6081g-1, Vernon's Texas Civil Statutes).

(e) The provisions of this chapter do not permit any interference with the right the public has under the provisions of Subchapter B of Chapter 61 of this code to the free and unrestricted use of, and to ingress and egress to, the area bordering on the Gulf of Mexico from mean low tide to the line of vegetation, as that term is defined in Subsection (2), Section 61.001 of this code. A county, county official, or anyone acting under the authority of this chapter may not exercise any authority, contract out a right to exercise authority, or otherwise delegate authority beyond that specifically granted to it in Sections 61.122 through 61.128 of this code over that area notwithstanding any of the specific provisions of this chapter. The rights established in Subchapters B and D of Chapter 61 of this code are paramount over the rights or interests that might otherwise be created by the provisions of this chapter, and nothing in this chapter encroaches on those rights or upon land, or interests in land, that may ultimately be held subject to those rights.

[Acts 1977, 65th Leg., p. 2492, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.002. Definition

In this chapter, "board" means the Beach Park Board of Trustees.

[Acts 1977, 65th Leg., p. 2493, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 62.003 to 62.010 reserved for expansion]

SUBCHAPTER B. CREATION OF BOARD

§ 62.011. Purpose and Authority

A county located or bordering on the Gulf of Mexico with a beach suitable for park purposes may create a board in the manner provided in this subchapter for the purpose of improving, equipping, maintaining, financing, and operating a public park or parks, or any facilities owned by the county, or to be acquired by the county, or to be managed by the county under the terms of a written contract. The board, to be designated Beach Park Board of Trustees, has the powers and duties specified in this chapter.

[Acts 1977, 65th Leg., p. 2493, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.012. Method of Creating Board

A board may be created after a favorable majority vote of the qualified voters of the county voting at an election held on the proposition.

[Acts 1977, 65th Leg., p. 2493, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.013. Election

(a) The election shall be called by the commissioners court.

(b) Notice of the election shall be given in the manner provided by Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended.

(c) The ballots shall be printed to provide for voting for or against the proposition: "Establishing a beach park board of trustees."

[Acts 1977, 65th Leg., p. 2493, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 62.014 to 62.040 reserved for expansion]

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 62.041. Members of Board

(a) The board is composed of seven members appointed by the commissioners court.

(b) One board member shall be a member of the commissioners court.

[Acts 1977, 65th Leg., p. 2493, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.042. Term of Office

(a) With the exception of the trustees first appointed, a trustee serves for a term of two years from the date of appointment.

(b) At the time of the appointment of the first trustees, the commissioners court shall designate three trustees to serve for one year and four trustees to serve for two years.

[Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.043. Oath and Bond

(a) A trustee shall qualify within 15 days after his appointment by taking the official oath and filing a good and sufficient bond with the county clerk.

(b) The bond shall be approved by the commissioners court, payable to the county, in a sum not to exceed \$5,000 as approved by the commissioners court of the county, and conditioned on the faithful performance of the duties of the trustee, including his proper handling of all money which may come into his hands in his capacity as a member of the board.

(c) The cost of the bond shall be paid by the board.

[Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.044. Compensation; Expenses

A trustee serves without compensation but shall be reimbursed for travel and other necessary expenses incurred in the performance of his official duties.

[Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.045. Vacancy

A vacancy on the board shall be filled by appointment of the commissioners court.

[Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.046. Officers of Board

(a) On the appointment of the first trustees, the commissioners court shall designate one of the trustees to serve as chairman of the board for a period of one year.

(b) After the first year the board annually shall elect a chairman, a vice-chairman, a secretary, and a treasurer from among its members. The office of secretary and treasurer may be held by the same person.

[Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.047. Park Manager

The board may employ and compensate a manager for any parks or facilities and may give him full

authority in the management and operation of the park or parks or facilities subject only to the direction and orders of the board.

[Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.048. Legal Services

(a) The board may call on the county attorney of the county for the legal services it requires.

(b) In lieu of or in addition to the county attorney, the board may employ and compensate its own counsel and legal staff.

[Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.049. Employees of Board

(a) The board may employ temporary or permanent secretaries, stenographers, bookkeepers, accountants, technical experts, and other agents and employees it requires.

(b) The board shall determine the qualifications, duties, and compensation of its employees.

[Acts 1977, 65th Leg., p. 2494, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.050. Meetings

(a) The board shall hold regular meetings at times set by the board.

(b) The board may hold special meetings at the times business or necessity requires. Special meetings may be called by the chairman or any three members of the board.

[Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.051. Board Records

(a) The board shall keep a true and full record of all its meetings and proceedings and preserve its minutes, contracts, accounts, and all other records in a fireproof safe or vault.

(b) The board may contract with the commissioners court of the county to have the county keep and maintain its records.

(c) All the records are the property of the board and are subject to inspection by the commissioners court at all reasonable times.

[Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.052. Management of Funds

The money belonging to or under control of the board shall be deposited and secured in the same manner prescribed by law for county funds.

[Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.053. Audit

Independent auditors selected by the board shall make an annual audit of all financial transactions and records of the board.

[Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.054. Court Actions

The board may sue and be sued in its own name.

[Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.055. Seal

The board shall adopt a seal which shall be placed on all leases, deeds, and other instruments usually executed under seal and on other instruments required by the board.

[Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 62.056 to 62.090 reserved for expansion]

SUBCHAPTER D. POWERS AND DUTIES

§ 62.091. Land Under Jurisdiction, Management, and Control

(a) The following land is under the jurisdiction of the board:

(1) public beaches owned in fee by the county; and

(2) land used as parks in connection with public beaches not located inside the boundaries of an incorporated city and not inside the area bordering on the Gulf of Mexico from the line of mean low tide to the line of vegetation as that term is defined in Section 61.001(2) of this code.

(b) The commissioners court may designate the following land to be under the management and control of the board:

(1) additional parks and facilities owned by the county; or

(2) additional parks and facilities to be managed by the county under the terms of a written contract.

[Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.092. Priority of Jurisdiction

(a) The board has no jurisdiction over a public beach located inside the boundaries of the county that has been designated a national park, national seashore, or state park.

(b) The authority of the board preempts the right of the county board of park commissioners to act with regard to a beach, park, or facility within the jurisdiction of the board.

(c) The provisions of this chapter are cumulative of other laws relating to county parks but take precedence in the event of conflict.

[Acts 1977, 65th Leg., p. 2495, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.093. Park Authority

The board may manage, operate, maintain, equip, and finance an existing public park placed under its jurisdiction by the commissioners court and may improve, manage, operate, maintain, equip, and finance additional parks acquired by gift but not acquired by the exercise of the power of eminent domain.

[Acts 1977, 65th Leg., p. 2496, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1263, ch. 487, § 1

Acts 1977, 65th Leg., p. 1263, ch. 487, § 1, purports to amend § 7 of Civil Statutes, art. 5415d-3 [now, this section in part], without reference to repeal of said article by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1). As so amended, the applicable part of § 7 reads:

*“ * * * In addition to the powers and authority herein granted, the board shall have and exercise the following powers and authority:*

“(a) To manage, operate, maintain, equip, improve, and finance any and all existing public parks placed under its jurisdiction by the commissioners court;

*“(b) To improve, manage, operate, maintain, equip, and finance additional parks acquired by gift or otherwise, but not by the exercise of the power of eminent domain; * * *”*

§ 62.094. Fee Charged

The board may charge and collect a reasonable fee for access or entrance to or parking on the land under its jurisdiction, other than public beaches owned by the county, or use of a facility located on land under its jurisdiction.

[Acts 1977, 65th Leg., p. 2496, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.095. Use of Funds

(a) The board may accept, receive, and spend gifts of money or other things of value from any person for the purpose of performing any function, power, or authority vested in the board and funds from the county that are appropriated by the county from time to time for the purpose of improving, equipping, maintaining, operating, and promoting recreational facilities under the board's supervision and control.

(b) The board may spend money appropriated by the commissioners court for the purpose of cleaning and maintaining public beaches and land within its jurisdiction, including money appropriated to the commissioners court by the state for that purpose.

[Acts 1977, 65th Leg., p. 2496, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.096. Contracts, Leases, and Other Agreements Relating to Land and Facilities

The board may enter into a contract, lease, or other agreement connected with, incident to, or affecting the financing, construction, equipping, maintenance, or operation of facilities located or to be located on or pertaining to land under its jurisdiction or facilities under its control and may execute and perform its lawful powers and functions on land leased from others.

[Acts 1977, 65th Leg., p. 2496, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.097. Contracts, Leases, and Other Agreements Relating to Management, Operation, and Maintenance of Land and Facilities

The board may enter into any contract, lease, or agreement with any person for a period of not more than 40 years relating to the management, operation, and maintenance of a concession, facility, improvement, leasehold, land, or other property over which the board has jurisdiction and control.

[Acts 1977, 65th Leg., p. 2496, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.098. Contracts With Other Governmental Agencies

To accomplish any purpose authorized in this chapter, the board may enter into contracts with:

- (1) adjacent counties;
- (2) boards in adjacent counties; and
- (3) boards in cities of the same county in which the board has jurisdiction.

[Acts 1977, 65th Leg., p. 2496, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.099. Advertising

The board may advertise the county's recreational advantages for the purpose of attracting tourists, residents, and other users of the public facilities operated by the board.

[Acts 1977, 65th Leg., p. 2497, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1263, ch. 487, § 1

Acts 1977, 65th Leg., p. 1263, ch. 487, § 1, purports to amend § 7 of Civil Statutes, art.

5415d-3 [now, this section in part], without reference to repeal of said article by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1). As so amended, the applicable part of § 7 reads:

"* * * In addition to the powers and authority herein granted, the board shall have and exercise the following powers and authority:
* * *

"(d) To publish brochures and otherwise advertise the county's recreational advantages for the purposes of attracting tourists, residents, and other users of the public facilities operated by the board; * * *"

§ 62.100. Rules

The board may adopt and enforce reasonable rules for the use of parks and facilities under the jurisdiction and control of the board by the public or by lessees, concessionaires, and other persons carrying on a business activity inside the area of the public parks and facilities.

[Acts 1977, 65th Leg., p. 2497, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.101. Legislative Intent

It is the intent of the legislature in enacting the provisions of this chapter that the rights established or recognized in Subchapters B and D of Chapter 61 of this code are paramount over any rights or interests that might otherwise be considered created by this chapter, and none of the provisions of this chapter may trench on those rights or encroach on land or interests in land that may ultimately be held subject to those rights.

[Acts 1977, 65th Leg., p. 2497, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 62.102 to 62.130 reserved for expansion]

SUBCHAPTER E. ISSUANCE OF BONDS

§ 62.131. Authority to Issue Revenue Bonds

For the purpose of improving and enlarging public parks and facilities, the board may issue revenue bonds payable solely from the revenue of all or any designated part of the properties or facilities under the jurisdiction and control of the board.

[Acts 1977, 65th Leg., p. 2497, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1263, ch. 487, § 1

Acts 1977, 65th Leg., p. 1263, ch. 487, § 1, purports to amend § 7 of Civil Statutes, art. 5415d-3 [now, this section in part], without reference to repeal of said article by Acts 1977,

65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1). As so amended, the applicable part of § 7 reads:

"* * * In addition to the powers and authority herein granted, the board shall have and exercise the following powers and authority:
* * *

"(l) To issue revenue bonds in the name of the board which shall be payable solely from the revenues of all or any designated part or parts of the properties or facilities under the jurisdiction and control of the board or from any other source of funds the board may wish to dedicate for that purpose, for the purpose of acquiring, developing, improving, and enlarging public recreational areas and facilities. * * *"

§ 62.132. Formal Requirements of Bonds

(a) The bonds may be issued by resolution adopted by the board without the necessity of an election.

(b) The bonds may be issued in the name of the board in one or more installments or series and shall mature serially or otherwise within 40 years from their date or dates.

(c) The bonds shall be issued on the terms and conditions, with regard to the security, manner, place, and time of payment, pledge of designated revenue, redemption before maturity, and the issuance of additional parity or junior lien bonds, that the board specifies in the resolution or resolutions authorizing the bonds.

(d) The bonds shall be executed by the chairman and secretary of the board and shall be signed by the chairman and secretary or shall bear the facsimile signature of either or both.

(e) The bonds shall display the seal of the board, which may be impressed, printed, or lithographed on the bonds.

[Acts 1977, 65th Leg., p. 2497, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1263, ch. 487, § 1

Acts 1977, 65th Leg., p. 1263, ch. 487, § 1, purports to amend § 7 of Civil Statutes, art. 5415d-3 [now, this section in part], without reference to repeal of said article by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1). As so amended, the applicable part of § 7 reads:

"* * * In addition to the powers and authority herein granted, the board shall have and exercise the following powers and authority:
* * *

"(l) * * * Such bonds may be issued in one or more installments or series by resolutions adopted by the board without the necessity of

*an election, shall bear interest at a rate not to exceed 10 percent per annum, shall mature serially or otherwise within 40 years from their date or dates, shall be sold by the board on the best terms obtainable, except that the annual interest rate and discount may not exceed 10 percent per annum, * * *".*

§ 62.133. Sale of Bonds

The board shall sell the bonds on the best terms obtainable but not for less than par and accrued interest.

[Acts 1977, 65th Leg., p. 2497, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.134. Approval and Registration

The bonds shall not be delivered until a transcript of the proceedings authorizing their issuance has been submitted to the attorney general and approved as to legality by the attorney general and the bonds are registered by the comptroller of public accounts.

[Acts 1977, 65th Leg., p. 2497, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.135. Authorized Investments

The bonds issued under the provisions of this subchapter are legal and authorized investments for banks, saving banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the state.

[Acts 1977, 65th Leg., p. 2498, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.136. Security for Deposits

The bonds are eligible to secure the deposit of public funds of the state and public funds of cities, towns, villages, or other political corporations or subdivisions of the state and are lawful and sufficient security for deposits to the extent of their face value when accompanied by all unmatured interest coupons appurtenant to them.

[Acts 1977, 65th Leg., p. 2498, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.137. Tax Bonds

(a) The board shall not issue bonds payable in whole or in part from ad valorem taxes.

(b) The board may receive and spend the proceeds of bonds payable from taxes which are issued by the governing body of the county for park purposes after the bonds are authorized at an election held in the manner required by law.

[Acts 1977, 65th Leg., p. 2498, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 62.138. Refunding Bonds

(a) The board may issue refunding bonds for the purpose of refunding one or more series or installments of outstanding original or refunding bonds of the board.

(b) The refunding bonds shall be issued, approved as to legality by the attorney general, and registered by the comptroller of public accounts in the manner and on the terms and conditions provided in this subchapter for the issuance of original revenue bonds.

[Acts 1977, 65th Leg., p. 2498, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 63. DUNES

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- 63.151. Appeal by Littoral Owner.
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- 63.181. Penalty.

SUBCHAPTER A. GENERAL PROVISIONS

§ 63.001. Findings of Fact

The legislature finds and declares:

(1) that the barrier islands and peninsulas of this state and the adjacent mainland areas contain a significant portion of the state's human, natural, and recreational resources;

(2) that these areas are wholly or in part protected from the action of the water of the Gulf of Mexico and storms on the Gulf by a system of natural or artificially constructed vegetated sand dunes that provide a protective barrier for adjacent land and inland water and land against the action of sand, wind, and water;

(3) that certain persons have from time to time modified or destroyed the effectiveness of the protective barriers in the process of developing the shoreline for various purposes;

(4) that the operation of recreational vehicles over these dunes has destroyed the natural vegetation on them;

(5) that these practices constitute serious threats to the safety of adjacent properties, to public highways, to the taxable basis of adjacent property and constitute a real danger to the health, safety, and welfare of persons living, visiting, or sojourning in the area;

(6) that it is necessary to protect these dunes as provided in this chapter because stabilized, vegetated dunes offer the best natural defense against storms;

(7) that vegetated stabilized dunes help preserve state-owned beaches and shores by protecting against erosion of the shoreline;

(8) that the area bounded on the north by the Mansfield Ship Channel and extending to the southern tip of South Padre Island is an area of irregular dunes, the vast majority of which are unvegetated, unstable, and migratory, and these dunes do not afford significant protection to persons and property inland from this area; and

(9) that the area bounded on the north by the inlet known as Aransas Pass and on the south by the Mansfield Ship Channel is an area of a mixture of irregular dunes as described in Subdivision (8) of this section and dunes that afford protection to persons and property inland.

[Acts 1977, 65th Leg., p. 2499, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.002. Definitions.

In this chapter:

(1) "Commissioner" means the Commissioner of the General Land Office.

(2) "Barrier island" means an island bordering on the Gulf of Mexico and entirely surrounded by water.

(3) "Peninsula" means an arm of land bordering on the Gulf of Mexico surrounded on three sides by water.

(4) "Recreational vehicle" means a dune buggy, marsh buggy, minibike, trail bike, jeep, or any other mechanized vehicle that is being used for recreational purposes, but does not include any vehicle not being used for recreational purposes.

[Acts 1977, 65th Leg., p. 2500, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.003. Effect of Chapter

The provisions of this chapter do not apply to any island or peninsula not accessible by public road or common carrier ferry facility for as long as that condition exists.

[Acts 1977, 65th Leg., p. 2500, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 63.004 to 63.010 reserved for expansion]

SUBCHAPTER B. DUNE PROTECTION LINE

§ 63.011. Establishing Dune Protection Line

After notice and hearing, the commissioners court of any county bordering on the Gulf of Mexico that has within its boundaries a barrier island or peninsula located north of the Mansfield Ship Channel may establish a dune protection line on the island or peninsula for the purpose of preserving sand dunes that offer a defense against storm water and erosion of the shoreline.

[Acts 1977, 65th Leg., p. 2500, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.012. Location of Dune Protection Line

The dune protection line shall not be located further landward than a line drawn parallel to and 1,000 feet landward of the line of mean high tide of the Gulf of Mexico.

[Acts 1977, 65th Leg., p. 2500, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.013. Notice

(a) Notice of a hearing to consider establishing the dune protection line shall be published at least three times in the newspaper with the largest circulation in the county. The notice shall be published not less than one week nor more than three weeks before the date of the hearing.

(b) Notice shall be given to the commissioner not less than one week nor more than three weeks before the hearing.

[Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.014. Map and Description of Dune Protection Line

(a) The commissioners court in establishing a dune protection line shall define the line by presenting it on a map or drawing, by making a written description, or by both. Each shall be designated appropriately and filed with the county clerk and with the commissioner.

(b) Notice of alterations in the dune protection line shall be filed with the county clerk and with the commissioner, and the appropriate changes shall be made on the map, drawing, or description.

[Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.015. Dune Protection Line Prohibited

No dune protection line may be established for the purpose of protecting dunes located inside a state or national park area.

[Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 63.016 to 63.050 reserved for expansion]

SUBCHAPTER C. PERMITS

§ 63.051. Permit Requirement

An owner of land or a person holding an interest in land under the owner who desires to perform any acts on the land which are prohibited in Sections 63.091 through 63.092 of this code must apply for a permit from the commissioners court.

[Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.052. Permit Not Required

No permit is required for the following activities:

- (1) grazing livestock;
- (2) production of oil and gas; and
- (3) recreational activity other than the operation of a recreational vehicle.

[Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.053. Fee

The commissioners court may require a reasonable fee to accompany the application.

[Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.054. Grant of Application

(a) The commissioners court shall evaluate the permit application, and if the commissioners court finds as a fact after full investigation that the particular conduct proposed will not materially weaken the dune or reduce its effectiveness as a means of protection from the effects of high wind and water, it may grant the application.

(b) In determining whether or not to grant the application, the commissioners court shall consider the height, width, and slope of the dune and the restoration of protection affected by construction as well as the restoration of vegetation.

[Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.055. Terms and Conditions of Permit

The commissioners court may include in a permit the terms and conditions it finds necessary to assure the protection of life and property.

[Acts 1977, 65th Leg., p. 2501, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.056. Notice to and Comments of Commissioner on Permits

(a) After receiving an application for a permit to perform any of the acts prohibited in Sections 63.091 through 63.092 of this code in a critical dune area, the commissioners court shall notify the commissioner by sending to him, not less than 10 days before the public hearing on the application, notice of the hearing and a copy of the application.

(b) The commissioner may submit any written or oral comments regarding the effect of the proposed activity on the dunes that protect state-owned land, shores, and submerged land.

[Acts 1977, 65th Leg., p. 2502, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.057. Permit for Recreational Vehicle Prohibited

No permit may be issued by the commissioners court that allows the operation of a recreational vehicle on a sand dune seaward of the dune protection line.

[Acts 1977, 65th Leg., p. 2502, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 63.058 to 63.090 reserved for expansion]

SUBCHAPTER D. PROHIBITIONS

§ 63.091. Conduct Prohibited Between the Texas-Louisiana State Line and Aransas Pass

Unless a permit is obtained authorizing the conduct, no person in any county in the area bounded on the south by the inlet known as Aransas Pass and on the north by the Texas-Louisiana state line, where a dune protection line has been established, may damage, destroy, or remove a sand dune or portion of a sand dune on a barrier island or peninsula seaward of the dune protection line or kill, destroy, or remove in any manner any vegetation growing on a sand dune seaward of the dune protection line.

[Acts 1977, 65th Leg., p. 2502, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.092. Conduct Prohibited Between Aransas Pass and Mansfield Ship Channel

In any county in the area bounded on the north by the inlet known as Aransas Pass and on the south by the Mansfield Ship Channel, where a dune protection line has been established, no person without a permit may:

(1) excavate, remove, or relocate a sand dune or a portion of a sand dune that is located seaward of the dune protection line, thus reducing the sand dune to an elevation less than the elevation or elevations shown on the Special Flood Hazard Map of the area adopted by the administrator of the Federal Insurance Administration under the National Flood Insurance Act of 1968 (42 U.S.C. Section 4001 et seq.); or

(2) kill, destroy, or remove in any manner vegetation growing on a sand dune seaward of the dune protection line without making provision for the stabilization of the dune by the installation or construction of improvements or the replanting or resodding of vegetation on the dune to maintain the dune at the minimum elevation provided in Subdivision (1) of this section.

[Acts 1977, 65th Leg., p. 2502, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.093. Prohibited Operation of Recreational Vehicles

No person may operate a recreational vehicle on a sand dune seaward of the dune protection line in any county in which a dune protection line has been established.

[Acts 1977, 65th Leg., p. 2502, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 63.094 to 63.120 reserved for expansion]

SUBCHAPTER E. CRITICAL DUNE AREAS

§ 63.121. Identification of Critical Dune Areas

The commissioner, in his role as trustee of the public land of this state, shall identify the critical dune areas that are essential to the protection of state-owned land, shores, and submerged land.

[Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.122. Notice to Counties

After the commissioner has identified the critical dune areas, notice of the critical dune areas shall be given to the commissioners court of each county in which one or more of these areas is located.

[Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 63.123 to 63.150 reserved for expansion]

SUBCHAPTER F. APPEALS

§ 63.151. Appeal by Littoral Owner

A littoral owner aggrieved by a decision of the commissioners court under this chapter may appeal to a district court in that county.

[Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 63.152. Appeal by Commissioner

The commissioner, in his role as trustee of the public land of this state, may appeal to a district court of that county any decision of the commissioners court that the commissioner determines to be a violation of this chapter.

[Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 63.153 to 63.180 reserved for expansion]

SUBCHAPTER G. PENALTIES

§ 63.181. Penalty

(a) A person who violates the provisions of this chapter shall be fined not more than \$200.

(b) Each day that a violation occurs constitutes a separate offense.

[Acts 1977, 65th Leg., p. 2503, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

SUBTITLE F. LAND OF POLITICAL SUBDIVISIONS

CHAPTER 71. LEASE FOR MINERAL DEVELOPMENT

SUBCHAPTER A. LEASES BY POLITICAL SUBDIVISIONS

Section	Definition.
71.001.	Definition.
71.002.	Authority to Lease.
71.003.	Governing Body to Exercise Authority.
71.004.	Notice and Hearing.
71.005.	Notice of Intention to Lease Land.
71.006.	Receiving Bids and Awarding Lease.
71.007.	Rejection of Bids and Additional Bids.
71.008.	Grant of Lease.
71.009.	Royalty.
71.010.	Lease Term.

SUBCHAPTER B. POOLING MINERAL LEASES

71.051.	Definitions.
71.052.	Inserting Pooling Provisions in Leases.
71.053.	Compliance With Governmental Agencies.
71.054.	Terms and Conditions of Leases of County School Land.
71.055.	Additional Terms of Leases.
71.056.	Amending Lease.
71.057.	Authority to Commit Royalty Interests.

SUBCHAPTER A. LEASES BY POLITICAL SUBDIVISIONS

§ 71.001. Definition

In this subchapter, "political subdivision" means any body corporate with a recognized and defined area.

[Acts 1977, 65th Leg., p. 2504, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.002. Authority to Lease

A political subdivision may lease land owned by it for mineral development, including development of coal and lignite.

[Acts 1977, 65th Leg., p. 2504, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.003. Governing Body to Exercise Authority

The governing body of the political subdivision which is vested by law with management, control, and supervision of the political subdivision shall exercise the right to lease the land.

[Acts 1977, 65th Leg., p. 2504, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.004. Notice and Hearing

Before a lease is made under this subchapter, notice must be given and a public hearing must be held for consideration of bids.

[Acts 1977, 65th Leg., p. 2504, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.005. Notice of Intention to Lease Land

(a) After the governing body determines that it is advisable to lease land belonging to the political subdivision, it shall give notice of the intention to lease the land.

(b) The notice shall describe the land to be leased and designate the time and place at which the governing body will receive and consider bids for the lease.

(c) The notice shall be published once a week for three consecutive weeks in a newspaper published in the county and with general circulation in the county.

[Acts 1977, 65th Leg., p. 2504, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.006. Receiving Bids and Awarding Lease

On the date specified in the notice, the governing body of the political subdivision shall receive and consider bids submitted for leasing all or part of the land that was advertised for lease, and the governing body may award the lease to the highest and best bidder who submits a bid.

[Acts 1977, 65th Leg., p. 2504, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.007. Rejection of Bids and Additional Bids

If the governing body believes that the bids submitted to it do not represent the fair value of the

leases, the governing body may reject the bids, give notice, and call for additional bids.

[Acts 1977, 65th Leg., p. 2505, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.008. Grant of Lease

A lease made under this subchapter, including leases for coal and lignite, may be granted by public auction.

[Acts 1977, 65th Leg., p. 2505, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.009. Royalty

(a) In each lease other than a lease for coal and lignite executed under this subchapter, the lessor shall retain at least a one-eighth royalty.

(b) In a lease for coal and lignite executed under this subchapter, the lessor shall retain at least a royalty based on one of the following or a combination of the following:

(1) a sum certain per ton;

(2) a percentage certain of the gross sale price F.O.B. at the mine site of the coal and lignite; or

(3) a sum certain for each acre-foot of coal and lignite mined and removed from the premises.

(c) Royalties under a coal and lignite lease may be paid as advanced mineral royalties.

[Acts 1977, 65th Leg., p. 2505, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.010. Lease Term

(a) No primary term of a lease other than a lease for coal and lignite made under this subchapter may be for a period of more than 10 years from the date of the execution and approval of the lease.

(b) No primary term for a coal and lignite lease made under this subchapter may be for a period of more than 35 years from the date of execution.

[Acts 1977, 65th Leg., p. 2505, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 71.011 to 71.050 reserved for expansion]

SUBCHAPTER B. POOLING MINERAL LEASES

§ 71.051. Definitions

In this subchapter:

(1) "City or town" means a city or town organized or chartered under the general laws of the state or under a special act or charter.

(2) "Political subdivision" means a body corporate which has a recognized and defined area.

[Acts 1977, 65th Leg., p. 2505, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.052. Inserting Pooling Provisions in Leases

A city, town, or political subdivision may insert in an oil and gas lease or in an oil, gas, and mineral

lease executed by it a provision authorizing the lessee to pool the lease, the land or minerals included in the lease, or any part of these with any other land, leases, mineral estates, or parts of any of these to form a drilling or spacing unit for the exploration, development, and production of oil or gas and authorizing the lessee to form the units and accomplish the pooling by written designations filed in the county in which the land is located.

[Acts 1977, 65th Leg., p. 2505, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.053. Compliance With Governmental Agencies

With respect to land owned by the city or town or other land owned by the political subdivisions, the drilling or spacing units may not be more than the minimum number of acres on which an oil and gas well must be located to comply with the rules or orders of the Railroad Commission of Texas or any other federal or state regulatory body that has authority to control or regulate the spacing of oil and gas wells.

[Acts 1977, 65th Leg., p. 2506, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.054. Terms and Conditions of Leases of County School Land

Leases of county school land that are governed by Article VII, Section 6, of the Texas Constitution, may include authorization for the formation of drilling and spacing units on any terms and provisions the commissioners court considers best.

[Acts 1977, 65th Leg., p. 2506, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.055. Additional Terms of Leases

A lease covered by this subchapter may provide:

(1) that the entire acreage pooled into a unit shall be treated for all purposes except the payment of royalties as if it were included in the lease and drilling or reworking operations and production of oil or gas on any part of the unit shall be considered for all purposes except the payment of royalties as if the operations were on and production were from the land included in the lease whether or not the well or wells are located on the premises included in the lease; and

(2) that instead of the royalties provided in the lease, the lessor shall receive on production from a pooled unit only the proportion of the royalty provided in the lease as the amount of the lessor's acreage placed in the unit or its royalty interest on an acreage basis bears to the total acreage included in the unit.

[Acts 1977, 65th Leg., p. 2506, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.056. Amending Lease

On application of the lessee or present owner of any oil and gas lease or any oil, gas, and mineral

lease validly executed before June 4, 1953, by any city, town, or political subdivision, the governing body of the city, town, or political subdivision may amend the lease to include a pooling provision that includes the terms provided in this subchapter. [Acts 1977, 65th Leg., p. 2506, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 71.057. Authority to Commit Royalty Interests

(a) A city, town, or political subdivision without notice may commit, to any agreement that provides for the operation of areas as a unit for the exploration, development, and production of oil or gas, any royalty interests owned by the city, town, or political subdivision in oil or gas.

(b) The agreement may include any terms and provisions that the city, town, or political subdivision considers best and may provide in substance:

(1) that operations incident to drilling a well on any portion of a unit shall be considered for all purposes to be the conduct of the operation on each separately owned tract in the unit by the several owners of the tracts;

(2) that the production allocated to each tract included in a unit shall, when produced, be considered for all purposes to have been produced from the tract by a well drilled on it;

(3) that any lease that covers any part of the area committed to the agreement shall continue in force as long as oil or gas is produced in paying quantities from any part of the unit area; and

(4) that royalties reserved to the city, town, or political subdivision from any tract or portion of a tract included within the unit shall be paid only on that portion of the production allocated to the tract or on the value of the production allocated according to the agreement.

(c) No agreement may be made by any city, town, or political subdivision which commits the city, town, or political subdivision to the payment of any part of the cost or expense of operating any unit area or any well located on the area.

[Acts 1977, 65th Leg., p. 2506, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

TITLE 3. OIL AND GAS

SUBTITLE A. ADMINISTRATION

CHAPTER 81. RAILROAD COMMISSION OF TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

Section
81.001. Definitions.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

81.011. Chief Supervisor.
81.012. Qualifications of Chief Supervisor.

Section

- 81.013. Deputy Supervisors, Assistants, and Clerical Personnel.
- 81.014. Qualifications of Chief Deputy Supervisor.
- 81.015. Qualifications of Deputy Supervisors.
- 81.016. Salaries.
- 81.017. Additional Employees.
- 81.018. Payment of Salaries and Other Expenses.
- 81.019. Duties of Chief Supervisor, Chief Deputy Supervisor, Deputy Supervisors, and Other Employees.
- 81.020. Additional Duties of Chief Supervisor and His Deputies.

SUBCHAPTER C. JURISDICTION, POWERS, AND DUTIES

- 81.051. Jurisdiction of Commission.
- 81.052. Rules.
- 81.053. Commission Powers.
- 81.054. Enforcement by Attorney General.

SUBCHAPTER D. WITNESSES

- 81.091. Incriminating Testimony.
- 81.092. Fee for Executing Process.

SUBCHAPTER E. TAX

- 81.111. Tax Levy.
- 81.112. Railroad Commission Operating Fund.
- 81.113. Use of Tax Proceeds.
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SUBCHAPTER F. CAMPAIGNING

- 81.151. Penalty for Campaigning.
- 81.152. Discharge and Ineligibility.
- 81.153. Setting Civil Complaint for Hearing.
- 81.154. Notice to Employee.
- 81.155. Court's Order.
- 81.156. Appeal.

SUBCHAPTER A. GENERAL PROVISIONS

§ 81.001. Definitions

In this chapter:

- (1) "Commission" means the Railroad Commission of Texas.
- (2) "Commissioner" means any member of the Railroad Commission of Texas.

[Acts 1977, 65th Leg., p. 2508, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 81.002 to 81.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 81.011. Chief Supervisor

(a) The commission shall employ a chief supervisor of its oil and gas division to assist the commission in enforcing the laws relating to the production, transportation, and conservation of oil and gas and rules and orders of the commission adopted under these laws.

(b) The chief supervisor also shall perform the duties of the pipeline expert as provided in the pipeline laws of this state.

[Acts 1977, 65th Leg., p. 2508, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.012. Qualifications of Chief Supervisor

In addition to other qualifications that may be required by the commission, a person appointed chief supervisor must have had at least five years' experience in some line of the oil or gas business, or in some other business or profession that would provide the necessary knowledge and experience for the performance of his duties.

[Acts 1977, 65th Leg., p. 2508, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.013. Deputy Supervisors, Assistants, and Clerical Personnel

The commission may appoint a chief deputy supervisor, deputy supervisors, assistants, and clerical personnel necessary to execute the laws relating to oil and gas.

[Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.014. Qualifications of Chief Deputy Supervisor

A person appointed chief deputy supervisor must have had at least three years' experience in oil and gas field work.

[Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.015. Qualifications of Deputy Supervisors

Any person appointed deputy supervisor must have had at least two years' experience in oil and gas field work, including substantial experience in drilling or production.

[Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.016. Salaries

The salary of the chief supervisor, the chief deputy supervisor, and the deputy supervisors shall be the same as that provided in the General Appropriations Act.

[Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.017. Additional Employees

The commission may employ gaugers, inspectors, investigators, supervisors, and clerical employees. These employees shall include a chief engineer, chief petroleum engineer, and an administrative chief, and their salaries shall be paid from the Railroad Commission operating fund in the amounts provided in the General Appropriations Act.

[Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.018. Payment of Salaries and Other Expenses

(a) Salaries and other expenses necessary in the administration and enforcement of the oil and gas laws shall be paid by warrants drawn by the comptroller on the State Treasury from funds provided under Section 81.112 of this code.

(b) Warrants for expenses shall be issued only on duly verified statements of the persons entitled to the funds and on approval of the chairman of the commission.

[Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.019. Duties of Chief Supervisor, Chief Deputy Supervisor, Deputy Supervisors, and Other Employees

The chief supervisor, chief deputy supervisor, deputy supervisors, and other employees shall perform the duties prescribed by the commission in conformity with rules of the commission relating to the production, transportation, and conservation of crude oil and natural gas.

[Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.020. Additional Duties of Chief Supervisor and His Deputies

(a) The chief supervisor and his deputies shall supervise the plugging of all abandoned wells and the shooting of wells and shall follow the rules of the commission relating to the production and conservation of oil and gas.

(b) The chief supervisor shall gather information and assist the commission in the performance of its duties under this title.

[Acts 1977, 65th Leg., p. 2509, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 81.021 to 81.050 reserved for expansion]

SUBCHAPTER C. JURISDICTION, POWERS, AND DUTIES

§ 81.051. Jurisdiction of Commission

(a) The commission has jurisdiction over all:

- (1) common carrier pipelines defined in Section 111.002 of this code in Texas;
- (2) oil and gas wells in Texas;
- (3) persons owning or operating pipelines in Texas; and
- (4) persons owning or engaged in drilling or operating oil or gas wells in Texas.

(b) Persons listed in Subsection (a) of this section and their pipelines and oil and gas wells are subject to the jurisdiction conferred by law on the commission.

[Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, § 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 2694, ch. 871, art. II, § 5, eff. Sept. 1, 1977.]

§ 81.052. Rules

The commission may adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the commission.

[Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.053. Commission Powers

In the discharge of its duties and the enforcement of its jurisdiction under this title, the commission shall:

- (1) institute suits;
- (2) hear and determine complaints;
- (3) require the attendance of witnesses and pay their expenses out of funds provided for that purpose;
- (4) obtain the issuance of writs and process which may be necessary for the enforcement of its orders; and
- (5) punish for contempt or disobedience of its orders in the manner provided for the district courts.

[Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.054. Enforcement by Attorney General

The attorney general shall enforce the provisions of this title by injunction or other adequate remedy and as otherwise provided by law.

[Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 81.055 to 81.090 reserved for expansion]

SUBCHAPTER D. WITNESSES

§ 81.091. Incriminating Testimony

If a witness fails or refuses to appear on being summoned, to answer any question he is asked, or to produce any record or data required by subpoena, the claim that the testimony may tend to incriminate the person giving it does not excuse the witness from testifying or producing the records and data, but the evidence or testimony may not be used against the person on the trial of any criminal proceeding.

[Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.092. Fee for Executing Process

The sheriff or constable executing process shall receive the compensation authorized by the commission.

[Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 81.093 to 81.110 reserved for expansion]

SUBCHAPTER E. TAX

§ 81.111. Tax Levy

(a) A tax is levied on crude petroleum produced in this state in the amount of three-sixteenths of one cent on each barrel of 42 standard gallons.

(b) This tax is in addition to and shall be collected in the same manner as the occupation tax on the production of crude petroleum.

[Acts 1977, 65th Leg., p. 2510, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.112. Railroad Commission Operating Fund

The tax shall be deposited in the Railroad Commission operating fund in the State Treasury and shall be paid from the fund by warrants in the manner provided for other funds.

[Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.113. Use of Tax Proceeds

Proceeds from the tax shall be used for the administration of the state's oil and gas conservation laws.

[Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.114. Production Reports

Producers of crude petroleum shall make reports of production in the same manner and under the same penalties as provided for the occupation tax on the production of crude oil.

[Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.115. Payments to Oil and Gas Division

No money appropriated to the oil and gas division of the commission under the General Appropriations Act may be paid from the General Revenue Fund.

[Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 81.116 to 81.150 reserved for expansion]

SUBCHAPTER F. CAMPAIGNING

§ 81.151. Penalty for Campaigning

A person who receives a salary from funds provided under this title and who uses his time or a state-owned automobile for campaign purposes or for the purpose of furthering the candidacy of his employer or any other candidate for state office is guilty of a misdemeanor and on conviction shall be fined not less than \$100 nor more than \$500 and shall be confined in jail for not less than 30 nor more than 90 days.

[Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.152. Discharge and Ineligibility

A person found guilty under Section 81.151 of this code shall be discharged immediately from his position and shall be ineligible for employment by the state in the future.

[Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.153. Setting Civil Complaint for Hearing

If a citizen of this state files a civil complaint with a district court in Travis County charging an employee with use of his time or a state-owned automobile for campaign purposes or to further the candidacy of his employer or any other candidate for state office, the court shall set the complaint for hearing at a time not less than 10 nor more than 20 days after the day on which the complaint is filed.

[Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.154. Notice to Employee

The court shall have notice of the hearing served on the employee against whom the complaint was filed at least five days before the date of the hearing.

[Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.155. Court's Order

At the hearing, if the court determines that the employee has used his time or a state-owned automobile as charged in the complaint, the court shall certify the fact to the department, agency, or commission which employs the person and order the employee's immediate discharge.

[Acts 1977, 65th Leg., p. 2511, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 81.156. Appeal

Any person against whom charges have been filed is entitled to appeal to the court of civil appeals, but the pendency of the appeal does not suspend his discharge.

[Acts 1977, 65th Leg., p. 2512, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

SUBTITLE B. CONSERVATION AND REGULATION OF OIL AND GAS

CHAPTER 85. CONSERVATION OF OIL AND GAS

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SUBCHAPTER A. GENERAL PROVISIONS

§ 85.001. Definitions

(a) In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Pool," "common pool," "field," or "common source of supply" means a common reservoir.

(3) "Pool" means an underground reservoir containing a connected accumulation of crude petroleum oil, or natural gas, or both.

(4) "Product" and "product of oil or gas" mean a commodity or thing made or manufactured from oil or gas and derivatives or by-products of oil or gas, including refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, treated crude oil, fuel oil, residuum, gas oil, naphtha, distillate, gasoline, kerosene, benzine, wash oil, waste oil, lubricating oil, casinghead gas, casinghead gasoline, blended gasoline, and blends or mixtures of oil, or gas, or any derivatives or by-products of them.

(b) "Oil" means crude petroleum oil, crude petroleum, and crude oil, and "gas" means natural gas. These terms shall not be construed as referring to substances different from those referred to in this chapter and other laws as "oil and gas" and these terms mean the same whether used in this chapter or in other laws relating to the conservation of oil and gas.

[Acts 1977, 65th Leg., p. 2514, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.002. Antitrust and Monopoly Statutes

(a) The provisions of this chapter that were formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, and Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, do not affect, alter, diminish, change, or modify the antitrust and monopoly laws of this state and do not directly or indirectly authorize a violation of the antitrust and monopoly laws of this state.

(b) It is the legislative intent that no provision of this chapter that was formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, or Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, shall affect, alter, diminish, or amend in any manner a provision of the antitrust and monopoly laws of this state or authorize a violation of the antitrust and monopoly laws. The legislative intent expressed in this subsection shall prevail and take precedence over sections cited in this subsection regardless of any statement in these sections to the contrary.

(c) If any provision of this chapter that was formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, or Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, is construed by a court of this state in a manner that will affect, alter, diminish, or modify any provision of the antitrust and monopoly laws of this state, this provision which is in conflict is declared null and void rather than the antitrust and monopoly laws.

[Acts 1977, 65th Leg., p. 2515, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 85.003 to 85.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 85.011. Supervisors, Deputy Supervisors, and Umpires

The commission shall employ all supervisors, deputy supervisors, and umpires necessary to carry out

the provisions of this chapter and other related laws and rules and orders of the commission.

[Acts 1977, 65th Leg., p. 2515, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.012. Assistants and Clerical Help

The commission shall employ other assistants and clerical help necessary to carry out the provisions of this chapter and other related laws and rules and orders of the commission.

[Acts 1977, 65th Leg., p. 2515, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.013. Persons Enforcing Rules and Orders

A person entrusted with the enforcement of the rules and orders of the commission shall be a regular employee of the state and paid by the state. No person other than a regular employee of the state may be charged with or relied on for the performance of these duties.

[Acts 1977, 65th Leg., p. 2516, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 85.014 to 85.040 reserved for expansion]

SUBCHAPTER C. PROVISIONS GENERALLY APPLICABLE TO THE CONSERVATION OF OIL AND GAS

§ 85.041. Acts Prohibited in Violation of Laws, Rules, and Orders

(a) The purchase, acquisition, or sale, or the transporting, refining, processing, or handling in any other way, of oil or gas, produced in whole or in part in violation of any oil or gas conservation statute of this state or of any rule or order of the commission under such a statute, is prohibited.

(b) The purchase, acquisition, or sale, or the transporting, refining, processing, or handling in any other way, of any product of oil or gas which is derived in whole or in part from oil or gas or any product of either, which was in whole or part produced, purchased, acquired, sold, transported, refined, processed, or handled in any other way, in violation of any oil or gas conservation statute of this state, or of any rule or order of the commission under such a statute, is prohibited.

[Acts 1977, 65th Leg., p. 2516, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.042. Rules and Orders

(a) The commission may promulgate and enforce rules and orders necessary to carry into effect the provisions of Section 85.041 of this code and to prevent that section's violation.

(b) When necessary, the commission shall make and enforce rules either general in their nature or applicable to particular fields for the prevention of

actual waste of oil or operations in the field dangerous to life or property.

[Acts 1977, 65th Leg., p. 2516, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.043. Application of Certain Rules and Orders

If the commission requires a showing that refined products were manufactured from oil legally produced, the requirement shall be of uniform application throughout the state; provided that, if the rule or order is promulgated for the purpose of controlling a condition in any local area or preventing a violation in any local area, then on the complaint of a person that the same or similar conditions exist in some other local area and the promulgation and enforcement of the rule could be beneficially applied to that additional area, the commission shall determine whether or not those conditions do exist, and if it is shown that they do, the rule or order shall be enlarged to include the additional area.

[Acts 1977, 65th Leg., p. 2516, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.044. Exempt Purchases

The provisions of Sections 85.041 through 85.043 of this code do not apply to the purchase of products of oil if made by the ultimate consumer from a retail distributor of the products.

[Acts 1977, 65th Leg., p. 2516, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.045. Waste Illegal and Prohibited

The production, storage, or transportation of oil or gas in a manner, in an amount, or under conditions that constitute waste is unlawful and is prohibited.

[Acts 1977, 65th Leg., p. 2517, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.046. Waste

The term "waste," among other things, specifically includes:

- (1) operation of any oil well or wells with an inefficient gas-oil ratio and the commission may determine and prescribe by order the permitted gas-oil ratio for the operation of oil wells;
- (2) drowning with water a stratum or part of a stratum that is capable of producing oil or gas or both in paying quantities;
- (3) underground waste or loss, however caused and whether or not the cause of the underground waste or loss is defined in this section;
- (4) permitting any natural gas well to burn wastefully;
- (5) creation of unnecessary fire hazards;
- (6) physical waste or loss incident to or resulting from drilling, equipping, locating, spacing,

or operating a well or wells in a manner that reduces or tends to reduce the total ultimate recovery of oil or gas from any pool;

(7) waste or loss incident to or resulting from the unnecessary, inefficient, excessive, or improper use of the reservoir energy, including the gas energy or water drive, in any well or pool; however, it is not the intent of this section or the provisions of this chapter that were formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, to require repressuring of an oil pool or to require that the separately owned properties in any pool be unitized under one management, control, or ownership;

(8) surface waste or surface loss, including the temporary or permanent storage of oil or the placing of any product of oil in open pits or earthen storage, and other forms of surface waste or surface loss including unnecessary or excessive surface losses, or destruction without beneficial use, either of oil or gas;

(9) escape of gas into the open air in excess of the amount necessary in the efficient drilling or operation of the well from a well producing both oil and gas; and

(10) production of oil in excess of transportation or market facilities or reasonable market demand, and the commission may determine when excess production exists or is imminent and ascertain the reasonable market demand.

[Acts 1977, 65th Leg., p. 2517, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.047. Exclusion From Definition of Waste

The use of gas produced from an oil well within the permitted gas-oil ratio for manufacture of natural gasoline shall not be included in the definition of waste.

[Acts 1977, 65th Leg., p. 2517, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.048. Authority to Limit Production

(a) Under the provisions of Subsection (10), Section 85.046 of this code, the commission shall not restrict the production of oil from any new field brought into production by exploration until the total production from that field is 10,000 barrels of oil a day in the aggregate.

(b) The commission's authority to restrict production from a new field under other provisions of Section 85.046 of this code is not limited by this section.

[Acts 1977, 65th Leg., p. 2517, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.049. Hearing

(a) On verified complaint of any person interested in the subject matter that waste of oil or gas is taking place in this state or is reasonably imminent, or on its own initiative, the commission, after proper notice, may hold a hearing to determine whether or not waste is taking place or is reasonably imminent and if any rule or order should be adopted or if any other action should be taken to correct, prevent, or lessen the waste.

(b) The hearing shall be held at the time and place determined by the commission.

[Acts 1977, 65th Leg., p. 2517, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.050. Procedure at Hearing

(a) At the hearing, interested parties shall be entitled to be heard and to introduce evidence and require the attendance of witnesses.

(b) The production of evidence may be required as provided by law.

[Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.051. Adoption of Rule or Order

If the commission finds at the hearing that waste is taking place or is reasonably imminent, it shall adopt a rule or order in the manner provided by law as it considers reasonably required to correct, prevent, or lessen the waste.

[Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.052. Compliance With Rule or Order

From and after the promulgation of a rule or order of the commission, it is the duty of each person affected by the rule or order to comply with it.

[Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.053. Distribution, Proration, and Apportionment of Allowable Production

If a rule or order of the commission limits or fixes in a pool or portion of a pool the production of oil, or the production of gas from wells producing gas only, the commission shall distribute, prorate, or otherwise apportion or allocate the allowable production among the various producers on a reasonable basis.

[Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.054. Allowable Production of Oil

(a) To prevent unreasonable discrimination in favor of one pool as against another, and on written complaint and proof of such discrimination, the commission may allocate or apportion the allowable production of oil on a fair and reasonable basis among the various pools in the state.

(b) In allocating or ascertaining the reasonable market demand for the entire state, the reasonable market demand of one pool shall not be discriminated against in favor of another pool.

(c) The commission shall determine the reasonable market demand of the respective pool as the basis for determining the allotments to be assigned to the respective pool so that discrimination may be prevented.

[Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.055. Allowable Production of Gas

(a) If full production from wells producing gas only from a common source of supply of gas in this state is in excess of the reasonable market demand, the commission shall inquire into the production and reasonable market demand for the gas and shall determine the allowable production from the common source of supply.

(b) The allowable production from a common source of supply is that portion of the reasonable market demand that can be produced without waste.

(c) The commission shall allocate, distribute, or apportion the allowable production from the common source of supply among the various producers on a reasonable basis and shall limit the production of each producer to the amount allocated or apportioned to the producer.

[Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.056. Public Interest

In the administration of the provisions of this chapter that were formerly a part of Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, the commission shall take into consideration and protect the rights and interests of the purchasing and consuming public in oil and all its products, such as gasoline and lubricating oil.

[Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.057. Restriction on Unexplored Territory

The provisions of this chapter that were formerly a part of Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, shall not be construed to grant the commission any authority to restrict or in any manner limit the drilling of wells to explore for oil or gas or both in territory that is not known to produce either oil or gas.

[Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.058. Commission Inquiry and Determination

From time to time, the commission shall inquire into the production, storage, transportation, refining, reclaiming, treating, marketing, and processing

of oil and gas, and the reasonable market demand for oil and gas, so that it may determine whether or not waste exists or is imminent or whether the oil and gas conservation laws of this state or the rules and orders of the commission promulgated under those laws are being violated.

[Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.059. Records

Each person who produces, stores, transports, refines, reclaims, treats, markets, or processes oil or gas or the products of either shall keep in this state accurate records of the amount of oil or gas which such person produced, stored, transported, refined, reclaimed, treated, marketed, or processed and of the source from which the person produced, obtained, or received the oil or gas or the products of either and the disposition made of them.

[Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.060. Sworn Statements and Reports

The commission may require a person who produces, stores, transports, refines, reclaims, treats, markets, or processes oil or gas or the products of either to make and file with the commission sworn statements or reports as to facts within his knowledge or possession pertaining to the reasonable market demand for oil and to the production, storage, transportation, refining, reclaiming, treating, marketing, or processing of oil or gas and the products of either. The report shall include those facts enumerated in Section 85.059 of this code.

[Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.061. Inspection and Gauging

The commission may require any well, lease, refinery, plant, tank or storage, pipeline, or gathering line that belongs to or is under the control of a person who produces, stores, transports, refines, reclaims, treats, markets, or processes oil or gas or the products of either to be inspected or gauged by the agents of the commission whenever and as often as and for such periods as the commission considers necessary.

[Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.062. Examination of Books and Records

The commission and its agents and the attorney general and his assistants and representatives may examine the books and records of a person who produces, stores, transports, refines, reclaims, treats, markets, or processes oil or gas or the products of either as often as considered necessary for the purpose of determining the facts concerning matters covered by Sections 85.058 through 85.061 of this code.

[Acts 1977, 65th Leg., p. 2520, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.063. Violations by Corporations

(a) The failure of a corporation chartered under the laws of this state to comply with the provisions of Sections 85.059 through 85.062 of this code and to keep the records required by Section 85.059 of this code in this state or the refusal to permit officers designated in Section 85.062 of this code to inspect and examine the records required by Section 85.059 of this code shall constitute grounds for forfeiture of the corporation's charter rights and privileges and dissolution of its corporate existence.

(b) The failure of a foreign corporation to comply with the provisions of Sections 85.059 through 85.062 of this code and to keep the records required by Section 85.059 of this code in this state or the refusal to permit officers designated in Section 85.062 of this code to inspect and examine the records required by Section 85.059 of this code shall be grounds for enjoining and forever prohibiting such corporation from doing business in this state.

[Acts 1977, 65th Leg., p. 2520, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.064. Action Against Corporation

(a) If he determines that the public interest requires it, the attorney general shall institute suit or other appropriate action in Travis County for forfeiture of charter rights of a domestic corporation or to enjoin a foreign corporation from doing business in this state when a corporation is deemed guilty of violating the provisions of Sections 85.059 through 85.062 of this code. The attorney general may take this action on his own motion and without leave or order of any judge or court.

(b) On judgment against a defendant for violating the provisions of Sections 85.059 through 85.062 of this code, the court may, if in its judgment the public interest requires it, forfeit the charter rights of a defendant domestic corporation or enjoin a defendant foreign corporation from doing business in this state.

[Acts 1977, 65th Leg., p. 2520, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 85.065 to 85.120 reserved for expansion]

SUBCHAPTER D. MARGINAL WELLS

§ 85.121. Definitions

(a) In this subchapter, "marginal well" means an oil well that is incapable of producing its maximum capacity of oil except by pumping, gas lift, or other means of artificial lift, and which well so equipped is capable, under normal unrestricted operating conditions, of producing such daily quantities of oil, as provided in this subchapter, that would be damaged, or result in a loss of production ultimately recoverable, or cause the premature abandonment of the

well, if its maximum daily production were artificially curtailed.

(b) As used in Subsection (a), Section 85.121 and Section 85.122 of this code, "gas lift" means gas lift by the use of gas not in solution with oil produced. [Acts 1977, 65th Leg., p. 2520, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.122. Wells Considered as Marginal Wells

Wells that are considered marginal wells include any oil well in this state that is incapable of producing its maximum daily capacity of oil except by pumping, gas lift, or other means of artificial lift and having:

(1) when producing from a depth of 2,000 feet or less, a maximum daily capacity for production of 10 barrels or less, averaged over the preceding 30 consecutive days;

(2) when producing from a horizon deeper than 2,000 feet and less in depth than 4,000 feet, a maximum daily capacity for production of 20 barrels or less, averaged over the preceding 30 consecutive days;

(3) when producing from a horizon deeper than 4,000 feet and less in depth than 6,000 feet, a maximum daily capacity for production of 25 barrels or less, averaged over the preceding 30 consecutive days;

(4) when producing from a horizon deeper than 6,000 feet and less in depth than 8,000 feet, a maximum daily capacity for production of 30 barrels or less, averaged over the preceding 30 consecutive days; or

(5) when producing from a horizon deeper than 8,000 feet, a maximum daily capacity for production of 35 barrels or less, averaged over the preceding 30 consecutive days.

[Acts 1977, 65th Leg., p. 2521, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.123. Curtailment of Marginal Well Production as Waste

To artificially curtail the production of a marginal well below the marginal limit as set out in Sections 85.121 through 85.122 of this code before the marginal well's ultimate plugging and abandonment is declared to be waste.

[Acts 1977, 65th Leg., p. 2521, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.124. Rules and Orders Restricting Marginal Wells

No rule or order of the commission or of any other constituted legal authority shall be adopted requiring the restriction of the production of a marginal well.

[Acts 1977, 65th Leg., p. 2521, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.125. Effect of Other Subchapters

None of the provisions of this chapter that were formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, or Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, authorize or may be construed to limit, modify, or repeal the provisions of this subchapter.

[Acts 1977, 65th Leg., p. 2521, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 85.126 to 85.160 reserved for expansion]

SUBCHAPTER E. CERTIFICATE OF COMPLIANCE

§ 85.161. Well Owners and Operators Certificates

The owner or operator of an oil or gas well, before connecting with any oil or gas pipeline, shall secure from the commission a certificate showing compliance with the oil or gas conservation laws of the state and conservation rules and orders of the commission.

[Acts 1977, 65th Leg., p. 2521, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.162. Prohibited Connection

No operator of a pipeline or other carrier shall connect with any oil or gas well until the owner or operator of the well furnishes a certificate from the commission that the owner or operator has complied with the conservation laws of this state and the rules and orders of the commission.

[Acts 1977, 65th Leg., p. 2521, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.163. Temporary Connection

The provisions of this subchapter do not prevent a temporary connection with a well in order to take care of production and prevent waste until opportunity shall have been given the owner or operator of the well to secure the certificate.

[Acts 1977, 65th Leg., p. 2522, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.164. Cancellation of Certificate

The commission may cancel any certificate of compliance issued under the provisions of this subchapter if it appears that the owner or operator of a well covered by the provisions of the certificate, in the operation of the well or the production of oil or gas from the well, has violated or is violating the oil and gas conservation laws of this state or rules or orders of the commission adopted under those laws.

[Acts 1977, 65th Leg., p. 2522, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.165. Effect of Cancellation on Operator of Pipeline or Other Carrier

(a) On notice from the commission to the operator of a pipeline or other carrier connected to an oil or gas well that the certificate of compliance pertaining to that well has been cancelled, the operator of the pipeline or other carrier shall disconnect from the well.

(b) It shall be unlawful for the operator of a pipeline or other carrier to transport oil from the well until a new certificate of compliance has been issued by the commission.

[Acts 1977, 65th Leg., p. 2522, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.166. Effect of Cancellation on Owner or Operator of Well

On notice from the commission that a certificate of compliance for an oil or gas well has been cancelled, it shall be unlawful for the owner or operator of the well to produce oil or gas from the well until a new certificate of compliance covering the well has been issued by the commission.

[Acts 1977, 65th Leg., p. 2522, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 85.167 to 85.200 reserved for expansion]

SUBCHAPTER F. RULES AND ORDERS OF THE COMMISSION

§ 85.201. Adoption of Rules and Orders

The commission shall make and enforce rules and orders for the conservation of oil and gas and prevention of waste of oil and gas.

[Acts 1977, 65th Leg., p. 2522, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.202. Purposes of Rules and Orders

(a) The rules and orders of the commission shall include rules and orders:

(1) to prevent waste, as defined in Section 85.046 of this code, of oil and gas in drilling and producing operations and in the storage, piping, and distribution of oil and gas;

(2) to require dry or abandoned wells to be plugged in a manner that will confine oil, gas, and water in the strata in which they are found and prevent them from escaping into other strata;

(3) for the drilling of wells and preserving a record of the drilling of wells;

(4) to require wells to be drilled and operated in a manner that will prevent injury to adjoining property;

(5) to prevent oil and gas and water from escaping from the strata in which they are found into other strata;

(6) to provide rules for shooting wells and for separating oil from gas;

(7) to require records to be kept and reports made; and

(8) to provide for issuance of permits, tenders, and other evidences of permission when the issuance of the permits, tenders, or permission is necessary or incident to the enforcement of the commission's rules or orders for the prevention of waste.

(b) The commission shall do all things necessary for the conservation of oil and gas and prevention of waste of oil and gas and may adopt other rules and orders as may be necessary for those purposes. [Acts 1977, 65th Leg., p. 2522, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.203. Considerations in Adopting Rules and Orders to Prevent Waste

The commission may consider any or all of the definitions of waste stated in Section 85.046 of this code, whenever the facts, circumstances, or conditions make them applicable, in adopting rules or orders to prevent waste of oil or gas.

[Acts 1977, 65th Leg., p. 2523, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.204. Prohibited Rules and Orders

The commission is not authorized to adopt a rule or order or to make a determination or holding that any mode, manner, or process of refining oil constitutes waste.

[Acts 1977, 65th Leg., p. 2523, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.205. Notice and Hearing

No rule or order pertaining to the conservation of oil and gas or to the prevention of waste of oil and gas may be adopted by the commission except after notice and hearing as provided by law.

[Acts 1977, 65th Leg., p. 2523, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.206. Emergency Order

(a) If the commission finds an emergency to exist, that in the commission's judgment requires the adoption of an order without giving notice or holding a hearing, the emergency order may be adopted and shall be valid as though notice had been given and a hearing held.

(b) The emergency order shall remain in force no longer than 15 days from its effective date.

(c) The emergency order shall expire, in any event, at the time an order relating to the same subject matter and adopted after proper notice and hearing becomes effective.

[Acts 1977, 65th Leg., p. 2523, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.207. Effect of Amendment, Repeal, or Expiration of a Rule or Order

The amendment, repeal, or expiration of a rule or order of the commission adopted under the provisions of this chapter that were formerly a part of Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, or the provisions of Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, shall not have the effect of releasing or discharging from liability, penalty, or forfeiture any person violating the rule or order before the effective date of the amendment, repeal, or expiration. Prosecutions and suits for these violations, liabilities, penalties, and forfeitures shall be instituted and proceeded with in all respects as if the rule or order had not been amended or repealed, or had not expired.

[Acts 1977, 65th Leg., p. 2523, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 85.208 to 85.240 reserved for expansion]

SUBCHAPTER G. SUITS CHALLENGING THE VALIDITY OF LAWS AND ORDERS

§ 85.241. Suits by Interested Persons

Any interested person who is affected by the conservation laws of this state or orders of the commission relating to oil or gas and the waste of oil or gas, and who is dissatisfied with any of these laws or orders, may file suit against the commission or its members in a court of competent jurisdiction in Travis County to test the validity of the law or order.

[Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.242. Expeditious Trial

A suit brought under Section 85.241 of this code shall be advanced for trial and shall be determined as expeditiously as possible. No postponement or continuance shall be granted except for reasons considered imperative by the court.

[Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.243. Burden of Proof

In the trial of a suit brought under Section 85.241 of this code, the burden of proof shall be on the party complaining of the law or order, and the law or order is deemed prima facie valid.

[Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.244. Conditions for Injunctive Relief

No temporary restraining order, temporary or permanent injunction, or other form of injunctive relief

may be granted against the commission, its members, agents, and representatives to restrain it or them from enforcing any rule or order adopted by the commission under the oil and gas conservation laws of this state or from enforcing any of these laws unless notice is given to the commission and a hearing is held as provided in this subchapter. [Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.245. Notice to Commission

(a) At the time a petition or application is filed requesting a temporary restraining order or any form of temporary injunctive relief, the clerk of the court in which the petition or application is filed shall issue notice in writing to the commission.

(b) The notice shall include:

- (1) the docket number;
- (2) the style of the case; and
- (3) a brief statement of the nature of the suit.

(c) The notice shall be served on the commission in Travis County by delivering a copy of the citation to the commission, a member of the commission, or the secretary of the commission for the service of other citations.

(d) Five days after the citation has been served a hearing may be held on the petition or application. [Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.246. Intervention in Suit

In the discretion of the court, any person who is interested in the subject matter of the suit may intervene.

[Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.247. Rules and Orders Prima Facie Valid

The rule or order complained of in the suit is prima facie valid, and the use and introduction of the verified petition of the plaintiff shall not be sufficient to overcome the prima facie validity of the rule or order or to authorize the court to grant any injunctive relief against the enforcement of the rule or order.

[Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.248. Bond

Before an order granting injunctive relief against an oil and gas conservation law, rule, or order of the commission becomes effective, the plaintiff shall be required by the court to execute a bond with good and sufficient sureties in a reasonably sufficient amount determined by the court to indemnify any persons whom the court may find from the facts proven will suffer damage as a result of the viola-

tion of the law, rule, or order in question. The persons shall be named in the order of the judge at the time the amount of the bond is fixed by the court and entered in the record.

[Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.249. Conditions of Bond

(a) In determining the amount of the bond, the judge shall consider all facts and circumstances surrounding the parties and the ability of the plaintiff to make the bond so that the judge can determine the amount and reasonableness of the bond under the facts and circumstances.

(b) A bond made or executed by a bonding or surety company shall be by a company authorized to do business in Texas.

(c) The bond shall be approved by the judge and shall be for the use and benefit of and may be sued on by any person named in the order who suffers damage as a result of violation of the law, rule, or order.

[Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.250. Changing Amount, Parties, and Sureties

On a motion and for good cause shown, and after notice to the parties, the court periodically may:

- (1) increase or decrease the amount of the bond;
- (2) add new beneficiaries; and
- (3) require new and additional sureties that the facts may justify.

[Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.251. Suits on Bonds

A suit on a bond must be instituted within six months from the date of the final determination of the validity in whole or in part of the rule or order.

[Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.252. Inadmissible Evidence

A finding by the court that any party is likely to suffer damage is not admissible as evidence of damages in a suit on the bond.

[Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.253. Appeal

After notice and hearing on an application for injunctive relief, either party to the suit is entitled to appeal the judgment or order granting or refusing the temporary restraining order, temporary or permanent injunction, or other form of injunctive relief or granting or overruling a motion to dissolve the temporary restraining order, temporary or permanent injunction, or other form of injunctive relief.

[Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.254. Appeal Has Precedence

The appeal is returnable at once to the appellate court and the action appealed shall have precedence in the appellate court over all cases, proceedings, and causes of a different character that are pending.

[Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.255. Early Decision by Court of Civil Appeals

The court of civil appeals shall decide the question in the appeal at as early a date as possible.

[Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.256. Appeal Procedures

The provisions and requirements of Article 4662, Revised Civil Statutes of Texas, 1925, as amended, and Rule 385 of the Texas Rules of Civil Procedure, as amended, relating to temporary injunctions, apply to appeals from any order granting or refusing a temporary restraining order, or granting or overruling a motion to dissolve a temporary restraining order under the provisions of this subchapter.

[Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.257. Certified Questions and Writs of Error

(a) If a question is certified or writ of error requested or granted to the supreme court, the supreme court shall set the cause for hearing immediately and shall decide the cause at as early a date as possible.

(b) The cause shall have precedence over all other causes, proceedings, and causes of a different character in the court.

[Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.258. Authority of Court of Civil Appeals to Issue Writs

The court of civil appeals and its judges have the jurisdiction to issue writs of prohibition, mandamus, and injunction to prevent the enforcement of any order or judgment of a trial court or judge who grants any type of injunctive relief without notice and hearing in violation of the requirements of Sections 85.244 and 85.245 of this code.

[Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.259. Issuance of Writs by Court of Civil Appeals

If it appears that the provisions of Sections 85.244 and 85.245 of this code have not been complied with, then on proper application from the commission to the court of civil appeals having jurisdiction, the court shall issue instanter the necessary writs of prohibition, mandamus, or injunction to prohibit and

restrain the trial judge from enforcing or attempting to enforce the provisions of the injunction issued by him and to prohibit and restrain the party or parties in whose favor the order is entered from acting or attempting to act under the protection of the order or from violating the law, rule, or order of the commission attacked.

[Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 85.260 to 85.290 reserved for expansion]

SUBCHAPTER H. RECEIVERSHIP

§ 85.291. Request for Receiver

If a rule or order of the commission has been finally adjudicated to be valid in whole or part in a suit to which the commission is a party, and if after that time a party to the suit or other proceedings in which the rule or order was declared valid violates the rule, order, or judgment or shall thereafter use or permit to be used any property owned or controlled by him in violation of the rule, order, or judgment, the commission shall make application to the judge of the trial court setting out the rule, order, or judgment and stating that the party subsequent to the date of the judgment violated or is violating the rule, order, or judgment and requesting that a receiver be appointed as provided in this subchapter.

[Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.292. Appointment of Receiver and Bond

After an application is submitted as provided in Section 85.291 of this code, the judge of the trial court, after notice and hearing, may appoint a receiver of the property involved or used in violation of the rule, order, or judgment and shall set a proper bond for the receiver.

[Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.293. Duties of Receiver

As soon as the receiver is qualified, he shall take possession of the property and shall perform his duties as receiver of the property under the orders of the court, strictly observing the rule, order, or judgment.

[Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.294. Dissolution of Receivership

A party whose property is placed in receivership may move to dissolve the receivership and to discharge the receiver on the terms the court may prescribe.

[Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 85.295 to 85.320 reserved for expansion]

SUBCHAPTER I. DAMAGES

§ 85.321. Suit for Damages

A party who owns an interest in property or production that may be damaged by another party violating the provisions of this chapter that were formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, or another law of this state prohibiting waste or a valid rule or order of the commission may sue for and recover damages and have any other relief to which he may be entitled at law or in equity.

[Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.322. Proceedings Not to Impair Suit for Damages

None of the provisions of this chapter that were formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, no suit by or against the commission, and no penalties imposed on or claimed against any party violating a law, rule, or order of the commission shall impair or abridge or delay a cause of action for damages or other relief that an owner of land or a producer of oil or gas, or any other party at interest, may have or assert against any party violating any rule or order of the commission or any judgment under this chapter.

[Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 85.323 to 85.350 reserved for expansion]

SUBCHAPTER J. INJUNCTIONS

§ 85.351. Suit for Injunction

(a) If it appears that a person is violating or threatening to violate the provisions of this chapter that were formerly a part of Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, or Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, or any rule or order of the commission adopted under those laws, the commission, through the attorney general, shall bring suit in the name of the state to restrain the violation or threatened violation.

(b) The suit shall be brought against the person violating or threatening to violate the law, rule, or order in a court of competent jurisdiction in Travis County or in the county of residence of the defendant. If there is more than one defendant, the suit to restrain the violation of the law, rule, or order or part of it may be brought in the county of residence of any of the defendants or in the county in which the violation is alleged to have occurred.

[Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.352. Types of Court Orders

In the suit, the commission in the name of the state may obtain prohibitory and mandatory injunctions, including temporary restraining orders and temporary injunctions, that the facts may warrant. [Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.353. Appointment of Receiver

(a) The violation by a person of any injunction granted under the provisions of this subchapter shall be sufficient grounds for appointment by the court of a receiver to take charge of the person's property and to exercise authority that in the judgment of the court is necessary to bring about compliance with the injunction. The court may appoint the receiver either on its own motion or on motion of the commission in the name of the state.

(b) No receiver may be appointed until after notice is given and a hearing is held.

(c) The authority to appoint a receiver is in addition to and cumulative of the authority to punish for contempt.

[Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 85.354 to 85.380 reserved for expansion]

SUBCHAPTER K. PENALTIES, IMPRISONMENT,
AND CONFINEMENT

§ 85.381. Penalty for Violation of Laws, Rules, and Orders

In addition to being subject to any forfeiture provided by law and to any penalty imposed by the commission for contempt for violation of its rules or orders, any person who violates the provisions of Sections 85.045 and 85.046 of this code, Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, or any rule or order of the commission promulgated under those laws shall be subject to a penalty of not more than \$1,000 for each and every day of violation and for each and every act of violation.

[Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.382. Venue

The penalty provided in Section 85.381 of this code shall be recovered in a court of competent jurisdiction in Travis County or in the county of the residence of the defendant. If there is more than one defendant, the penalty may be recovered in the county of residence of any of the defendants or in the county in which the violation is alleged to have occurred.

[Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.383. Suit

By direction of the commission, the suit to recover the penalty shall be instituted and conducted in the name of the state by the attorney general or by the county or district attorney in the county in which the suit is brought.

[Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.384. Effect of Recovery or Payment of Penalty

The recovery or payment of the penalty shall not authorize the violation of any provision of Section 85.045 or 85.046 of this code, Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, or any rule or order of the commission adopted under those laws.

[Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.385. Persons Aiding or Abetting Violation

Any person who aids or abets any other person in violating Section 85.045 or 85.046 of this code, Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, or any rule or order adopted by the commission under those laws is subject to the same penalties as provided in Section 85.381 of this code.

[Acts 1977, 65th Leg., p. 2529, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.386. Forging Names on Permits and Tenders

A person shall be imprisoned in the penitentiary for not less than two nor more than five years if he:

(1) forges the name of an agent, officer, or employee of the commission to a permit or tender of the commission relating to oil or gas or any product or by-product of oil or gas;

(2) forges the name of any person to such a tender or permit; or

(3) knowingly uses a forged instrument to induce another to handle or transport oil or gas or any product or by-product of oil or gas.

[Acts 1977, 65th Leg., p. 2529, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.387. Procuring Tenders and Permits

A person shall be imprisoned in the penitentiary for not less than two nor more than five years if he:

(1) knowingly procures or causes an agent, officer, or employee of the commission to approve or issue a permit or tender of the commission relating to oil or gas or any product or by-product of oil or gas that includes a statement or representation that is false and that materially misrepresents the true facts respecting the oil or gas or any product or by-product of either; or

(2) procures or causes an agent, officer, or employee of the commission to issue to him a permit or tender relating to oil or gas or any product or by-product of either with the intent to defraud.

[Acts 1977, 65th Leg., p. 2529, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 85.388. Possessing a Forged Permit or Tender

Any person who knowingly has in his possession a forged tender or permit of the commission relating to oil or gas or any product or by-product of oil or gas for the purpose of transporting, handling, or selling oil or gas shall be guilty of a misdemeanor and on conviction shall be fined not less than \$25 nor more than \$1,000 or shall be confined in the county jail for not less than 30 days nor more than one year, or both.

[Acts 1977, 65th Leg., p. 2529, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 86. REGULATION OF NATURAL GAS

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SUBCHAPTER A. GENERAL PROVISIONS

§ 86.001. Declaration of Policy

In recognition of past, present, and imminent evils occurring in the production and use of gas as a result of waste in this production and use of gas in the absence of correlative opportunities of owners of gas in a common reservoir to produce and use the gas, the provisions of this chapter are enacted for the protection of public and private interests against these evils by prohibiting waste and compelling ratable production.

[Acts 1977, 65th Leg., p. 2531, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.002. Definitions

In this chapter:

- (1) "Oil" means crude petroleum oil.
- (2) "Gas" means natural gas.
- (3) "Commission" means the Railroad Commission of Texas.
- (4) "Common reservoir" means all or part of any oil or gas field or oil and gas field that comprises and includes any area that is underlaid or that, from geological or other scientific data or experiments or from drilling operations or other evidence, appears to be underlaid by a common pool or accumulation of oil or gas or oil and gas.
- (5) "Gas well" means a well that:
 - (A) produces gas not associated or blended with oil at the time of production;
 - (B) produces more than 100,000 cubic feet of gas to each barrel of oil from the same producing horizon; or
 - (C) produces gas from a formation or producing horizon productive of gas only encountered in a well bore through which oil also is produced through the inside of another string of casing.

(6) "Oil well" means any well that produces one barrel or more of oil to each 100,000 cubic feet of gas.

(7) "Dry gas" means gas produced from a stratum that does not produce oil.

(8) "Sour gas" means gas:

(A) containing more than one and one-half grains of hydrogen sulphide per 100 cubic feet;

(B) containing more than 30 grains of total sulphur per 100 cubic feet; or

(C) which in its natural state is found by the commission to be unfit for use in generating light or fuel for domestic purposes.

(9) "Sweet gas" means all gas except sour gas and casinghead gas.

(10) "Casinghead gas" means any gas or vapor indigenous to an oil stratum and produced from the stratum with oil.

(11) "Natural gasoline" means gasoline manufactured from casinghead gas or from any gas.

(12) "Cubic foot of gas" or "standard cubic foot of gas" means the volume of gas, including natural and casinghead gas, contained in one cubic foot of space at a standard pressure base of 14.65 pounds per square inch absolute and at a standard temperature base of 60 degrees Fahrenheit, and if the conditions of pressure and temperature differ from this standard, conversion of the volume from the differing conditions to the standard conditions shall be made in accordance with the ideal gas laws, corrected for deviation.

[Acts 1977, 65th Leg., p. 2531, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.003. Determination of Separate Wells

If oil or gas, or both, is produced through different strings of casing set in the same well bore, the inner string through which oil or gas, or both, is produced shall be regarded as one well, and each successive additional string of casing through which oil or gas, or both, is produced from a different producing horizon through the same well bore shall be regarded as another well.

[Acts 1977, 65th Leg., p. 2532, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.004. Applicability

The provisions in this chapter do not impair the authority of the commission to prevent waste under the oil and gas conservation laws of this state and do not repeal, modify, or impair any of the provisions relating to oil and gas conservation in Sections 85.002, 85.041 through 85.055, 85.056 through 85.064, 85.125, 85.201 through 85.207, 85.241 through 85.243, 85.249 through 85.252, and 85.381 through 85.385 of

this code and Subchapters E and J of Chapter 85 of this code.

[Acts 1977, 65th Leg., p. 2532, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 86.005 to 86.010 reserved for expansion]

SUBCHAPTER B. WASTE OF GAS

§ 86.011. Prohibition Against Waste

The production, transportation, or use of gas in a manner, in an amount, or under conditions which constitute waste is unlawful and is prohibited.

[Acts 1977, 65th Leg., p. 2532, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.012. Definition of Waste

The term "waste" includes:

(1) the operation of an oil well or wells with an inefficient gas-oil ratio;

(2) the drowning with water of a stratum or part of a stratum capable of producing gas in paying quantities;

(3) permitting a gas well to burn wastefully;

(4) the creation of unnecessary fire hazards;

(5) physical waste or loss incident to or resulting from so drilling, equipping, or operating a well or wells as to reduce or tend to reduce the ultimate recovery of gas from any pool;

(6) the escape of gas from a well producing both oil and gas into the open air in excess of the amount that is necessary in the efficient drilling or operation of the well;

(7) the production of gas in excess of transportation or market facilities or reasonable market demand for the type of gas produced;

(8) the use of gas for the manufacture of carbon black without first having extracted the natural gasoline content from the gas, except it shall not be necessary to first extract the natural gasoline content from the gas where it is utilized in a plant producing an average recovery of not less than five pounds of carbon black to each 1,000 cubic feet of gas;

(9) the use of sweet gas produced from a gas well for the manufacture of carbon black unless it is used in a plant producing an average recovery of not less than five pounds of carbon black to each 1,000 cubic feet and unless the sweet gas is produced from a well located in a common reservoir producing both sweet and sour gas;

(10) permitting gas produced from a gas well to escape into the air before or after the gas has been processed for its gasoline content, unless authorized as provided in Section 86.185 of this code;

(11) the production of natural gas from a well producing oil from a stratum other than that in which the oil is found unless the gas is produced in a separate string of casing from that in which the oil is produced;

(12) the production of more than 100,000 cubic feet of gas to each barrel of crude petroleum oil unless the gas is put to one or more of the uses authorized for the type of gas so produced under allocations made by the commission or unless authorized as provided in Section 86.185 of this code; and

(13) underground waste or loss however caused and whether or not defined in other subdivisions of this section.

[Acts 1977, 65th Leg., p. 2532, ch. 871, art. I, § 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 2695, ch. 871, art. II, § 8, eff. Sept. 1, 1977.]

[Sections 86.013 to 86.040 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES OF THE COMMISSION

§ 86.041. In General

The commission has broad discretion in administering the provisions of this chapter and may adopt any rule or order in the manner provided by law that it finds necessary to effectuate the provisions and purposes of this chapter.

[Acts 1977, 65th Leg., p. 2533, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.042. Rules and Orders

The commission shall adopt and enforce rules and orders to:

- (1) conserve and prevent the waste of gas;
- (2) prevent the waste of gas in drilling and producing operations and in the piping and distribution of gas;
- (3) require dry or abandoned wells to be plugged in a way that confines gas and water in the strata in which they are found and prevents them from escaping into other strata;
- (4) provide for drilling wells and preserving a record of them;
- (5) require wells to be drilled and operated in a manner that prevents injury to adjoining property;
- (6) prevent gas and water from escaping from the strata in which they are found into other strata;
- (7) require records to be kept and reports made;
- (8) provide for the issuance of permits and other evidences of permission when the issuance

of the permit or permission is necessary or incident to the enforcement of its blanket grant of authority to make any rules necessary to effectuate the law; and

(9) otherwise accomplish the purposes of this chapter.

[Acts 1977, 65th Leg., p. 2533, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.043. Determining Gas-Oil Ratio

The commission may fix and determine the gas-oil ratio of all oil wells in the state but none of the provisions of this chapter may be construed to authorize the limitation of the production of marginal wells below the amount fixed by statute. If a restriction imposed by the commission on the production of oil from an oil well operates to increase the gas-oil ratio of the well so as to then classify it as a gas well under the provisions of this chapter, the well nevertheless shall be considered to be an oil well.

[Acts 1977, 65th Leg., p. 2534, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 86.044 to 86.080 reserved for expansion]

SUBCHAPTER D. PRODUCTION OF GAS

§ 86.081. Regulation of Production

For the protection of public and private interests, the commission shall prorate and regulate the daily gas well production from each common reservoir to:

- (1) prevent waste; and
- (2) adjust the correlative rights and opportunities of each owner of gas in a common reservoir to produce and use or sell the gas as permitted in this chapter.

[Acts 1977, 65th Leg., p. 2534, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.082. Exercise of Authority to Prevent Waste

The commission shall exercise its authority to prevent waste when the presence or imminence of waste is supported by a finding based on the evidence introduced at a hearing after proper notice.

[Acts 1977, 65th Leg., p. 2534, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.083. Exercise of Authority to Adjust Correlative Rights and Opportunities

The commission shall exercise its authority to adjust correlative rights and opportunities of each owner of gas in a common reservoir to produce and use or sell the gas when evidence introduced at a hearing after proper notice will support a finding made by the commission that the aggregate lawful volume of the open flow or daily potential capacity

to produce of all gas wells located in a common reservoir is in excess of the daily reasonable market demand for gas from gas wells that may be produced from the common reservoir, to be used as permitted in this chapter.

[Acts 1977, 65th Leg., p. 2534, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.084. Determination of Status of Production

(a) The commission shall determine the status of gas production from all reservoirs in the state.

(b) If the commission finds that waste exists or is imminent in the production of gas from a reservoir, or that the capacity of the wells to produce gas from a reservoir exceeds the market demand for gas from the reservoir, the commission by proper order shall prorate and regulate the gas production from the reservoir on a reasonable basis.

[Acts 1977, 65th Leg., p. 2534, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.085. Determination of Demand and Volume

On or before the 20th day of each month, the commission, after notice and hearing, shall determine:

(1) the lawful market demand for gas to be produced from each reservoir during the following month; and

(2) the volume of gas that can be produced without waste from the reservoir and each well in the reservoir during the following month.

[Acts 1977, 65th Leg., p. 2534, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.086. Monthly Reservoir Allowable

After determining demand and volume of production as provided in Section 86.085 of this code, the commission shall fix the monthly reservoir allowable of gas to be produced from the reservoir at the lawful market demand for the gas or at the volume that can be produced from the reservoir without waste, whichever is the smaller quantity.

[Acts 1977, 65th Leg., p. 2535, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.087. Monthly Well Allowable

The monthly reservoir allowable shall be allocated among all wells entitled to produce gas from the reservoir to give each well its fair share of the gas to be produced from the reservoir, but each well is restricted to the amount of gas that can be produced from it without waste. The volume of gas allocated to each well is the monthly allowable for that well.

[Acts 1977, 65th Leg., p. 2535, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.088. Daily Allowable

The daily market demand for gas and the daily allowable shall be determined by dividing the monthly demand and the monthly allowable by the number of days in the month.

[Acts 1977, 65th Leg., p. 2535, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.089. Factors in Determining Allowable

(a) In determining the daily allowable production for each gas well, the commission shall take into account:

(1) the size of the tract segregated with respect to surface position and common ownership on which the gas well or wells are located;

(2) the relation between the daily producing capacity of each gas well and the aggregate daily capacity of all gas wells producing the same kind of gas in the same common reservoir or zone; and

(3) other factors that are pertinent.

(b) In determining the daily allowable production for each gas well, the commission shall not take into account the size of the tract on which any gas well or wells are located in excess of the efficient drainage area of the well or wells, producing at 25 percent of the daily productive capacity. The drainage area shall be determined by the commission.

(c) In ascertaining the drainage area of a well, the commission shall take into account such factors as are reflected in the productive capacity of a gas well, including formation pressure, the permeability and porosity of the producing formation, and the well bore's structural position, together with all other factors taken into account by a reasonably prudent operator in determining the drainage area for a gas well.

[Acts 1977, 65th Leg., p. 2535, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.090. Authorizing Overproduction and Underproduction

(a) In order to adjust the correlative rights and opportunities of each owner to produce, use, and sell gas from a common reservoir from which a portion of the market demand is seasonal or where a portion of the market demand fluctuates from month to month, the commission may permit the wells in the reservoir to be produced in excess of the monthly allowable, in accordance with the conditions and limitations set forth in Subsections (b), (c), and (d) of this section, if no waste is caused.

(b) No well may be permitted in any one month to produce:

(1) at a rate in excess of 25 percent of the daily producing capacity of the well as found by the commission; or

(2) in excess of two times its monthly allowable, except that if on application to the commission there is shown to exist, or there is threatened and unforeseen, an emergency requiring an increase in the demand for the gas from the reservoir which cannot be satisfied otherwise from the reservoir, then the wells under the application may be produced as authorized in this subchapter but not in excess of four times each of the well's monthly allowable.

(c) No well may ever be allowed to produce in excess of twice its allowable for more than two months in any period of six months beginning on the first day of March and September of each year. If a well has produced twice its allowable or more during a period of six months beginning on the first day of March or September, it shall be closed in until its production and allowable are in balance.

(d) On the first day of March and September of each year, the commission shall restrict production from all wells that are then overproduced to the fractional part of their monthly allowable that will bring the accumulated allowables and the accumulated monthly production in balance during the next six months. If the overproduction is not balanced during that six-month period, the overproduced well shall be shut in until its production and allowable are in balance.

(e) The commission by appropriate order may permit a gas well to be underproduced for a period of six consecutive months and may allow the accumulated underproduction to be produced in addition to the regular monthly allowable during the following six-month period.

[Acts 1977, 65th Leg., p. 2535, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.091. Minimum Limits on Well Restrictions

(a) None of the provisions of this chapter require that the production from a gas well with a daily natural open flow of 200,000 cubic feet of gas or more be restricted to a quantity less than 50,000 cubic feet of gas daily.

(b) None of the provisions of this chapter require that the production from a gas well with a daily natural open flow of less than 200,000 cubic feet of gas be reduced to a quantity less than 25 percent of its natural open flow.

[Acts 1977, 65th Leg., p. 2536, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.092. Maximum Well Production

(a) In a common reservoir producing both sweet and sour gas, no gas well may be permitted to produce in excess of 25 percent of its daily productive capacity except as provided in Subsection (b) of this section.

(b) If the commission finds that reservoir conditions require that the percentage be increased to prevent waste and that the increase will not create a drainage condition between sweet and sour gas land, the commission may authorize an increase in the allowable production.

(c) If the allowable production previously allocated to a well is more than 15 percent of its daily producing capacity and the commission finds that the production of its daily allowable from the well will cause waste due to the intermingling of sweet and sour gas, the commission may order the production from the well restricted to 15 percent of its daily producing capacity. This subsection shall not be construed to militate against the right of the commission to fix the allowable production of a well below 15 percent of its daily producing capacity in carrying out the requirements of Sections 86.089 and 86.090 of this code.

[Acts 1977, 65th Leg., p. 2536, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.093. Effect of Oil and Gas Stratum on Gas Only Stratum

If gas is produced from one stratum and oil and gas are produced from another stratum in the same well bore, the commission shall taken into account the amount of gas produced from the oil stratum in determining the amount of gas that may be produced from the stratum producing gas only. The commission may subtract the amount of the casinghead gas produced from the dry gas that would be allocated to the well if it produced dry gas and may restrict the dry gas production accordingly.

[Acts 1977, 65th Leg., p. 2536, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.094. Authority to Increase Take Above Allowable

If unforeseen contingencies increase the demand for gas required by a distributor, transporter, or purchaser to an amount in excess of the total allowable production of the wells to which he is connected, the distributor, transporter, or purchaser may increase his take ratably from all these wells in order to supply his demand for gas, provided that notice of the increase and the amount of the increase are given to the commission within five days; and provided further, the commission, at its next hearing, shall adjust the inequality of withdrawals caused by the increase in fixing the allowable production of the various wells in the common reservoir or zone.

[Acts 1977, 65th Leg., p. 2537, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.095. Zoning Common Reservoirs

(a) The commission shall zone a common reservoir if, on consideration of the evidence introduced at a hearing, it finds that either the prevention of waste

or adjustment of correlative rights and opportunities, or both, as designated in Section 86.081 of this code, may be accomplished more adequately by zoning the common reservoir.

(b) If the commission zones a common reservoir, each zone shall be regarded as a separate common reservoir in making allocations of daily allowable production as provided in this chapter.

(c) If the commission zones a common reservoir, the commission:

(1) shall allocate to each zone its just proportion of the market demand for gas from the common reservoir;

(2) shall establish appropriate rules applicable to each zone;

(3) may adjust its orders to the practicable conditions that exist; and

(4) may enter any reasonable order necessary to effectuate the purposes of this chapter.

(d) The commission may segregate a sour gas area from a sweet gas area and is not required to restrict the allowable production of the sour gas zone to the same percentages that may be produced from the sweet gas zone.

[Acts 1977, 65th Leg., p. 2537, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.096. Failure to Use or Sell Allowable Production

If the commission finds that the owner of a gas well failed or refused to use or sell the allowable production from his well when the owner was offered a connection or market for the gas at a reasonable price, the well shall be excluded from consideration in allocating the daily allowable production from the reservoir or zone in which it is located until the owner of the well signifies to the commission his desire to use or sell the gas. In all other cases, all gas wells shall be taken into account in allocating the allowable production among wells producing the same type of gas.

[Acts 1977, 65th Leg., p. 2537, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.097. Production of Gas From Oil Well

No person in possession of or operating an oil well may produce from the oil well gas found in a horizon productive of gas only.

[Acts 1977, 65th Leg., p. 2537, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 86.098 to 86.140 reserved for expansion]

SUBCHAPTER E. METER AND PRESSURE TESTS

§ 86.141. Duty to Test Pressure

All persons producing gas from any gas well shall determine through appropriate tests during the months of January and July of each year the open flow and rock pressure of each gas well from which gas is produced.

[Acts 1977, 65th Leg., p. 2538, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.142. Pressure Test Requirements

The test to determine pressure of a gas well shall be made:

(1) under uniform and generally recognized methods;

(2) in the presence of and under the supervision of a representative of the commission; and

(3) under rules prescribed by the commission.

[Acts 1977, 65th Leg., p. 2538, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.143. Pressure Test Reports

(a) Verified reports of the tests to determine pressure shall be filed with the commission on or before the 10th day of each January and July.

(b) The reports shall disclose the name of the representative of the commission who was actually present when the tests were made.

(c) The reports are a permanent public record. They shall be kept on file with the commission and shall be open to the inspection and examination of the public.

[Acts 1977, 65th Leg., p. 2538, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.144. Demanding Second Test

A person producing gas from the same common reservoir who is dissatisfied with the test as made and reported may demand that a second test be made in the manner provided in this subchapter and in the presence of the person making the demand or his representative.

[Acts 1977, 65th Leg., p. 2538, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.145. Duty to Test Meter

The commission shall require one of its duly authorized agents to inspect, read, or test any meter or meters through which gas is being measured or gauged on the request of a lessor, lessee, operator, or royalty owner from whose land, lease, or royalty interest gas is being produced.

[Acts 1977, 65th Leg., p. 2538, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 86.146 to 86.180 reserved for expansion]

SUBCHAPTER F. USE OF GAS

§ 86.181. Use of Sweet Gas Produced From Gas Well

No sweet gas produced from a gas well may be used for any purpose except:

- (1) light or fuel;
- (2) efficient chemical manufacture, other than the manufacture of carbon black, provided that sweet gas produced from wells located in a common reservoir producing both sweet and sour gas may be used for the manufacture of carbon black if it is used in a plant producing an average recovery of not less than five pounds of carbon black to each 1,000 cubic feet of gas;
- (3) bona fide introduction of gas into oil or gas bearing horizon in order to maintain or increase the rock pressure, or otherwise increase the ultimate recovery of oil or gas from the horizon; and
- (4) the extraction of natural gasoline when the residue is returned to the horizon from which it is produced.

[Acts 1977, 65th Leg., p. 2538, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.182. Use of Sour Gas

In addition to the purposes for which sweet gas produced from a gas well may be used, sour gas may be used for efficient chemical manufacturing purposes including the manufacture of carbon black provided:

- (1) it is utilized in a plant producing a recovery of not less than one pound of carbon black to each 1,000 cubic feet of gas; and
- (2) the gasoline content is removed and saved from the sour gas before the gas is used for carbon black.

[Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.183. Use of Casinghead Gas

Casinghead gas may be used for any beneficial purpose, which includes the manufacture of natural gasoline.

[Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.184. Use as Gas Lift

(a) A producer of either sweet or sour gas or casinghead gas may use the gas as gas lift in the bona fide production of oil if the gas is not used in excess of 10,000 cubic feet per barrel of oil produced.

(b) To prevent waste in a case where the facts in the case warrant it, the commission may permit the use of additional quantities of gas to lift oil provided:

(1) all the gas used in excess of 10,000 cubic feet for each barrel of oil is processed for natural gasoline; and

(2) the residue is burned for carbon black when it is reproduced.

[Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.185. Prohibition Against Gas in Air

No gas from a gas well may be permitted to escape into the air after the expiration of 10 days from the time the gas is encountered in the gas well, or from the time of perforating the casing opposite a gas-bearing zone if casing is set through the zone, whichever is later, but the commission may permit the escape of gas into the air for an additional time if the operator of a well or other facility presents information to show the necessity for the escape; provided that the amount of gas which is flared under that authority is charged to the operator's allowable production. A necessity includes but is not limited to the following situations:

- (1) cleaning a well of sand or acid or both following stimulation treatment of a well; and
- (2) repairing or modifying a gas-gathering system.

[Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, § 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 2696, ch. 871, art. II, § 9, eff. Sept. 1, 1977.]

[Sections 86.186 to 86.220 reserved for expansion]

SUBCHAPTER G. ENFORCEMENT;
JUDICIAL REVIEW

§ 86.221. Unauthorized Production Prohibited

No person may produce gas from a gas well in violation of the valid orders of the commission.

[Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.222. Penalty

Any person who violates a provision of this chapter is liable for a penalty of not more than \$1,000 for each offense. Each day a violation occurs constitutes a separate offense.

[Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.223. Suit for Penalty

The penalty may be recovered with the cost of suit by the State of Texas through the attorney general or the county or district attorney when joined by the attorney general in a civil action instituted in Travis County or in the county in which the violation occurred.

[Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.224. Suit for Injunction

A violation or threatened violation of this chapter may be enjoined by any court of competent jurisdiction in which the suit for penalty may be brought. The court may issue mandatory or prohibitory writs of injunction that the facts justify.

[Acts 1977, 65th Leg., p. 2539, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 86.225. Judicial Review

Any person affected by an order of the commission adopted under the authority of this chapter is entitled to judicial review of that order in a manner other than trial de novo.

[Acts 1977, 65th Leg., p. 2540, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 87. REGULATION OF SOUR NATURAL GAS

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SUBCHAPTER A. GENERAL PROVISIONS

§ 87.001. Definitions

In this chapter, the words "oil," "gas," "commission," "common reservoir," "gas well," "oil well," "sour gas," "sweet gas," "natural gasoline," "cubic foot of gas," and "casinghead gas" are defined as provided in Section 86.002 of this code.

[Acts 1977, 65th Leg., p. 2541, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 87.002 to 87.010 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION

§ 87.011. Rules and Orders

(a) In administering the provisions of this chapter, the commission shall hold hearings, make determinations, and promulgate rules and orders as provided in Sections 86.084-86.090 of this code and other laws of this state.

(b) After notice and hearing as provided by law, the commission shall promulgate any other rule or order it finds necessary to carry out the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2541, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.012. Validity

(a) Rules and orders adopted by the commission under the terms of this chapter are considered prima facie valid.

(b) A person affected by an order may sue to test the validity of the order adopted by the commission under this chapter in the same manner, on the same conditions, and in the same court or courts as prescribed for suits testing the validity of orders of the commission promulgated under the general oil conservation statutes of this state.

[Acts 1977, 65th Leg., p. 2541, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.013. Hearings

From time to time, the commission shall hold hearings, after proper notice, to hear evidence and to adopt rules and orders to enforce the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2541, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.014. Inspection of Records; Reports

In addition to authority given by existing law, the commission or its agents may:

(1) inspect the books and records of any person who is affected by the provisions of this chapter; and

(2) require sworn reports to be filed from time to time as the commission finds necessary.

[Acts 1977, 65th Leg., p. 2541, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 87.015 to 87.050 reserved for expansion]

SUBCHAPTER C. PRODUCTION OF SOUR GAS

§ 87.051. Limitation of Sour Gas Production

No person may produce sour gas from any sour gas well in a reservoir producing both sweet and sour gas in excess of the daily allowable production for the gas well as fixed by the orders and schedules of the commission. The rate of production from a sour gas well is considered to be the daily average rate of production for the calendar month.

[Acts 1977, 65th Leg., p. 2542, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.052. Maximum Production of Sour Gas for Carbon Black Manufacture

(a) In any common reservoir in the state producing both sweet and sour gas, there shall never be produced from the common reservoir for use in carbon black manufacture a maximum daily volume of sour gas from the gas wells in excess of 750 million cubic feet.

(b) The commission shall prorate the daily volume of sour gas from gas wells among all the sour gas wells in the reservoir to prevent cognizable and preventable drainage of gas from tracts of land in the sour gas producing area segregated as to surface position and common ownership on which the sour gas wells are located.

[Acts 1977, 65th Leg., p. 2542, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.053. Effect of Demand Below Maximum Allowable Production

(a) If the daily demand for sour gas from gas wells for use in carbon black manufacture is less than the daily maximum allowable permitted in Section 87.052 of this code, the total daily volume of gas from gas wells from the sour gas area for use in carbon black manufacture shall be equal to the daily demand.

(b) The commission shall determine the daily demand and prorate it among all the sour gas wells in the area as provided in Section 87.052 of this code.

[Acts 1977, 65th Leg., p. 2542, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.054. Effect of Demand for Other Purposes Than Carbon Black Manufacture

(a) If a lawful daily demand exists for sour gas from gas wells for purposes of utilization permitted by law, other than the manufacture of carbon black, the additional demand shall be added to the daily demand for carbon black manufacture, and that sum shall constitute the daily volume of sour gas from gas wells that may be withdrawn from the common reservoir for utilization.

(b) The commission shall prorate the daily volume provided for in Subsection (a) of this section among the sour gas wells in the area on the basis set forth in Section 87.052 of this code.

[Acts 1977, 65th Leg., p. 2542, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 87.055 to 87.090 reserved for expansion]

SUBCHAPTER D. PLANTS EXTRACTING NATURAL GASOLINE

§ 87.091. Prohibited Commingling of Gas

In a plant for the extraction of natural gasoline content of gas, no sweet gas may be commingled with sour gas and no casinghead gas may be commingled with sweet gas or sour gas or both, except on the conditions and requirements stated in this subchapter.

[Acts 1977, 65th Leg., p. 2543, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.092. Permit Required

In any common reservoir in this state producing both sweet and sour gas, no person may operate a plant for the extraction of the natural gasoline content of gas in which sweet gas and sour gas are commingled, or plant casinghead gas is commingled with either sweet gas or sour gas or both, until the person secures from the commission a permit authorizing the operation of the plant.

[Acts 1977, 65th Leg., p. 2543, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.093. Issuance of Permit

The commission shall issue a permit if it appears that the plant is being operated and the residue gas from the plant is and will be disposed of in accordance with the provisions of this subchapter.

[Acts 1977, 65th Leg., p. 2543, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.094. Cancellation of Permit

(a) If it appears to the commission that a plant is operating in violation of any of the provisions of this subchapter, the commission shall cancel the permit issued to the plant.

(b) After the cancellation of the permit, no operator of the plant may commingle either sweet gas and sour gas or casinghead gas with sweet gas or sour gas in the plant for the purpose of extracting the natural gasoline content.

[Acts 1977, 65th Leg., p. 2543, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.095. Residue Gas Allowed in Air

(a) Except as provided in Subsection (b) of this section, if a plant operating under this subchapter commingles casinghead gas with sweet gas or sour gas or both, the operator of the plant shall not blow, or permit to be blown, in the air any of the residue gas remaining after the gasoline content of the gas is extracted.

(b) The operator of a plant may blow in the air an amount of residue gas from the plant that is determined by the commission to be necessary to accomplish uninterrupted deliveries in required amounts to carbon black plants for carbon black manufacture.

[Acts 1977, 65th Leg., p. 2543, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.096. Residue Gas: Determination by Commission

If a plant operating under this subchapter commingles casinghead gas with sweet gas or sweet gas with sour gas, the commission shall ascertain:

(1) the quantity of residue gas required to be used for fuel purposes in the efficient operation of the plant; and

(2) the quantity of residue gas required to be returned by the operator of the plant to the leases to which the plant is connected for use as fuel in the operation of the leases.

[Acts 1977, 65th Leg., p. 2543, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.097. Use of Residue Gas for Other Purposes

(a) The operator of the plant is required to use, or cause to be used, for one or more of the uses provided for sweet gas by law a quantity of the residue gas from the plant equal to the quantity of sweet gas taken into the plant for processing, less the extraction loss from the processing.

(b) The operator shall not be credited with use of residue for plant-fuel or lease-fuel operations in an amount in excess of the quantity of the residue gas found by the commission to be necessary for the efficient operation of the plant and return to the leases for fuel for lease operations.

[Acts 1977, 65th Leg., p. 2544, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 87.098 to 87.130 reserved for expansion]

SUBCHAPTER E. USE OF GAS WITHOUT EXTRACTION OF NATURAL GASOLINE

§ 87.131. Use of Sweet Gas for Carbon Black Manufacture

Sweet gas produced from any gas well in this state may be used without the prior extraction of its gasoline content for the manufacture of carbon black if it is used in a plant producing an average recovery of not less than five pounds of carbon black for each 1,000 cubic feet of gas.

[Acts 1977, 65th Leg., p. 2544, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.132. Use of Gas From Certain Wells for Carbon Black Manufacture

(a) Gas from any gas well completed on or before September 5, 1947, within a common reservoir producing both sweet and sour gas from which the gas was not sold off the leased premises to an interstate pipeline company during the year immediately preceding September 5, 1947, or gas from any gas well completed after September 5, 1947, within a common reservoir producing both sweet and sour gas, may be used for the manufacture of carbon black without the prior extraction of its natural gasoline content if:

(1) it is used in a plant producing an average recovery of not less than one and one-half pounds of carbon black for each 1,000 cubic feet of gas; and

(2) the royalty rate and market price paid for the gas at the wellhead at least equals the royalty rate and market price paid at the wellhead in the immediate area for gas used for light and fuel purposes.

(b) In arriving at the market price of sour gas, a reduction of not more than one-half cent per 1,000 cubic feet shall be allowed for purifying the gas to render it suitable for light and fuel purposes.

(c) If the gas is used by a producer, any royalty rate paid shall be paid on the same basis.

[Acts 1977, 65th Leg., p. 2544, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.133. Determining Market Price

(a) After due notice of hearing, the commission shall hold annual or semiannual hearings, as it considers necessary, for the purpose of determining the market price that is being paid at the wellhead for gas being used and sold for light and fuel purposes.

(b) After the hearing and determination of the market price, the commission shall post and publish the price in its main office in Austin, and its branch office, if any, in the area affected.

(c) All parties contracting for gas under the provisions of this subchapter may accept the posted and published price as the market price to be paid for the gas.

[Acts 1977, 65th Leg., p. 2544, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.134. **Effect of Subchapter**

The provisions of this subchapter are cumulative of existing laws relating to the uses of gas and do not restrict or affect the manufacture of carbon black from processed sour gas as authorized by Section 86.182 of this code.

[Acts 1977, 65th Leg., p. 2545, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 87.135 to 87.170 reserved for expansion]

SUBCHAPTER F. USE OF GAS DETERMINED BY HYDROCARBON CONTENT

§ 87.171. **Gas Containing Low Hydrocarbon Content**

Any natural gas, including casinghead gas, produced from any gas well or oil well in this state, containing less than one and one-half gallons of propane and heavier hydrocarbons per 1,000 cubic feet, as determined by fractional analysis made of the gas, may be used for the manufacture of carbon black in a plant producing an average recovery of at least one and one-half pounds of carbon black for each 1,000 cubic feet of gas consumed.

[Acts 1977, 65th Leg., p. 2545, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.172. **Gas Containing High Hydrocarbon Content**

(a) Except as provided in Subsection (b) of this section, no natural gas, including casinghead gas, produced from any gas well or oil well in this state, containing one and one-half gallons or more of propane and heavier hydrocarbons per 1,000 cubic feet, as determined by fractional analysis made of the gas, may be used for the manufacture of carbon black in a plant producing an average recovery of at least one and one-half pounds of carbon black for each 1,000 cubic feet of gas consumed without the prior extraction of its natural gasoline content.

(b) On the filing of an application and after proper notice and hearing as provided by law, the commission may authorize the use of any natural gas, including casinghead gas, containing one and one-half gallons or more of propane and heavier hydrocarbons per 1,000 cubic feet, as determined by fractional analysis made of the gas, in the manufacture of carbon black in a plant producing an average recovery of at least one and one-half pounds of carbon black for each 1,000 cubic feet of gas consumed if the commission finds it is unprofitable to first extract the natural gasoline content of the gas.

[Acts 1977, 65th Leg., p. 2545, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.173. **Additional Extraction to Alleviate Shortage**

If a general shortage of propane or heavier liquid hydrocarbons occurs, the commission, after notice and hearing, may require additional extraction of hydrocarbons from the gas to alleviate the shortage, but additional extraction shall not be required if it is not economically feasible to do so.

[Acts 1977, 65th Leg., p. 2545, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.174. **Applicability of This Subchapter**

The provisions of this subchapter shall not apply to:

(1) gas produced from a common reservoir that contains both sweet and sour gas which was being lawfully used for the manufacture of carbon black under the provisions of the source law codified in Subchapters D and E of this chapter at the time of the passage of the source law for this section; or

(2) gas from gas wells located in these reservoirs which were entitled to be so used under the provisions of the source law codified in Subchapters D and E of this chapter at the time of the passage of the source law for this section.

[Acts 1977, 65th Leg., p. 2545, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 87.175 to 87.210 reserved for expansion]

SUBCHAPTER G. CARBON BLACK PLANTS

§ 87.211. **Prohibited Location**

Unless adequate precaution is taken to minimize the emission of smoke from the plant, no channel-type carbon black plant shall be erected or constructed closer than five miles to:

(1) the limits of a city, town, or village incorporated at or before the time the erection or construction of the plant is begun; or

(2) a commercially operated citrus fruit orchard planted not less than one year before the time the erection or construction of the plant is commenced.

[Acts 1977, 65th Leg., p. 2546, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 87.212 to 87.240 reserved for expansion]

SUBCHAPTER H. ENFORCEMENT

§ 87.241. **Penalty**

(a) A person who violates a provision of this chapter is liable to a penalty of not more than \$1,000 for each offense.

(b) Each day a violation occurs constitutes a separate offense.

(c) The penalty may be recovered by the State of Texas, with costs of suit, in a civil action instituted by the attorney general in Travis County or in the county in which the violation occurred.

[Acts 1977, 65th Leg., p. 2546, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 87.242. Injunctive Relief

(a) A violation or threatened violation of this chapter may be enjoined by any court of competent jurisdiction in which suit for penalty may be brought.

(b) The court shall issue the writs or prohibitory or mandatory injunctions that the facts justify.
[Acts 1977, 65th Leg., p. 2546, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 88. CONTROL OF OIL PROPERTY

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SUBCHAPTER D. INSPECTION AND EXAMINATION OF OIL PROPERTY

88.091. Access to Property and Records.
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88.131. Venue.
88.132. Service of Process.
88.133. Responsibility for Compliance and Liability to Prosecution.
88.134. Penalties.

SUBCHAPTER A. GENERAL PROVISIONS

§ 88.001. Definitions

In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Governmental agent" or "governmental agency" means the Railroad Commission of Texas and any other administrative governmental board and governmental agent to which the legislature delegates the duty of supervising the production of oil and gas in the State of Texas.

(3) "Oil property" means a well producing oil, gas, or oil and gas, and any group of such contiguous wells of any number owned, operated, or controlled as a producing unit by the same person in the same locality, and any leasehold estate to the extent that it is owned, operated, and controlled by the same person.

[Acts 1977, 65th Leg., p. 2547, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 88.002 to 88.010 reserved for expansion]

SUBCHAPTER B. RULES

§ 88.011. Adoption of Rules

(a) The governmental agency may promulgate and adopt rules:

(1) to provide for the method of measuring oil and gas produced from any well in this state and to provide for the type of measuring devices to be used in obtaining the measurement;

(2) for the inspection of all oil properties to ascertain that the prescribed measuring devices are installed, are in accurate working condition, and are being accurately used;

(3) to provide that no oil or gas is being permitted to leave the possession of the producer without first being accurately measured and an accurate record of production made and preserved;

(4) to provide that no oil is being produced from a well producing both oil and gas without burning a flare or flares if the installation and use of a flare or flares is required by the terms of this chapter;

(5) for the keeping of complete and accurate records correctly reflecting the amount of oil or gas or both produced from each oil property each calendar day and the disposition and method of disposition of all the oil and gas produced, and for the monthly filing with the governmental agency of monthly reports accurately reflecting the true facts with respect to all such matters; and

(6) for the inspection and examination by the governmental agency, or its agents, servants, and employees, of all oil properties and the records provided for in this chapter.

(b) The rules shall be adopted in the manner provided by law for adoption of rules of the commission.
[Acts 1977, 65th Leg., p. 2547, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 88.012. Rules and Orders Relating to Records and Reports

The rules and orders of the governmental agency relating to records and reports shall prescribe the form in which the records and reports will be made and kept, but the records and reports shall contain the data and information provided for in this chapter.

[Acts 1977, 65th Leg., p. 2548, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 88.013. Notice by Publication

(a) When the governmental agency adopts a rule under this chapter, the governmental agency shall publish a complete copy of the rule once each day for three consecutive days in three newspapers of general circulation in the state, to be selected by the governmental agency.

(b) Notice of any amendment, repeal, alteration, or modification of the order may be similarly adopted and will become effective after similar notice. [Acts 1977, 65th Leg., p. 2548, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 88.014 to 88.050 reserved for expansion]

SUBCHAPTER C. PRACTICES PROHIBITED IN THE PRODUCTION OF OIL AND GAS

§ 88.051. Production Prohibited in Excess of Allowable Amount

No person owning, leasing, operating, producing, or controlling an oil property or any oil well in this state may produce or cause to be produced on any day from any oil property or oil well any oil in excess of the amount allowed to be produced each day from the oil property or oil well under an order previously adopted by the governmental agency and in force at the time.

[Acts 1977, 65th Leg., p. 2548, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 88.052. Prohibited Passage From Control of Producer Without Measurement and Record of Amount

No person owning, leasing, operating, or controlling an oil property in this state may permit the oil or gas produced to pass beyond the possession or control of that person to the possession or control of any other person without first accurately measuring the amount of the oil or gas and making and preserving an accurate record of the amount.

[Acts 1977, 65th Leg., p. 2548, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 88.053. Prohibited Evasion or Prevention of Accurate Measurement

No person owning, leasing, operating, or controlling an oil property in this state may use a method or device to evade or prevent obtaining the accurate measurement as provided in Section 88.052 of this code.

[Acts 1977, 65th Leg., p. 2548, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 88.054. Passage From Control of Producer Prohibited If Tank Not Under His Control

No person owning, leasing, operating, or controlling an oil property may permit oil produced by him in this state to pass from his possession or control to the possession or control of any other person except from a tank or tanks under the control of the person producing the oil.

[Acts 1977, 65th Leg., p. 2549, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 88.055. Production Prohibited Without Flare

If the gas from a well producing both oil and gas is not trapped and used and the gas is capable of being burned in a flare, no person owning, leasing, operating, or controlling an oil property in this state may produce oil from the well at any time without simultaneously and continuously burning a flare to consume all gas that otherwise would be permitted to escape into the open air.

[Acts 1977, 65th Leg., p. 2549, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 88.056. Identifying Signs

Each oil property in this state, each tank owned or controlled by such person to which the property is connected, and each flare to which the property is connected shall be posted at all times with a sign written in the English language with letters at least one inch in height, stating:

- (1) the name of the owner of the property;
- (2) the operator of the property;
- (3) the number of acres contained in the property; and
- (4) the name by which the property is commonly known and identified.

[Acts 1977, 65th Leg., p. 2549, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 88.057 to 88.090 reserved for expansion]

SUBCHAPTER D. INSPECTION AND EXAMINATION OF OIL PROPERTY

§ 88.091. Access to Property and Records

The governmental agency shall have access at all times to:

(1) the oil property of all persons for inspection and examination; and

(2) the records of all these persons for inspection, examination, and audit.

[Acts 1977, 65th Leg., p. 2549, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 88.092. Prohibited Interference With Access and Inspection

No person may:

(1) refuse to permit the governmental agency, or an agent, servant, representative, or employee of the governmental agency, to have access to an oil property for inspection and examination;

(2) interfere with the inspection and examination;

(3) remove, tamper with, mutilate, or destroy a device, seal, or meter on an oil property placed there or used in the inspection and examination; or

(4) refuse to permit the governmental agency, or an agent, servant, representative, or employee of the governmental agency, to have access, for inspection, examination, and audit, to the books, documents, and records pertaining to, used in connection with, or required to be used in connection with an oil property.

[Acts 1977, 65th Leg., p. 2549, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 88.093. Prohibited Equipment or Enclosure

No person owning, leasing, operating, or controlling an oil property in this state may equip or enclose his oil property, or any part of his oil property, in a manner that:

(1) prevents inspection and examination; or
(2) prevents an inspection and examination from revealing the true facts with respect to:

(A) the amount of oil or oil and gas being produced from the oil property;

(B) the manner in which the oil property is being operated; or

(C) the manner and method by which the production from the oil property is produced, stored, or delivered from the possession or control of that person.

[Acts 1977, 65th Leg., p. 2550, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 88.094. Prohibited Gift or Gratuity

No person may corruptly give, offer, or promise to give a member of the governmental agency, chief supervisor, deputy supervisor, or any agent or employee of the governmental agency a gift or gratuity with intent to influence the officer or person in his acts or conduct with respect to:

(1) enforcing any provision of the law applicable to oil and gas in force at the time in this state;

(2) enforcing any order or rule of the governmental agency adopted under the power and authority given to it; or

(3) the discharge of any duty imposed on him by the oil and gas laws, orders, and rules duly promulgated and in force at the time in this state.

[Acts 1977, 65th Leg., p. 2550, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 88.095 to 88.130 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT; PENALTIES

§ 88.131. Venue

The courts of the county in which the oil property or any part of the oil property is located and with respect to which a violation of the provisions of this chapter is charged have jurisdiction of all prosecutions for violations of the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2550, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 88.132. Service of Process

(a) In a suit or action involving the enforcement of the conservation laws of this state or the orders of the commission affecting the conservation of the natural resources of this state, a Texas Ranger or an agent of the commission may serve civil or judicial process, citation, notice, warrant, subpoena, or writ, including process of every character in contempt proceedings, the same and as fully as a sheriff or constable of a county to whom the process, writ, notice, citation, subpoena, or warrant might be directed could within the limits of his own county.

(b) A ranger or an agent of the commission may serve the process anywhere in the State of Texas although it may be directed to "any sheriff or constable" of a particular county. He shall make the same return as any other officer, sign his name, and add under his name the title of "State Ranger" or "Agent, Railroad Commission of Texas," as the case may be, which is sufficient to make it valid if the writ otherwise is properly prepared.

(c) No fees are allowed the rangers or agents of the commission other than their regular salary or compensation.

[Acts 1977, 65th Leg., p. 2550, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 88.133. Responsibility for Compliance and Liability to Prosecution

The president of each corporation, the chief managing executive of each association, all active mem-

bers of each firm and partnership, and all trustees of each trust subject to the provisions of this chapter shall be responsible for the compliance with the terms of this chapter by the corporation, association, firm, partnership, or trust of which he is, respectively, president, chief managing executive, member, or trustee, and he shall be liable to prosecution under and subject to the criminal penalties provided in this chapter for violations of this chapter by the respective corporation, association, firm, partnership, or trust of which he has actual knowledge or to which he assents.

[Acts 1977, 65th Leg., p. 2551, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 88.134. Penalties

(a) A person who violates any of the provisions of Sections 88.091 through 88.093 of this code, or any person who fails to comply with any of the provisions of those sections, is guilty of a misdemeanor and on conviction shall be subject to a fine of not more than \$500, or by confinement in the county jail for not more than six months, or by both.

(b) A person who violates any other provision of this chapter other than those covered by Subsection (a) of this section, a person who fails to comply with any of the other terms of this chapter, a person who fails to comply with the terms of a rule or order adopted by the governmental agency under the terms of this chapter, or a person who violates any of the rules or orders of the governmental agency adopted under the provisions of this chapter on conviction is considered guilty of a felony and on conviction shall be punished by imprisonment in the state penitentiary for a term of not less than two nor more than four years.

[Acts 1977, 65th Leg., p. 2551, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 89. ABANDONED WELLS

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- 89.002. Definitions.
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SUBCHAPTER B. DUTY TO PLUG WELLS

- 89.011. Duty of Operator.
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SUBCHAPTER C. POWERS AND DUTIES OF THE COMMISSION

- 89.041. Determining Proper Plugging.
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SUBCHAPTER D. COSTS OF PLUGGING WELLS

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- 89.081. Cause of Action for Disproportionate Share of Cost.
- 89.082. Cause of Action If Landowner Plugs.
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- 89.084. Money Paid Commission by Private Person.

SUBCHAPTER E. ENFORCEMENT; JUDICIAL REVIEW

- 89.121. Enforcement by Commission.
- 89.122. Appeal to Courts.

SUBCHAPTER A. GENERAL PROVISIONS

§ 89.001. Policy

The conservation and development of all the natural resources of this state are declared to be a public right and duty. It is also declared that the protection of water and land of the state against pollution or the escape of oil or gas is in the public interest. In the exercise of the police power of the state, it is necessary and desirable to provide additional means so that wells that are drilled for the exploration, development, or production of oil or gas, or as injection or salt water disposal wells, and that have been abandoned and are leaking salt water, oil, gas, or other deleterious substances into freshwater formations or on the surface of the land, may be plugged, replugged, or repaired by or under the authority and direction of the commission.

[Acts 1977, 65th Leg., p. 2552, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 89.002. Definitions

(a) In this chapter:

(1) "Well" means a hole drilled for the purpose of:

- (A) producing oil or gas;
- (B) injecting fluid or gas in the ground in connection with the exploration or production of oil or gas; or
- (C) obtaining geological information by taking cores or through seismic operations.

(2) "Operator" means a person who is responsible for the physical operation and control of a well at the time the well is about to be abandoned or ceases operation.

(3) "Nonoperator" means a person who owns a working interest in a well at the time the well is about to be abandoned or ceases operation and is not an operator as defined in Subdivision (2) of this subsection.

(4) "Landowner" means the owner of the land on which the well is located at the time the well is abandoned and one who holds a mineral interest therein.

(5) "Commission" means the Railroad Commission of Texas.

(b) The terms operator and nonoperator as defined in this section do not mean a royalty interest owner or an overriding royalty interest owner.

[Acts 1977, 65th Leg., p. 2552, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 89.003. Applicability

The provisions of this chapter do not alter causes of action arising before August 30, 1965.

[Acts 1977, 65th Leg., p. 2553, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 89.004 to 89.010 reserved for expansion]

SUBCHAPTER B. DUTY TO PLUG WELLS**§ 89.011. Duty of Operator**

The operator of a well shall properly plug the well when required and in accordance with the commission's rules that are in effect at the time of plugging.

[Acts 1977, 65th Leg., p. 2553, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 89.012. Duty of Nonoperator

If the operator of a well fails to comply with Section 89.011 of this code, each nonoperator is responsible for his proportionate share of the cost of the proper plugging of the well within a reasonable time, according to the rules of the commission in effect at the time the responsibility attaches.

[Acts 1977, 65th Leg., p. 2553, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 89.013. Duty of Landowner

If the operator and the nonoperator fail to comply with Sections 89.011 and 89.012 of this code, respectively, each landowner is responsible for his proportionate share of the cost of proper plugging of the well within a reasonable time, according to the rules of the commission in effect at the time the responsibility attaches.

[Acts 1977, 65th Leg., p. 2553, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 89.014 to 89.040 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES OF THE COMMISSION**§ 89.041. Determining Proper Plugging**

If it comes to the attention of the commission that a well that has been abandoned or is not being operated is causing or is likely to cause pollution of fresh water above or below the ground or if gas or oil is escaping from the well, the commission shall determine at a hearing, after due notice, whether or not the well was properly plugged as provided in Section 89.011, Section 89.012, or Section 89.013 of this code.

[Acts 1977, 65th Leg., p. 2553, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 89.042. Commission Order to Plug

(a) If the commission finds that the well was not properly plugged, it shall order the operator to plug the well according to the rules of the commission in effect at the time the order is issued.

(b) If the operator cannot be found or is no longer in existence or has no assets with which to properly plug the well, the commission shall order the nonoperators to plug the well according to the rules of the commission in effect at the time the order is issued.

(c) If the nonoperators cannot be found or are no longer in existence or have no assets with which to properly plug the well, the commission shall order the landowners to properly plug the well according to the rules of the commission in effect at the time the order is issued.

[Acts 1977, 65th Leg., p. 2553, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 89.043. Plugging by Commission

If the commission determines at a hearing under Section 89.041 of this code that a well has not been properly plugged or needs replugging, the commission, through its employees or through a person acting as agent for the commission, may plug or replug the well if:

(1) the well was properly plugged according to rules in effect at the time the well was abandoned or ceased to be operated; or

(2) neither the operator, nonoperator, nor the landowner properly plugged the well, and

(A) neither the operator, nonoperator, nor the landowner can be found; or

(B) neither the operator, nonoperator, nor the landowner has assets with which to properly plug the well.

[Acts 1977, 65th Leg., p. 2554, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 89.044. Right to Enter on Land

The commission or its employees or agents, the operator, the nonoperator, or the landowner may enter the land of another for the purpose of plugging or replugging a well that the commission has determined, under the provisions of Section 89.041 of this code, has not been properly plugged.

[Acts 1977, 65th Leg., p. 2554, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 89.045. Liability for Damages

The commission and its employees and agents, the operator, the nonoperator, and the landowner are not liable for any damages that may occur as a result of acts done or omitted to be done by them or each of them in a good-faith effort to carry out the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2554, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 89.046 to 89.080 reserved for expansion]

SUBCHAPTER D. COSTS OF PLUGGING WELLS

§ 89.081. Cause of Action for Disproportionate Share of Cost

If an operator, nonoperator, or landowner owns only a partial interest in the well, oil and gas, or land and the operator, nonoperator, or landowner pays a larger proportion of the cost of plugging the well than his proportionate interest in the well, oil and gas, or land, he has a cause of action against the other operators, nonoperators, or landowners for their proportionate shares of the cost of plugging. [Acts 1977, 65th Leg., p. 2554, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 89.082. Cause of Action If Landowner Plugs

(a) If a landowner plugs or replugs a well under Section 89.013 of this code, the landowner has a cause of action against the operator and nonoperator or either of them in any court of competent jurisdiction for all reasonable costs and expenses incurred in the plugging or replugging of the well, to be secured by a lien on the interest of the operator and the nonoperator or either of them in:

- (1) the oil and gas underlying the lease on which the well is located; and
- (2) the fixtures, machinery, and equipment found or used on the lease.

(b) Notwithstanding the provisions of Subsection (a) of this section, if the landowner is responsible for the well not being plugged properly, the landowner does not have a cause of action under this chapter. [Acts 1977, 65th Leg., p. 2554, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 89.083. Cause of Action If Commission Plugs

If the commission plugs a well under the provisions of Sections 89.043 through 89.044 of this code, the state has a cause of action for all reasonable expenses incurred in plugging or replugging the well according to the rules of the commission in effect at the time the well is plugged or replugged. The cause of action is:

- (1) first, against the operator, to be secured by a lien on his interest in the oil and gas in the land and his fixtures, machinery, and equipment found or used on the land where the well is located;
- (2) second, against the nonoperator at the time the well should have been plugged, to be secured by a lien on his interest in the oil and gas in the land; and
- (3) third, against the landowner, to be secured by a lien on his interest in the land.

[Acts 1977, 65th Leg., p. 2555, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 89.084. Money Paid Commission by Private Person

(a) The commission may accept money from private persons and use the money to plug or replug a well.

(b) Paying money to the commission is not an admission that the person paying the money is obligated to plug or replug the well. Evidence that a person has paid money to the commission is not admissible against the person in a suit in which the person's obligation to plug a well is an issue and introducing the evidence is a compulsory ground for mistrial.

[Acts 1977, 65th Leg., p. 2555, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 89.085 to 89.120 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT;
JUDICIAL REVIEW

§ 89.121. Enforcement by Commission

In addition to the powers specifically granted to the commission under the provisions of this chapter, the commission may enforce the provisions of this chapter or any rule or order of the commission adopted under the provisions of this chapter in the same manner and on the same conditions as provided in the other chapters of Title 3 of this code. [Acts 1977, 65th Leg., p. 2555, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 89.122. Appeal to Courts

Any person affected by the provisions of this chapter may sue to test the validity of any order adopted by the commission under this chapter in the same manner, on the same conditions, and to the same court or courts as prescribed for suits testing the validity of orders of the commission adopted under the general oil conservation statutes of this state.

[Acts 1977, 65th Leg., p. 2555, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 90. INTERSTATE COMPACT TO
CONSERVE OIL AND GAS

Section	
90.001.	Ratification.
90.002.	Original Copy.
90.003.	Representative.
90.004.	Extension.
90.005.	Form of Agreement.
90.006.	Withdrawal From Compact.
90.007.	Text of Compact.

§ 90.001. Ratification

The Interstate Compact to Conserve Oil and Gas, executed in the City of Dallas, on February 16, 1935, by the Governor of Texas, the text of which is set out in Section 90.007 of this code, was ratified by the legislature of this state in Chapter 81, General Laws, Acts of the 44th Legislature, Regular Session, 1935. [Acts 1977, 65th Leg., p. 2556, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 90.002. Original Copy

The original copy of the compact is on deposit with the Department of State of the United States. [Acts 1977, 65th Leg., p. 2556, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 90.003. Representative

(a) The governor is the official representative of the State of Texas on the Interstate Oil Compact Commission, provided for in the Interstate Compact to Conserve Oil and Gas. He shall exercise and perform for the state all the powers and duties as a member of the Interstate Oil Compact Commission.

(b) The governor may appoint an assistant representative who shall act in his stead as the official representative of the State of Texas as a member of the commission.

(c) The representative shall take the oath of office prescribed by the constitution, which shall be filed with the Secretary of State.

[Acts 1977, 65th Leg., p. 2556, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Application of Sunset Act

Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.062, purports to add § 5a to Civil Statutes, art. 6008-1, without reference to repeal of said article by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(2). As so added, § 5a reads:

"The office of Interstate Oil Compact Commissioner for Texas is subject to the Texas Sunset Act [Civil Statutes, art. 5429k]; and unless continued in existence as provided by that Act the office is abolished, and this Act expires effective September 1, 1983."

§ 90.004. Extension

(a) The continuous extension of the Interstate Compact to Conserve Oil and Gas until September 1, 1951, by an agreement executed by the governor in the name of the State of Texas with other states currently members of the Interstate Oil Compact Commission was authorized by the legislature, subject to the approval of Congress, in:

(1) Chapter 217, Acts of the 45th Legislature, Regular Session, 1937;

(2) Chapter 2, Special Laws, page 527, Acts of the 46th Legislature, Regular Session, 1939;

(3) Chapter 63, Acts of the 47th Legislature, Regular Session, 1941;

(4) Chapter 15, Acts of the 48th Legislature, Regular Session, 1943; and

(5) Chapter 52, Acts of the 50th Legislature, Regular Session, 1947.

(b) The governor may execute agreements in the name of the State of Texas for the further extension of the expiration date of the Interstate Compact to Conserve Oil and Gas.

[Acts 1977, 65th Leg., p. 2556, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 90.005. Form of Agreement

The agreement to extend the Interstate Compact to Conserve Oil and Gas, which the governor is authorized to execute for the state, shall be in substance as follows:

"It is hereby agreed that the Interstate Compact to Conserve Oil and Gas executed in the City of Dallas, Texas, on the 16th day of February, 1935, and now on deposit with the Department of State of the United States, be and the same is hereby extended for a period of four (4) years from its date of expiration (September 1, 1947), this agreement to become effective when executed by any three (3) of the States of Texas, Oklahoma, California, Kansas and New Mexico, and consent thereto is given by Congress."

[Acts 1977, 65th Leg., p. 2556, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 90.006. Withdrawal From Compact

(a) The governor may determine if and when it is in the best interest of the state to withdraw from the compact as provided by its terms on 60 days' notice.

(b) If the governor determines that the state should withdraw from the compact, he has full authority to give necessary notice and take any steps necessary and proper to effect the withdrawal of the State of Texas from the compact.

[Acts 1977, 65th Leg., p. 2557, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 90.007. Text of Compact

The Interstate Compact to Conserve Oil and Gas reads as follows:

AN INTERSTATE COMPACT TO CONSERVE OIL AND GAS

ARTICLE I

This agreement may become effective within any compacting state at any time as prescribed by that state, and shall become effective within those states

ratifying it whenever any three (3) of the States of Texas, Oklahoma, California, Kansas and New Mexico have ratified, and Congress has given its consent. Any oil-producing state may become a party hereto as hereinafter provided.

ARTICLE II

The purpose of this Compact is to conserve oil and gas by the prevention of physical waste thereof from any cause.

ARTICLE III

Each state bound hereby agrees that within a reasonable time it will enact laws, or if laws have been enacted, then it agrees to continue the same in force, to accomplish within reasonable limits the prevention of:

- (a) The operation of any oil well with an inefficient gas-oil ratio;
- (b) The drowning with water of any stratum capable of producing oil or gas, or both oil and gas, in paying quantities;
- (c) The avoidable escape into the open air or the wasteful burning of gas from a natural gas well;
- (d) The creation of unnecessary fire hazards;
- (e) The drilling, equipping, locating, spacing, or operating of a well or wells so as to bring about physical waste of oil or gas or loss in the ultimate recovery thereof;
- (f) The inefficient, excessive, or improper use of the reservoir energy in producing any well.

The enumeration of the foregoing subjects shall not limit the scope of the authority of any state.

ARTICLE IV

Each state bound hereby agrees that it will, within a reasonable time, enact statutes, or if such statutes have been enacted then that it will continue the same in force, providing in effect that oil produced in violation of its valid order and/or gas conservation statutes or any valid rule, order, or regulation promulgated thereunder, shall be denied access to commerce; and providing for stringent penalties for the waste of either oil or gas.

ARTICLE V

It is not the purpose of this Compact to authorize the states joining herein to limit the production of oil or gas for the purpose of stabilizing or fixing the price thereof, or create or perpetuate monopoly, or to promote regimentation, but is limited to the purpose of conserving oil and gas and preventing the avoidable waste thereof within reasonable limitations.

ARTICLE VI

Each state joining herein shall appoint a representative to a Commission hereby constituted and designated as The Interstate Oil Compact Commission, the duty of which said Commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances, and conditions as may be disclosed for bringing about conservation and the prevention of physical waste of oil and gas; and at such intervals as said Commission deems beneficial it shall report its findings and recommendations to the several states for adoption or rejection.

The Commission shall have power to recommend the coordination of the exercise of the police powers of the several states within their several jurisdictions to promote the maximum ultimate recovery from the petroleum reserves of said states, and to recommend measures for the maximum ultimate recovery of oil and gas. Said Commission shall organize and adopt suitable rules and regulations for the conduct of its business.

No action shall be taken by the Commission, except: (1) by the affirmative votes of the majority of the whole number of the compacting states, represented at any meeting; and (2) by a concurring vote of a majority in interest of the compacting states at said meeting, such interest to be determined as follows: Such vote of each state shall be in the decimal proportion fixed by the ratio of its daily average production during the preceding calendar half-year to the daily average production of the compacting states during said period.

ARTICLE VII

No state by joining herein shall become financially obligated to any other state, nor shall the breach of the terms hereof by any state subject such state to financial responsibility to the other states joining herein.

ARTICLE VIII

This Compact shall expire September 1, 1937. But any state joining herein may, upon sixty (60) days notice, withdraw herefrom.

The representatives of the signatory states have signed this agreement in a single original, which shall be deposited in the archives of the Department of State of the United States, and a duly certified copy shall be forwarded to the Governor of each of the signatory states.

This Compact shall become effective when ratified and approved as provided in Article I. Any oil-producing state may become a party hereto by affixing its signature to a counterpart to be similarly deposited, certified, and ratified.

[Acts 1977, 65th Leg., p. 2557, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 91. PROVISIONS GENERALLY APPLICABLE

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Section

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SUBCHAPTER A. GENERAL PROVISIONS

§ 91.001. Definitions

In this chapter:

- (1) "Commission" means the Railroad Commission of Texas.
- (2) "Gas" means natural gas.
- (3) "Oil" means crude oil and crude petroleum oil.

[Acts 1977, 65th Leg., p. 2560, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 91.002 to 91.010 reserved for expansion]

SUBCHAPTER B. DUTIES RELATING TO OIL AND GAS WELLS

§ 91.011. Casing

Before drilling into the oil or gas bearing rock, the owner or operator of a well being drilled for oil or gas shall encase the well with good and sufficient wrought iron or steel casing in a manner that will exclude surface or fresh water from the lower part of the well from penetrating the oil or gas bearing rock, and if the well is drilled through the first into the lower oil or gas bearing rock, the well shall be cased in a manner that will exclude fresh water above the last oil or gas bearing rock penetrated. [Acts 1977, 65th Leg., p. 2560, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.012. Water in Wells

(a) In boring any well for oil or gas, if a person pierces any cap rock or other geological formation in a manner that will cause a flow of salt water or fresh water injurious to an already bored oil well or any oil or gas deposits and that will probably result in the injury of the oil or gas field or already bored oil or gas well, the person shall abandon immediately all work on the well if the flow of water cannot be cased off and shall plug and fill the well in a manner and with materials that will stop the flow of the water.

(b) No well owner or person boring a well described under Subsection (a) of this section may remove the casing from the drilled well until the flow of water is stopped either by casing off or plugging the well.

(c) The provisions of this section apply only if the cap rock or other formation is pierced at a depth below the horizon at which oil or gas has been discovered already.

[Acts 1977, 65th Leg., p. 2560, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.013. Plugging and Shutting in Wells by Others

(a) If the owner of a well described in Subsection (a) of Section 91.012 of this code neglects or refuses to have the well plugged or shut in for more than 20 days after written notice is given to him, the owner or operator of adjacent or neighboring land may enter the premises on which the well is located and have the well plugged if it is an abandoned well or shut in if it is not abandoned, in the manner provided by law.

(b) Notice may be given to the owner of the well either by personal service on the owner or by posting the notice at a conspicuous place at or near the well.

(c) The reasonable cost and expense incurred in plugging or shutting in the well shall be paid by the owner of the well and may be recovered as debts of like amount are recovered under the law.

[Acts 1977, 65th Leg., p. 2560, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.014. Petition to Restrain Waste

(a) In addition to any other penalties, a district judge, in term time or vacation time, shall hear and determine any petition that is filed to restrain the waste of gas in violation of this subchapter and may issue mandatory or restraining orders that in his judgment are necessary.

(b) The petition may be filed by any citizen of this state and does not have to allege further financial interest of the petitioner in the state's natural resources than that possessed in common with all citizens of the state.

[Acts 1977, 65th Leg., p. 2561, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.015. Prevention of Waste

Operators, contractors, drillers, pipeline companies, and gas distributing companies that drill for or produce oil or gas or pipe oil or gas for any purpose shall use every possible precaution in accordance with the most approved methods to stop and prevent waste of oil, gas, or both oil and gas in drilling and producing operations, storage, piping, and distribution and shall not wastefully use oil or gas or allow oil or gas to leak or escape from natural reservoirs, wells, tanks, containers, or pipes.

[Acts 1977, 65th Leg., p. 2561, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.016. Confining Gas to Original Stratum

(a) If gas located in a gas-bearing stratum known to contain gas in paying quantities is encountered in a well drilled for oil or gas in this state, the gas shall be confined to its original stratum until it can be produced and used without waste.

(b) Gas-bearing strata shall be adequately protected from infiltrating water.

[Acts 1977, 65th Leg., p. 2561, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.017. Using Gas in the Open Air

(a) Any person who uses gas in lights in the open air or in or around derricks shall turn off the gas not later than 8 a. m. of each day the lights are burning or are used and shall not turn the lights on or relight them between 8 a. m. and 5 p. m.

(b) The person consuming the gas and using the burners in the open air shall enclose them in glass globes or lamps.

[Acts 1977, 65th Leg., p. 2561, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.018. Illumination

No person, copartnership, or corporation may use gas for illuminating purposes in flambeau lights. The use of "jumbo" burners or other burners consuming no more gas than the "jumbo" burners is not prohibited.

[Acts 1977, 65th Leg., p. 2561, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 91.019 to 91.050 reserved for expansion]

SUBCHAPTER C. STANDARD GAS MEASUREMENT

§ 91.051. Title

This subchapter may be cited as the Standard Gas Measurement Law.

[Acts 1977, 65th Leg., p. 2561, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.052. Definition

(a) The term "cubic foot of gas" or "standard cubic foot of gas" means the volume of gas contained in one cubic foot of space at a standard pressure base and at a standard temperature base.

(b) The standard pressure base shall be 14.65 pounds per square inch absolute, and the standard temperature base shall be 60 degrees Fahrenheit. If the conditions of pressure and temperature differ from this standard, conversion of the volume from these conditions to the standard conditions shall be made in accordance with the ideal gas laws, corrected for deviation.

[Acts 1977, 65th Leg., p. 2562, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.053. Commission Determination

The commission shall determine the average temperature of gas as produced in each oil and gas field in Texas, other variable factors necessary to calculate the metered volumes in accordance with the ideal gas laws, and the variable factors to correct for deviation from the ideal gas laws in each of the oil and gas fields in the state.

[Acts 1977, 65th Leg., p. 2562, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.054. Notice and Hearing

On request of any interested person, the commission shall give proper notice and hold a public hearing before making a determination under Section 91.053 of this code.

[Acts 1977, 65th Leg., p. 2562, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.055. Findings and Rules

On making the determination, the commission promptly shall make its findings and shall adopt reasonable field rules that may be necessary to effectuate the provisions of this subchapter.

[Acts 1977, 65th Leg., p. 2562, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.056. Use of Findings and Field Rules

(a) Any person may use the findings and field rules of the commission for any purposes under this subchapter.

(b) If the findings or field rules are not used as provided in Subsection (a) of this section in deter-

mining volumes under this subchapter, the volumes otherwise determined shall be corrected to the basis of the standard cubic foot of gas as defined in Section 91.052 of this code.

[Acts 1977, 65th Leg., p. 2562, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.057. Method of Reporting

A person required to report volumes of gas under the laws of this state shall report the volumes in number of standard cubic feet calculated and determined under the provisions of this subchapter.

[Acts 1977, 65th Leg., p. 2562, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.058. Sale, Purchase, Delivery, and Receipt of Gas

(a) Each sale, purchase, delivery, and receipt of gas by volume made in this state by, for, or on behalf of an oil and gas lease owner, royalty owner under a lease, or other mineral interest owner shall be made and the gas shall be measured, calculated, purchased, delivered, and accounted for on the basis of a standard cubic foot of gas as defined in this subchapter and determined under this subchapter.

(b) If the provisions of this subchapter operate to change the basis of measurement provided in existing contracts, the price for gas, including royalty gas, provided for in the contracts shall be adjusted to compensate for the change in the method of measuring the volume of gas delivered under the contracts if either the purchaser or seller so desires.

(c) This section is intended to protect parties to contracts in existence on October 4, 1949, so that the total amount of money paid for a volume of gas purchased or required to be accounted for under these contracts shall remain unaffected by this subchapter.

[Acts 1977, 65th Leg., p. 2562, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.059. Constitutionality

If the provisions of Section 91.058 of this code or any part of that section are held to be invalid or unconstitutional by the courts, the remaining portions of this subchapter shall become ineffective and inoperative.

[Acts 1977, 65th Leg., p. 2563, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.060. Penalty

(a) Any person who, as purchaser, shall knowingly fail or refuse to measure, calculate, or account in the manner required in this subchapter for any gas purchased is subject to a penalty of not less than \$10 nor more than \$500 for each offense.

(b) The penalty is recoverable in the name of the state in a district court in Travis County.

(c) Each day a violation is committed constitutes a separate offense.

(d) It is a defense to a claim for the penalty that the commission has not made the findings under Section 91.055 of this code with regard to the particular field in question.

[Acts 1977, 65th Leg., p. 2563, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.061. Civil Suit

None of these provisions shall prevent an aggrieved person from maintaining a civil suit for damages in the county or counties in which the gas is produced.

[Acts 1977, 65th Leg., p. 2563, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.062. Applicability of Certain Provisions

None of the provisions of Sections 91.058 through 91.061 of this code affect or apply to purchases or sales made on any basis other than a volume basis.

[Acts 1977, 65th Leg., p. 2563, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 91.063 to 91.100 reserved for expansion]

SUBCHAPTER D. PREVENTION OF POLLUTION

§ 91.101. Rules and Orders

To prevent pollution of streams and public bodies of surface water of the state, including subsurface water strata capable of producing water suitable for domestic or livestock use, irrigation of crops, or industrial use, that would or might result from the escape or release of oil, salt water, or other mineralized water from any well or operations in connection with any well, the commission shall adopt and enforce rules and orders relating to:

(1) the drilling of exploratory wells and oil and gas wells or any purpose in connection with them;

(2) the production of oil and gas;

(3) the operation, abandonment, and proper plugging of these wells.

[Acts 1977, 65th Leg., p. 2563, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.102. Additional Personnel

The commission is directed to employ additional personnel necessary to administer this subchapter and related laws and rules and orders adopted by the commission.

[Acts 1977, 65th Leg., p. 2563, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.103. Persons Required to Execute Bond

Before approval of an application, the commission may require the following persons to execute and file with the commission a bond:

- (1) an applicant to drill a new well or redrill or deepen an old well;
- (2) an operator who has acquired a producing well and who is requesting authorization to connect a producing well or wells to a pipeline or other outlet; and
- (3) an operator filing a well potential form who has reworked and brought into production a previously nonproducing well, resulting in making an application for an allowable for production of oil and gas from the well.

[Acts 1977, 65th Leg., p. 2564, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.104. No Appeal From Commission Decision

The discretion of the commission in requiring a bond under this subchapter is final and may not be appealed.

[Acts 1977, 65th Leg., p. 2564, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.105. Amount of Bond

The bond shall be in the penal sum of \$5,000 for each well to be drilled or operated or, in lieu of a separate bond for each well, a blanket bond in the penal sum of \$10,000 to cover all wells drilled, to be drilled, and to be operated in the state.

[Acts 1977, 65th Leg., p. 2564, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.106. Bond Conditions

Each bond shall be conditioned that the operator will plug and abandon the well in accordance with the law of the state and the rules and orders of the commission.

[Acts 1977, 65th Leg., p. 2564, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.107. Execution of Bond

Each bond shall be executed by a corporate surety authorized to do business in this state and shall be renewed and be continued in effect until the conditions have been met or release is authorized by the commission.

[Acts 1977, 65th Leg., p. 2564, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.108. New Bond

If a well covered by a bond is transferred, sold, or assigned by its operator, the commission may require the party acquiring the well to execute a new bond, and the bond of the prior operator shall remain in effect until the new bond is provided or filing of the bond is waived.

[Acts 1977, 65th Leg., p. 2564, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 91.109 to 91.140 reserved for expansion]

SUBCHAPTER E. BOOKS, RECORDS,
AND REPORTS

§ 91.141. Books and Records

(a) Owners and operators of oil and gas wells shall keep books that show accurately:

- (1) the amount of sold and unsold stock;
- (2) the amount of promotion money paid;
- (3) the amount of oil and gas produced and disposed of and the price for which the oil and gas was sold;
- (4) the receipts from the sale or transfer of leases or other property; and
- (5) disbursements made in connection with or for the benefit of the business.

(b) The books shall be kept open for the inspection of the commission or any accredited representative of the commission and any stockholder or shareholder or royalty owner in the business.

(c) The owners and operators of oil and gas wells shall report the information to the commission for its information if required by the commission to do so.

[Acts 1977, 65th Leg., p. 2564, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.142. Report to Commission

A person, firm, partnership, joint stock association, corporation, or other domestic or foreign organization operating wholly or partially in this state and acting as principal or agent for another for the purpose of drilling, owning, or operating an oil or gas well or owning or controlling leases of oil and mineral rights or the transportation of oil or gas by pipeline shall file immediately with the commission:

- (1) the name of the company or organization;
- (2) the post-office address of the company or organization;
- (3) the plan under which the company or organization was organized;
- (4) the names and post-office addresses of the trustee or trustees of the company or organization; and
- (5) the names and post-office addresses of the officers and directors.

[Acts 1977, 65th Leg., p. 2565, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 91.143. False Applications, Reports, and Documents

(a) A person is guilty of a felony and on conviction shall be punished by imprisonment in the state penitentiary for not less than two years but not more than five years or by a fine of not more than \$1,000 or by both if:

(1) he makes or subscribes any application, report, or other document required or permitted to be filed with the commission by the provisions of Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, knowing that the application, report, or other document is false or untrue in a material fact;

(2) he aids or assists in, or procures, counsels, or advises the preparation or presentation of any of these applications, reports, or other documents that are fraudulent, false, or incorrect in any material matter, knowing them to be fraudulent, false, or incorrect in any material matter;

(3) he knowingly simulates or falsely or fraudulently executes or signs such an application, report, or other document; or

(4) he knowingly procures these applications, reports, or other documents to be falsely or fraudulently executed, or advises, aids in, or connives at this execution.

(b) If other penalties prescribed in Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, overlap offenses that are also punishable under this section, the penalties prescribed in this section shall be in addition to other penalties.

(c) No application, report, or other document required or permitted to be filed with the commission under Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, may be required to be under oath, verification, acknowledgment, or affirmation.

[Acts 1977, 65th Leg., p. 2565, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

SUBTITLE C. POOLING AND COOPERATIVE AGREEMENTS

CHAPTER 101. COOPERATIVE DEVELOPMENT

SUBCHAPTER A. GENERAL PROVISIONS

Section	
101.001.	Definition.
101.002.	Existing Agreement Rights.
101.003.	Applicability.
101.004.	Conflict With Antitrust Acts.

SUBCHAPTER B. COOPERATIVE AGREEMENTS IN SECONDARY RECOVERY OPERATIONS

101.011.	Authorized Agreements for Separately Owned Properties.
101.012.	Persons Bound by Agreements.
101.013.	Commission Approval.
101.014.	Jointly Owned Properties.
101.015.	Commission Regulation.
101.016.	Permissible Provisions.
101.017.	Prohibited Provisions.
101.018.	Effect of Approval Outside of Unit.

SUBCHAPTER C. PUBLIC LAND

Section	
101.051.	Authority of Commissioner of General Land Office.
101.052.	Necessary Approval by Other Persons and State Agencies.

SUBCHAPTER A. GENERAL PROVISIONS

§ 101.001. Definition

In this chapter, "commission" means the Railroad Commission of Texas.

[Acts 1977, 65th Leg., p. 2566, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 101.002. Existing Agreement Rights

None of the provisions in this chapter restrict any of the rights that a person now may have to make and enter into unitization and pooling agreements.

[Acts 1977, 65th Leg., p. 2566, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 101.003. Applicability

None of the provisions in this chapter impair the power of the commission to prevent waste under the oil and gas conservation laws of the state except as provided in Section 101.004 of this code or repeal, modify, or impair any of the provisions of Sections 85.002 through 85.003, 85.041 through 85.055, 85.056 through 85.064, 85.125, 85.201 through 85.207, 85.241 through 85.243, 85.249 through 85.252, or 85.381 through 85.385 of this code or Subchapters E and J of Chapter 85 of this code, relating to oil and gas conservation.

[Acts 1977, 65th Leg., p. 2566, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 101.004. Conflict With Antitrust Acts

(a) Agreements and operations under agreements which are in accordance with the provisions in this chapter, being necessary to prevent waste and conserve the natural resources of this state, shall not be construed to be in violation of the provisions of Chapter 15, Business & Commerce Code, as amended.

(b) If a court finds a conflict between the provisions in this chapter and Chapter 15, Business & Commerce Code, as amended, the provisions in this chapter are intended as a reasonable exception to that law, necessary for the public interests stated in Subsection (a) of this section.

(c) If a court finds that a conflict exists between the provisions in this chapter and Chapter 15, Business & Commerce Code, as amended, and finds that the provisions in this chapter are not a reasonable exception to said Chapter 15, it is the intent of the legislature that the provisions in this chapter, or any conflicting portion of them, shall be declared invalid rather than declaring Chapter 15, Business & Com-

merce Code, as amended, or any portion of it, invalid.

[Acts 1977, 65th Leg., p. 2567, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 101.005 to 101.010 reserved for expansion]

SUBCHAPTER B. COOPERATIVE AGREEMENTS
IN SECONDARY RECOVERY OPERATIONS

§ 101.011. Authorized Agreements for Separately Owned Properties

Subject to the approval of the commission, as provided in this chapter, persons owning or controlling production, leases, royalties, or other interests in separate property in the same oil field, gas field, or oil and gas field may voluntarily enter into and perform agreements for either or both of the following purposes:

(1) to establish pooled units, necessary to effect secondary recovery operations for oil or gas, including those known as cycling, recycling, repressuring, water flooding, and pressure maintenance and to establish and operate cooperative facilities necessary for the secondary recovery operations;

(2) to establish pooled units and cooperative facilities necessary for the conservation and use of gas, including those for extracting and separating the hydrocarbons from the natural gas or casinghead gas and returning the dry gas to a formation underlying any land or leases committed to the agreement.

[Acts 1977, 65th Leg., p. 2567, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 101.012. Persons Bound by Agreements

Agreements for pooled units and cooperative facilities do not bind a landowner, royalty owner, lessor, lessee, overriding royalty owner, or any other person who does not execute them. The agreements bind only the persons who execute them, their heirs, successors, assigns, and legal representatives. No person shall be compelled or required to enter into such an agreement.

[Acts 1977, 65th Leg., p. 2567, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 101.013. Commission Approval

(a) Agreements for pooled units and cooperative facilities are not legal or effective until the commission finds, after application, notice, and hearing:

(1) that the agreement is necessary to accomplish the purposes specified in Section 101.011 of this code;

(2) that it is in the interest of the public welfare as being reasonably necessary to pre-

vent waste and to promote the conservation of oil or gas or both;

(3) that the rights of the owners of all the interests in the field, whether signers of the unit agreement or not, would be protected under its operation;

(4) that the estimated additional cost, if any, of conducting the operation will not exceed the value of additional oil and gas so recovered, by or on behalf of the several persons affected, including royalty owners, owners of overriding royalties, oil and gas payments, carried interests, lien claimants, and others as well as the lessees;

(5) that other available or existing methods or facilities for secondary recovery operations or for the conservation and utilization of gas in the particular area or field concerned or for both are inadequate for the purposes; and

(6) that the area covered by the unit agreement contains only that part of the field that has reasonably been defined by development, and that the owners of interests in the oil and gas under each tract of land in the area reasonably defined by development are given an opportunity to enter into the unit on the same yardstick basis as the owners of interests in the oil and gas under the other tracts in the unit.

(b) A finding by the commission that the area described in the unit agreement is insufficient or covers more acreage than is necessary to accomplish the purposes of this chapter is grounds for the disapproval of the agreement.

[Acts 1977, 65th Leg., p. 2568, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 101.014. Jointly Owned Properties

None of the provisions in this chapter shall be construed to require the approval of the commission of voluntary agreements for the joint development and operation of jointly owned property.

[Acts 1977, 65th Leg., p. 2568, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 101.015. Commission Regulation

An agreement executed under the provisions of this chapter is subject to any valid order or rule of the commission relating to location, spacing, proration, conservation, or other matters within the authority of the commission, whether adopted prior to or subsequent to the execution of the agreement.

[Acts 1977, 65th Leg., p. 2568, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 101.016. Permissible Provisions

(a) An agreement authorized by this chapter may provide for the location and spacing of input wells and for the extension of leases covering any part of

land committed to the unit as long as operations for drilling or reworking are conducted on the unit or as long as production of oil or gas in paying quantities is had from any part of the land or leases committed to the unit. However, no agreement may relieve an operator from the obligation to develop reasonably the land and leases as a whole committed to the unit.

(b) An agreement authorized by this chapter may provide that the dry gas after extraction of hydrocarbons may be returned to a formation underlying any land or leases committed to the agreement and may provide that no royalties are required to be paid on the gas so returned.

[Acts 1977, 65th Leg., p. 2568, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 101.017. Prohibited Provisions

(a) No agreement authorized by this chapter may attempt to contain the field rules for the area or field, or provide for or limit the amount of production of oil or gas from the unit properties, those provisions being solely the province of the commission.

(b) No agreement authorized by this chapter may provide directly or indirectly for the cooperative refining of crude petroleum, distillate, condensate, or gas, or any by-product of crude petroleum, distillate, condensate, or gas. The extraction of liquid hydrocarbons from gas, and the separation of the liquid hydrocarbons into propanes, butanes, ethanes, distillate, condensate, and natural gasoline, without any additional processing of any of them, is not considered to be refining.

(c) No agreement authorized by this chapter may provide for the cooperative marketing of crude petroleum, condensate, distillate, or gas, or any by-products of them.

[Acts 1977, 65th Leg., p. 2569, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 101.018. Effect of Approval Outside of Unit

The approval of an agreement authorized by this chapter shall not of itself be construed as a finding that operations of a different kind or character in the portion of the field outside of the unit are wasteful or not in the interest of conservation. [Acts 1977, 65th Leg., p. 2569, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 101.019 to 101.050 reserved for expansion]

SUBCHAPTER C. PUBLIC LAND

§ 101.051. Authority of Commissioner of General Land Office

Subject to the approval specified in Section 101.052 of this code, the Commissioner of the General Land Office, in behalf of the State of Texas or of

any fund belonging to the state, may execute contracts committing to the agreements declared lawful by the provisions of this chapter the royalty interests in oil or gas or both reserved to the state, or any fund of the state, by law, in any patent, in any contract of sale, or under the terms of any oil and gas lease lawfully issued by an official, board, agent, agency, or authority of the state.

[Acts 1977, 65th Leg., p. 2569, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 101.052. Necessary Approval by Other Persons and State Agencies

(a) An agreement that commits the royalty interests in land set apart by the constitution and laws of this state for the permanent free school fund and the several asylum funds, in river beds, inland lakes, and channels, and the area within tidewater limits, including islands, lakes, bays, inlets, marshes, reefs, and the bed of the sea, must be approved by the School Land Board.

(b) An agreement that covers land leased for oil and gas under the Relinquishment Act, codified as Subchapter F in Chapter 52 of this code, must be executed by the owners of the soil.

(c) An agreement that commits the royalty interests in land or areas other than those covered by Subsections (a) and (b) of this section must be approved by the board, official, agent, agency, or authority of the state vested with authority to lease or to approve the leasing of the land or areas for oil and gas.

[Acts 1977, 65th Leg., p. 2569, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 102. POOLING

SUBCHAPTER A. GENERAL PROVISIONS

Section	Title
102.001.	Title.
102.002.	Definitions.
102.003.	Application to Certain Reservoirs.
102.004.	Application to Public Land.

SUBCHAPTER B. REQUIREMENTS AND PROCEDURE FOR POOLING

102.011.	Authority of Commission.
102.012.	Owners Authorized to Apply for Pooling.
102.013.	Required Voluntary Pooling Offer.
102.014.	Productive Acreage Equal to Standard Proration Unit.
102.015.	Prohibited Provisions in Operating Agreement.
102.016.	Notice of Hearing.
102.017.	Pooling Order.
102.018.	Acreage Subject to Pooling.

SUBCHAPTER C. RIGHTS IN A POOLED UNIT

102.051.	Ownership of Production.
102.052.	Drilling and Completion Costs.
102.053.	Effect of Operations.

Section SUBCHAPTER D. DISSOLUTION OF UNIT
 102.081. Dissolved With Consent of Owners.
 102.082. Automatic Dissolution.
 102.083. Termination of Pooled Lease.

SUBCHAPTER E. JUDICIAL REVIEW
 102.111. Right to Appeal.
 102.112. Venue.

SUBCHAPTER A. GENERAL PROVISIONS

§ 102.001. Title

This chapter may be cited as the Mineral Interest Pooling Act.

[Acts 1977, 65th Leg., p. 2570, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.002. Definitions

In this chapter:

(1) "Mineral" means and is limited to oil and gas.

(2) "Commission" means the Railroad Commission of Texas.

[Acts 1977, 65th Leg., p. 2570, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.003. Application to Certain Reservoirs

The provisions of this chapter do not apply to any reservoir discovered and produced before March 8, 1961.

[Acts 1977, 65th Leg., p. 2571, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.004. Application to Public Land

(a) The provisions of this chapter do not apply to land owned by the State of Texas nor to land in which the State of Texas has an interest directly or indirectly.

(b) The provisions of this chapter do not amend, repeal, change, alter, or affect in any manner the authority or jurisdiction of the Commissioner of the General Land Office or the State of Texas with respect to any land or interest in land in which the Commissioner of the General Land Office has jurisdiction.

(c) The provisions of this chapter do not amend, repeal, change, alter, or affect in any manner the authority, jurisdiction, or consent of the Commissioner of the General Land Office on the pooling of any interest now subject to the jurisdiction, authority, or consent of the Commissioner of the General Land Office.

(d) With the approval or consent first obtained, or at the instance of the Commissioner of the General Land Office, or any board or agency having jurisdiction, the land in which the State of Texas has an interest as described in this chapter may be pooled under the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2571, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 102.005 to 102.010 reserved for expansion]

SUBCHAPTER B. REQUIREMENTS AND PROCEDURE FOR POOLING

§ 102.011. Authority of Commission

When two or more separately owned tracts of land are embraced in a common reservoir of oil or gas for which the commission has established the size and shape of proration units, whether by temporary or permanent field rules, and where there are separately owned interests in oil and gas within an existing or proposed proration unit in the common reservoir and the owners have not agreed to pool their interests, and where at least one of the owners of the right to drill has drilled or has proposed to drill a well on the existing or proposed proration unit to the common reservoir, the commission, on the application of an owner specified in Section 102.012 of this code and for the purpose of avoiding the drilling of unnecessary wells, protecting correlative rights, or preventing waste, shall establish a unit and pool all of the interests in the unit within an area containing the approximate acreage of the proration unit, which unit shall in no event exceed 160 acres for an oil well or 640 acres for a gas well plus 10 percent tolerance.

[Acts 1977, 65th Leg., p. 2571, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.012. Owners Authorized to Apply for Pooling

The following interested owners may apply to the commission for the pooling of mineral interests:

(1) the owner of any interest in oil and gas in an existing proration unit or with respect to a proposed unit;

(2) the owner of any working interest; or

(3) any owner of an unleased tract other than a royalty owner.

[Acts 1977, 65th Leg., p. 2571, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.013. Required Voluntary Pooling Offer

(a) The applicant shall set forth in detail the nature of voluntary pooling offers made to the owners of the other interests in the proposed unit.

(b) The commission shall dismiss the application if it finds that a fair and reasonable offer to pool voluntarily has not been made by the applicant.

(c) An offer by an owner of a royalty or any other interest in oil or gas within an existing proration unit to share on the same yardstick basis as the other owners within the existing proration unit are then sharing shall be considered a fair and reasonable offer.

[Acts 1977, 65th Leg., p. 2572, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.014. Productive Acreage Equal to Standard Proration Unit

(a) The commission shall not require the owner of a mineral interest, the productive acreage of which is equal to or in excess of the standard proration unit for the reservoir, to pool his interest with others unless requested by the holder of an adjoining mineral interest, the productive acreage of which is smaller than such pattern, who has not been provided a reasonable opportunity to pool voluntarily.

(b) If the conditions specified in Subsection (a) of this section exist, the commission shall pool the smaller tract with adjacent acreage on a fair and reasonable basis and may authorize a larger allowable for the unit if it exceeds the size of the standard proration unit for the reservoir.

[Acts 1977, 65th Leg., p. 2572, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.015. Prohibited Provisions in Operating Agreement

A pooling agreement, offer to pool, or pooling order is not considered fair and reasonable if it provides for an operating agreement containing any of the following provisions:

- (1) preferential right of the operator to purchase mineral interests in the unit;
- (2) a call on or option to purchase production from the unit;
- (3) operating charges that include any part of district or central office expense other than reasonable overhead charges; or
- (4) prohibition against nonoperators questioning the operation of the unit.

[Acts 1977, 65th Leg., p. 2572, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.016. Notice of Hearing

On the filing of an application for pooling of interests into a unit under the provisions of this chapter, at least 30 days notice before hearing on the application shall be given to all interested parties, including notice by publication if there are unknown owners or owners whose whereabouts are unknown. The notice shall be given in the manner and form prescribed by the commission.

[Acts 1977, 65th Leg., p. 2572, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.017. Pooling Order

(a) After notice and hearing, all orders effecting the pooling shall be made on terms and conditions that are fair and reasonable and will afford the owner or owners of each tract or interest in the unit the opportunity to produce or receive his fair share.

(b) Each order shall:

- (1) describe the land included in the unit, identifying the reservoir to which it applies;

(2) designate the location of the well; and

(3) appoint an operator for the unit.

[Acts 1977, 65th Leg., p. 2572, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.018. Acreage Subject to Pooling

The commission shall pool only the acreage which at the time of its order reasonably appears to lie within the productive limits of the reservoir.

[Acts 1977, 65th Leg., p. 2573, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 102.019 to 102.050 reserved for expansion]

SUBCHAPTER C. RIGHTS IN A POOLED UNIT

§ 102.051. Ownership of Production

(a) For the purpose of determining the portions of production owned by the persons owning interests in the pooled unit, the production shall be allocated to the respective tracts within the unit in the proportion that the number of surface acres included within each tract bears to the number of surface acres included in the entire unit.

(b) Notwithstanding the provisions in Subsection (a) of this section, if the commission finds that allocation on a surface-acreage basis does not allocate to each tract its fair share, the commission shall allocate the production so that each tract will receive its fair share, which for any nonconsenting owner shall be no less than he would receive under a surface-acreage allocation.

[Acts 1977, 65th Leg., p. 2573, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.052. Drilling and Completion Costs

(a) As to an owner who elects not to pay his proportionate share of the drilling and completion costs in advance, the commission shall make provision in the pooling order for reimbursement solely out of production, to the parties advancing the costs, of all actual and reasonable drilling, completion, and operating costs plus a charge for risk not to exceed 100 percent of the drilling and completion costs.

(b) If there is a dispute relative to the costs, the commission shall determine the proper costs and their allocation among working interest owners after due notice to interested parties and a hearing on the costs.

[Acts 1977, 65th Leg., p. 2573, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.053. Effect of Operations

(a) The operations on and production from any portion of a unit for which a pooling order has been entered shall be considered for all purposes the conduct of the operations on and production from

each separately owned tract in the pooled unit. If a gas well on a pooled unit is shut-in, it shall be considered that the shut-in gas well is on each separately owned tract in the pooled unit.

(b) If only part of a tract is included in the unit, operations on, production from, or a shut-in gas well on the unit shall maintain an oil and gas lease on the tract as to the part excluded from the unit only if the lease would be maintained had the unit been created voluntarily under the provisions of the lease. [Acts 1977, 65th Leg., p. 2573, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 102.054 to 102.080 reserved for expansion]

SUBCHAPTER D. DISSOLUTION OF UNIT

§ 102.081. Dissolved With Consent of Owners

A unit established by order of the commission under this chapter may not be modified or dissolved subsequently without the consent of all mineral owners affected, except as necessary to permit its enlargement as provided in Subchapter B of this chapter.

[Acts 1977, 65th Leg., p. 2573, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.082. Automatic Dissolution

A unit is automatically dissolved:

- (1) one year after its effective date if no production or drilling operations have been had on the unit;
- (2) six months after the completion of a dry hole on the unit; or
- (3) six months after cessation of production from the unit.

[Acts 1977, 65th Leg., p. 2574, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.083. Termination of Pooled Lease

On termination of a lease pooled by order of the commission under authority granted by this chapter, interests covered by the lease are considered pooled as unleased mineral interests.

[Acts 1977, 65th Leg., p. 2574, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 102.084 to 102.110 reserved for expansion]

SUBCHAPTER E. JUDICIAL REVIEW

§ 102.111. Right to Appeal

A person affected by an order of the commission adopted under the authority of this chapter is entitled to judicial review of that order in a manner other than by trial de novo.

[Acts 1977, 65th Leg., p. 2574, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 102.112. Venue

Appeal shall be to the district court of the county in which the land or any part of the land covered by the order is located and not elsewhere, notwithstanding the provisions of Sections 85.241 through 85.243 of this code.

[Acts 1977, 65th Leg., p. 2574, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 103. COOPERATIVE FACILITIES FOR CONSERVATION AND UTILIZATION OF GAS

SUBCHAPTER A. GENERAL PROVISIONS

Section

- 103.001. Definition.
- 103.002. Rights Existing on May 12, 1953.
- 103.003. Conflict With Antitrust Laws.

SUBCHAPTER B. FACILITIES FOR CONSERVATION AND UTILIZATION OF GAS

- 103.041. Authorized Cooperative Facilities for Separately Owned Property.
- 103.042. Commission Approval.
- 103.043. Cooperative Refining.
- 103.044. Cooperative Marketing.
- 103.045. Effect of Approval on Operations in Other Fields.
- 103.046. Jointly Owned Property.

SUBCHAPTER A. GENERAL PROVISIONS

§ 103.001. Definition

In this chapter, "commission" means the Railroad Commission of Texas.

§ 103.002. Rights Existing on May 12, 1953

None of the provisions in this chapter restrict any of the rights that persons had on May 12, 1953, to make and enter into contracts for the construction and operation of cooperative facilities as provided in this chapter.

[Acts 1977, 65th Leg., p. 2575, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 103.003. Conflict With Antitrust Laws

(a) Agreements and operations under agreements that are in accordance with the provisions in this chapter, being necessary to prevent waste and conserve the natural resources of this state, shall not be construed to be in violation of the provisions of Chapter 15, Business & Commerce Code, as amended.

(b) If a court finds a conflict between the provisions in this chapter and Chapter 15, Business & Commerce Code, as amended, the provisions in this chapter are intended as a reasonable exception necessary for the public interest stated in Subsection (a) of this section.

(c) If a court finds that a conflict exists between the provisions in this chapter and the laws cited in Subsections (a) and (b) of this section and finds that the provisions in this chapter are not a reasonable exception, it is the intent of the legislature that the provisions in this chapter, or any conflicting portion of them, shall be declared invalid rather than declaring the cited laws, or any portion of them, invalid. [Acts 1977, 65th Leg., p. 2575, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 103.004 to 103.040 reserved for expansion]

SUBCHAPTER B. FACILITIES FOR CONSERVATION AND UTILIZATION OF GAS

§ 103.041. Authorized Cooperative Facilities for Separately Owned Property

The commission may approve agreements by persons owning or controlling leases or other interests in separate property in oil fields, gas fields, or oil and gas fields for the construction and operation of cooperative facilities necessary for the conservation and utilization of gas, including facilities for extracting and separating hydrocarbons from gas or casing-head gas.

[Acts 1977, 65th Leg., p. 2575, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 103.042. Commission Approval

Agreements for the construction and operation of cooperative facilities shall be approved by the commission only after application, notice, and hearing, and a finding by the commission that the cooperative facilities are in the interest of conservation and that secondary recovery operations are not feasible or necessary.

[Acts 1977, 65th Leg., p. 2575, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 103.043. Cooperative Refining

(a) No agreement for the construction or operation of cooperative facilities may provide directly or indirectly for the cooperative refining of oil, distillate, condensate, or gas, or any by-product of oil, distillate, condensate, or gas.

(b) The extraction of liquid hydrocarbons from gas and the separation of liquid hydrocarbons into butanes, propanes, ethanes, distillate, condensate, and natural gasoline without any additional processing of any of them is not considered to be refining. [Acts 1977, 65th Leg., p. 2575, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 103.044. Cooperative Marketing

No agreement for the construction or operation of cooperative facilities may provide for the cooperative marketing of oil, condensate, distillate, or gas,

or any by-product of oil, condensate, distillate, or gas.

[Acts 1977, 65th Leg., p. 2576, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 103.045. Effect of Approval on Operations in Other Fields

The approval of an agreement authorized by this chapter is not of itself a finding that similar operations in other fields are wasteful or not in the interest of conservation.

[Acts 1977, 65th Leg., p. 2576, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 103.046. Jointly Owned Property

None of the provisions in this chapter require the approval of the commission of voluntary agreements for the joint development and operation of jointly owned property.

[Acts 1977, 65th Leg., p. 2576, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

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SUBCHAPTER A. GENERAL PROVISIONS

§ 111.001. Definitions

In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Public utility" means a person, association of persons, or corporation that owns, operates, or manages crude petroleum storage tanks or storage facilities for the public for hire, either in connection with a pipeline, pipelines, or otherwise.

[Acts 1977, 65th Leg., p. 2578, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.002. Common Carriers Under Chapter

A person is a common carrier subject to the provisions of this chapter if it:

(1) owns, operates, or manages a pipeline or any part of a pipeline in the State of Texas for the transportation of crude petroleum to or for the public for hire, or engages in the business of transporting crude petroleum by pipeline;

(2) owns, operates, or manages a pipeline or any part of a pipeline in the State of Texas for the transportation of crude petroleum to or for the public for hire and the pipeline is constructed or maintained on, over, or under a public road or highway, or is an entity in favor of whom the right of eminent domain exists;

(3) owns, operates, or manages a pipeline or any part of a pipeline in the State of Texas for the transportation of crude petroleum to or for the public for hire which is or may be constructed, operated, or maintained across, on, along, over, or under the right-of-way of a railroad, corporation, or other common carrier required by law to transport crude petroleum as a common carrier;

(4) under lease, contract of purchase, agreement to buy or sell, or other agreement or arrangement of any kind, owns, operates, manages, or participates in ownership, operation, or management of a pipeline or part of a pipeline in the State of Texas for the transportation of crude petroleum, bought of others, from an oil field or place of production within this state to any distributing, refining, or marketing center or reshipping point within this state; or

(5) owns, operates, or manages, wholly or partially, pipelines for the transportation for hire of coal in whatever form or of any mixture of substances including coal in whatever form.

[Acts 1977, 65th Leg., p. 2579, ch. 871, art. I, § 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 2692, ch. 871, art. II, § 2, eff. Sept. 1, 1977.]

§ 111.003. Applicability of Chapter

(a) The provisions of this chapter do not apply to pipelines that are limited in their use to the wells, stations, plants, and refineries of the owner and that are not a part of the pipeline transportation system of a common carrier as defined in Section 111.002 of this code.

(b) The provisions of this chapter do not apply to any property of a common carrier, as defined in Section 111.002 of this code, that is not a part of or necessarily incident to its pipeline transportation system.

[Acts 1977, 65th Leg., p. 2579, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.004. General Restriction on Transportation of Oil

No person, including a common carrier, may transport crude oil or petroleum in this state unless the crude oil or petroleum has been produced or purchased or both in accordance with the laws of this state or a rule of the commission made under those laws, or both.

[Acts 1977, 65th Leg., p. 2579, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 111.005 to 111.010 reserved for expansion]

SUBCHAPTER B. COMMON CARRIERS**§ 111.011. Regulation in Public Interest**

The operation of common carriers covered by this chapter is a business in which the public is interested and is subject to regulation by law.

[Acts 1977, 65th Leg., p. 2579, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.012. General Jurisdiction of Commission

Particular powers granted to the commission by the provisions of this chapter do not limit the general powers conferred by other laws.

[Acts 1977, 65th Leg., p. 2579, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.013. Control of Pipelines

A pipeline subject to the provisions of this chapter not exempt under Section 111.003 of this code, which is used in connection with the business of purchasing or purchasing and selling crude petroleum, or in the business of transporting coal in whatever form by pipeline for hire in Texas, shall be operated as a common carrier and shall be subject to the jurisdiction of the commission.

[Acts 1977, 65th Leg., p. 2579, ch. 871, art. I, § 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 2692, ch. 871, art. II, § 2, eff. Sept. 1, 1977.]

§ 111.014. Publication of Tariffs

Common carriers shall make and publish their tariffs under rules prescribed by the commission. [Acts 1977, 65th Leg., p. 2580, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.015. Transportation Without Discrimination

Subject to the law and the rules prescribed by the commission, a common carrier shall receive and transport crude petroleum delivered to it for transportation and perform its other related duties without discrimination.

[Acts 1977, 65th Leg., p. 2580, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.016. Discrimination Between Shippers

(a) A common carrier in its operations as a common carrier shall not discriminate between or against shippers with regard to facilities furnished, services rendered, or rates charged under the same or similar circumstances in the transportation of crude petroleum.

(b) A common carrier shall not discriminate in the transportation of crude petroleum produced or purchased by itself directly or indirectly.

(c) In this connection, a pipeline is a shipper of the crude petroleum produced or purchased by itself directly or indirectly and handled through its facilities.

[Acts 1977, 65th Leg., p. 2580, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.017. Equal Compensation for Like Service

(a) No common carrier in its operations as a common carrier may charge, demand, collect, or receive either directly or indirectly from anyone a greater or lesser compensation for a service rendered than from another for a like and contemporaneous service.

(b) The provisions of Subsection (a) of this section do not limit the right of the commission to prescribe rules and rates from or to some places that are different from rules or rates for transportation from or to other places.

[Acts 1977, 65th Leg., p. 2580, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.018. Effect of Commission Order

A common carrier is not guilty of discrimination when obeying an order of the commission.

[Acts 1977, 65th Leg., p. 2580, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.019. Right of Eminent Domain

(a) Common carriers have the right and power of eminent domain.

(b) In the exercise of the power of eminent domain granted under the provisions of Subsection (a) of this section, a common carrier may enter on and

condemn the land, rights-of-way, easements, and property of any person or corporation necessary for the construction, maintenance, or operation of the common carrier pipeline.

[Acts 1977, 65th Leg., p. 2580, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.0191. Costs of Relocation of Property

In the event a common carrier pipeline in the exercise of the power of eminent domain or police power or any other power granted under this chapter makes necessary the relocation, raising, lowering, rerouting, or changing the grade of, or altering the construction of any railroad, electric transmission, telegraph or telephone lines, properties and facilities, or pipeline, all such relocation, raising, lowering, rerouting, changing of grade, or alteration of construction shall be accomplished at the sole expense of such common carrier pipeline. The term "sole expense" means the actual cost of the relocation, raising, lowering, rerouting, or change in grade or alteration of construction in providing comparable replacement without enhancement of the facilities, after deducting therefrom the net salvage value derived from the old facility.

[Acts 1977, 65th Leg., p. 2694, ch. 871, art. II, § 4, eff. Sept. 1, 1977.]

§ 111.0192. Limitations on the Powers of Eminent Domain in Certain Situations

(a) The right of eminent domain granted under this chapter to any pipelines transporting coal in whatever form shall not include and cannot be used to condemn water or water rights for use in the transportation of coal by pipeline, and no Texas water from any source shall be used in connection with the transportation, maintenance, or operation of a coal slurry pipeline (except water used for drinking, toilet, bath, or other personal uses at pumping stations or offices) within the State of Texas unless the Texas Water Commission shall determine, after public hearing, that the use will not be detrimental to the water supply of the area from which the water is sought to be extracted.

(b) The right of eminent domain granted under this chapter to any pipeline transporting coal in whatever form shall not include the power to take land or any interest in land, by exercise of the power of eminent domain, for the purpose of drilling for, mining, or producing any oil, gas, geothermal, geothermal/geopressed, lignite, coal, sulphur, uranium, plutonium, or other mineral, but this provision does not impair the right of any such entity to acquire title to real property for pipelines, including cooling ponds and related surface installations and equipment.

[Acts 1977, 65th Leg., p. 2694, ch. 871, art. II, § 6, eff. Sept. 1, 1977.]

§ 111.0193. Restoration of Property

Every condemnation award granted under this chapter shall require that the condemnor restore the property which is the subject of the award to its former condition as near as reasonably practicable.

[Acts 1977, 65th Leg., p. 2695, ch. 871, art. II, § 7, eff. Sept. 1, 1977.]

§ 111.020. Pipeline on Public Stream or Highway

(a) Subject to the provisions of Subsection (b) of this section, all common carriers are entitled to lay, maintain, and operate along, across, or under a public stream or highway in this state pipelines, together with telegraph and telephone lines incidental to and designed for use only in connection with the operation of the pipelines.

(b) The right to run a pipeline or telegraph or telephone line along, across, or over a public road or highway may be exercised only on condition that:

(1) it does not interfere with traffic on the road or highway;

(2) the road or highway is promptly restored to its former condition of usefulness;

(3) the restoration of the road or highway is subject also to the supervision of the commissioners court or other proper local authority; and

(4) no pipes or pipelines are laid parallel with and on a public highway closer than 15 feet from the improved section of the highway except with the approval and under the direction of the commissioners court of the county in which the public highway is located.

(c) The common carrier shall compensate the county or road district, respectively, for any damage done to the public road in the exercise of the privileges conferred.

(d) A person may acquire the right conferred in this section by filing with the commission a written acceptance of the provisions of this chapter expressly agreeing that, in consideration of the rights acquired, it becomes a common carrier subject to the duties and obligations conferred or imposed by this chapter.

[Acts 1977, 65th Leg., p. 2580, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.021. Pipeline Under Railroad, Street Railroad, or Canal

A common carrier is entitled to lay its pipe or pipeline under any railroad, railroad right-of-way, street railroad, or canal in this state.

[Acts 1977, 65th Leg., p. 2581, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.022. Right to Use Street or Alley in City or Town

The provisions of this chapter do not grant a pipeline company the right to use a public street or alley in an incorporated or unincorporated city or town except with express permission of the governing body of the city or town or the right to lay its pipes or pipelines along and under a street or alley in an incorporated city or town except with the consent and under the direction of the governing body of the city or town.

[Acts 1977, 65th Leg., p. 2581, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.023. Exchange of Facilities

(a) A common carrier shall exchange crude petroleum tonnage with each like common carrier.

(b) When a necessity exists, the commission may require connections and facilities for the interchange of crude petroleum tonnage to be made at every locality reached by both pipelines, subject to the rules and rates made by the commission.

(c) A common carrier pipeline under like rules shall be required to install and maintain facilities for the receipt and delivery of crude petroleum of patrons at all points on the pipeline.

[Acts 1977, 65th Leg., p. 2581, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.024. Limit on Amount of Oil Carried

No common carrier may be required at any time to receive for shipment from any person more than 3,000 barrels of petroleum in any one day.

[Acts 1977, 65th Leg., p. 2581, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.025. Abandoning Connections

(a) No common carrier may abandon any of its connections or lines except under authority of a permit granted by the commission or with written consent of the owner or duly authorized agent of the wells to which connections are made.

(b) Before granting a permit to abandon any connection, the commission shall issue proper notice and hold a hearing as provided by law.

[Acts 1977, 65th Leg., p. 2581, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 111.026 to 111.050 reserved for expansion]

SUBCHAPTER C. PUBLIC UTILITIES

§ 111.051. Applicability of Statute to Public Utilities

A public utility is subject to the provisions of this subchapter and other provisions of this chapter relating to public utilities.

[Acts 1977, 65th Leg., p. 2582, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.052. Discrimination by Public Utility

No public utility in its operations as a public utility may discriminate between or against its patrons in regard to facilities furnished or services rendered, or rates charged under the same or similar circumstances, in the storage of crude oil.

[Acts 1977, 65th Leg., p. 2582, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.053. Bond of Public Utility

(a) Before engaging in business as a public utility, a person, association, or corporation that is to engage in business as a public utility shall file a bond in an amount not to exceed \$25,000 that is properly executed and made payable to the State of Texas with the amount of the bond and the sureties on the bond subject to the approval of the commission.

(b) The bond or securities in lieu of the bond as provided in Article 836, Revised Civil Statutes of Texas, 1925, as amended, shall be approved by the commission before it is filed.

(c) After proper notice and hearing as provided by law, the amount of the bond may be changed from time to time by order of the commission, according to the volume of business done or to be done by the public utility.

(d) The bond shall be conditioned that the public utility will observe the applicable provisions of this subchapter and chapter and the rules of the commission insofar as its business is regulated and controlled by the commission and that the public utility will exercise ordinary care in the storage, preservation, handling, and delivery of petroleum products entrusted to it and shall guarantee the classification, measurements, and grades made by it under its authority and in conformity herewith.

(e) The bond shall be for the benefit of the patrons of the public utility and their assignees as though they were named obligees in the bond and they shall severally have the right of suit on the bond.

[Acts 1977, 65th Leg., p. 2582, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.054. Lien for Storage Charges

A public utility shall have a lien on the commodity in its possession to secure it in the payment of all proper storage charges against the commodity or the transportation charges accrued to or paid or advanced by it or both and the lien is superior to all other liens on the commodity except a lien for taxes.

[Acts 1977, 65th Leg., p. 2582, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 111.055 to 111.080 reserved for expansion]

SUBCHAPTER D. COMMON PURCHASERS

§ 111.081. Definition of Common Purchaser

(a) In this subchapter, "common purchaser" means:

(1) every person that purchases crude oil or petroleum produced within the limits of this state and that is affiliated through stock ownership, common control, contract, or in any other manner with a common carrier by pipeline or is itself a common carrier;

(2) every person, gas pipeline company, or gas purchaser that claims or exercises the right to carry or transport natural gas by pipeline or pipelines for hire, compensation, or otherwise within the limits of this state or that engages in the business of purchasing or taking natural gas, residue gas, or casinghead gas thereof;

(3) every person that operates a crude oil gathering system, whether by pipeline or truck, that may purchase crude oil or petroleum in this state, whether or not it is a common carrier or affiliated with a common carrier; and

(4) the business of purchasing or of purchasing and selling crude petroleum by the use of a gathering system for crude petroleum, whether by pipeline or by truck.

(b) The persons covered by Subdivision (3), Subsection (a) of this section do not include persons transporting only crude oil from property in which they own an operating interest.

(c) The operation of a crude oil gathering system by a person, association of persons, or corporation transporting only crude oil from property in which it owns an operating interest shall not be considered to be included in Subdivision (4) of Subsection (a) of this section.

[Acts 1977, 65th Leg., p. 2582, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.082. Purpose for Including Certain Entities Under Regulation as Common Purchasers

Persons, gas pipeline companies, and gas purchasers claiming or exercising the right to carry or transport natural gas by pipeline or pipelines for hire, compensation, or otherwise within the limits of this state are regulated as common purchasers under this subchapter for the purpose of further conserving the natural gas resources of this state.

[Acts 1977, 65th Leg., p. 2583, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.083. Duty of Certain Common Purchasers

A common purchaser as defined in Subdivision (2), Subsection (a), Section 111.081 of this code shall purchase or take the natural gas purchased or taken by it as a common purchaser under rules prescribed

by the commission in the manner, under the inhibitions against discriminations, and subject to the provisions applicable under this chapter to common purchasers of oil.

[Acts 1977, 65th Leg., p. 2583, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.084. Operation of Gathering Systems for Crude Petroleum

The operation of gathering systems for crude petroleum by pipeline or by truck in connection with the purchase or purchase and sale of crude petroleum is a business in the mode of the conduct of which the public is interested, and as such is subject to regulation by law. Therefore, it is provided that the business of purchasing or of purchasing and selling crude petroleum by the use of a gathering system for crude petroleum, whether by pipeline or by truck, shall not be conducted unless the person operating the gathering system being used in this manner in connection with this business is a common purchaser under this law and subject to the jurisdiction conferred on the commission over common purchasers.

[Acts 1977, 65th Leg., p. 2583, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.085. Applicability of Rate Provisions to Certain Common Purchasers

Common purchasers as defined in Subdivision (3), Subsection (a), Section 111.081 of this code are subject to the same regulation concerning rates and charges for gathering, transporting, loading, and delivering crude petroleum as set out in Subchapter F of this chapter.

[Acts 1977, 65th Leg., p. 2583, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.086. Discrimination Between Persons and Fields

(a) A common purchaser shall purchase oil offered to it for purchase without discrimination in favor of one producer or person against another producer or person in the same field and without unjust or unreasonable discrimination between fields in this state.

(b) A question of justice or reasonableness under this section shall be determined by the commission taking into consideration the production and age of wells in respective fields and all other proper factors.

[Acts 1977, 65th Leg., p. 2584, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.087. Conditions in Taking Production

(a) No common purchaser may discriminate between or against crude oil or petroleum of a similar kind or quality in favor of its own production, or

production in which the common carrier may be directly or indirectly interested in whole or part.

(b) For the purpose of prorating the purchase of crude oil or petroleum to be marketed, the production shall be taken in like manner as that of any other person or producer and shall be taken in the ratable proportion that the production bears to the total production offered for market in the field. [Acts 1977, 65th Leg., p. 2584, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.088. Commission Relief

After proper notice and hearing as provided by law, the commission may relieve any common purchaser from the duty of purchasing petroleum of inferior quality or grade.

[Acts 1977, 65th Leg., p. 2584, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.089. Discrimination as to Royalty Oil

(a) In making purchases of royalty oil, a common purchaser shall comply with the provisions of this subchapter, Subchapters C, F, and G of this chapter, and Sections 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, and 111.140 of this code, and shall not discriminate between royalty owners or landowners or both in making those purchases.

(b) No common purchaser may unreasonably delay payments to a royalty owner or landowner or both in purchases of said oil or gas.

(c) In addition to other penalties, the royalty owner or landowner or both have a cause of action for violation of this section against the common purchaser for damages and may file suit for damages in any court of competent jurisdiction in the county in which the royalty lies.

[Acts 1977, 65th Leg., p. 2584, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.090. Compliance by Common Purchasers

The commission shall enforce compliance with this subchapter, Subchapters C, F, and G of this chapter, and Sections 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, and 111.140 of this code and after notice and hearing, may make rules and orders defining the distance that extensions or gathering lines shall be made to all oil or gas wells and other rules or orders that may be necessary to carry out those provisions cited in this section and to prevent discrimination.

[Acts 1977, 65th Leg., p. 2584, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.091. Prevention of Discrimination

(a) The commission shall make inquiry in each field concerning the connection of various producers, and if discrimination is found to be practiced by a common purchaser, the commission shall issue an

order to the common purchaser to make any reasonable extensions of its lines, reasonable connections, and ratable purchases that will prevent the discrimination.

(b) The commission may issue a show cause order to any common purchaser requesting it to appear and show cause why it should not purchase the allowable production of any producer discriminated against under Subsection (a) of this section.

[Acts 1977, 65th Leg., p. 2584, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.092. Injunction to Prevent Discrimination

On information that discrimination is practiced in its purchases by a common purchaser, the commission shall request the attorney general to bring a mandatory injunction suit against the common purchaser to compel the reasonable extensions that are necessary to prevent discrimination.

[Acts 1977, 65th Leg., p. 2585, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.093. Forfeiture of Charter of Domestic Corporation

(a) If a domestic corporation that is a common purchaser violates any provision of this subchapter, Subchapter C, F, or G of this chapter, or Sections 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, or 111.140 of this code or any valid rule promulgated by the commission under those provisions, the attorney general may bring suit in a district court in Travis County against the corporation to forfeit the charter of the corporation and enjoin and forever prohibit the corporation from doing business in this state.

(b) If the corporation is found guilty by the court before whom the action is brought under this section, the charter of the corporation may be forfeited and the injunction may be granted, provided that the forfeiture and injunction are in addition to all other penalties.

[Acts 1977, 65th Leg., p. 2585, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.094. Forfeiture of Charter of Foreign Corporation

(a) If a foreign corporation that is a common purchaser violates a provision of this subchapter, Subchapter C, F, or G of this chapter, or Sections 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, or 111.140 of this code or a valid rule promulgated by the commission under these provisions, the attorney general may bring suit in a district court of Travis County to cancel the permit of the corporation and enjoin and forever prohibit the corporation from doing business in this state.

(b) If the corporation is found guilty by the court before whom the action is brought, the permit may

be cancelled and the injunction may be granted, provided the cancellation and injunction are in addition to all other penalties.

[Acts 1977, 65th Leg., p. 2585, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.095. Action for Damages

(a) If a person is discriminated against by a common purchaser in favor of the production of the common purchaser, the person may bring an action for damages against the common purchaser.

(b) An action for damages under this section may be brought in any court of competent jurisdiction in the county in which the damage occurred.

[Acts 1977, 65th Leg., p. 2585, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.096. Duties and Responsibilities of Common Purchasers, Purchasers, Gatherers, and Transporters

Notwithstanding the provisions of any statute or law including the provisions of this subchapter, Subchapters C, F, and G of this chapter, and Sections 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, and 111.140 of this code, none of the provisions of Sections 111.081, 111.084, 111.085, and 111.091 of this code shall increase or decrease the duties or responsibilities of any common purchaser, purchaser, gatherer, or transporter of natural gas, residue gas, or casinghead gas.

[Acts 1977, 65th Leg., p. 2585, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.097. Antitrust Laws Unaffected

(a) No provision of this subchapter may be construed as modifying, limiting, changing, repealing, or affecting in any manner any part of the present law of this state defining and regulating trusts, monopolies, and conspiracies in restraint of trade.

(b) No provision of this subchapter may be construed as authorizing any agreement or combination or both of capital, skill, and acts or any of these and any combination or consolidation now prohibited by the antitrust laws of this state or laws of this state prohibiting trusts, monopolies, and conspiracies in restraint of trade or both.

(c) No provision of this subchapter is intended or may be construed as authorizing any agreement, act, combination, consolidation, or other arrangement that is now prohibited under the antitrust laws of this state or the laws prohibiting and defining trusts, monopolies, and conspiracies in restraint of trade or both.

[Acts 1977, 65th Leg., p. 2586, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 111.098 to 111.130 reserved for expansion]

SUBCHAPTER E. POWERS AND DUTIES OF THE COMMISSION

§ 111.131. Commission Rules for Common Carriers

The commission shall establish and promulgate rules for gathering, transporting, loading, and delivering crude petroleum by common carriers in this state and for use of storage facilities necessarily incident to this transportation and shall prescribe and enforce rules, in the manner provided by law, for the government and control of common carriers with respect to their pipelines and receiving, transferring, and loading facilities.

[Acts 1977, 65th Leg., p. 2586, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.132. Commission Rules for Public Utilities

(a) The commission shall establish and enforce rules governing:

(1) the character of facilities to be furnished by public utilities;

(2) the forms of receipts to be issued by public utilities; and

(3) the rates, charges, and rules for the storage of crude petroleum by public utilities in respect to their storage facilities and for the inspection, grading, measurement, deductions for waste or deterioration, and the delivery of their products.

(b) The commission also shall exercise its authority to establish and enforce rules governing public utilities on petition of an interested person.

[Acts 1977, 65th Leg., p. 2586, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.133. Enforcement by Commission

The commission may make rules for the enforcement of the provisions of Subchapters C, D, and F of this chapter and Sections 111.004, 111.025, 111.131 through 111.132, 111.136, 111.137, and 111.140 of this code.

[Acts 1977, 65th Leg., p. 2586, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.134. Notice and Hearing

No order of the commission establishing, prescribing, or modifying rules or rates may be made except after a hearing and after not less than 10 days nor more than 30 days notice to the person, firm, corporation, partnership, joint stock association, or association owning or controlling and operating the pipeline or pipelines affected.

[Acts 1977, 65th Leg., p. 2586, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.135. Validity of Commission Orders

Until set aside or vacated by an order or decree of a court of competent jurisdiction, all orders of the commission relating to any matter within its jurisdiction shall be accepted as prima facie evidence of their validity.

[Acts 1977, 65th Leg., p. 2587, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.136. Review of Orders

A person affected by an order of the commission adopted under the authority of this chapter is entitled to judicial review of that order in a manner other than by trial de novo.

[Acts 1977, 65th Leg., p. 2587, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.137. Enlargement and Extension of Facilities

On its own initiative without complaint, and after proper notice and hearing, as provided by law the commission may authorize or require by order any common carrier owning or operating pipelines in this state or owning, operating, or managing crude petroleum storage tanks or facilities for the public for hire, to extend or enlarge those pipelines or storage facilities if the extension or enlargement is found to be reasonable and required in the public interest and the expense involved will not impair the ability of the common carrier or public utility to perform its duty to the public.

[Acts 1977, 65th Leg., p. 2587, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.138. Books and Records

The commission may investigate the books and records kept by any common carrier in connection with its business.

[Acts 1977, 65th Leg., p. 2587, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.139. Reports

(a) The commission shall require each common carrier to make reports including duly verified monthly reports of:

(1) the total quantities of crude petroleum owned by the common carrier in the state;

(2) the total quantities of crude petroleum held by the common carrier in storage for others in the state; and

(3) the common carrier's unfilled storage capacity.

(b) The commission shall give no publicity to the stock of crude petroleum on hand of any particular common carrier, but the commission may, in its discretion, make public the aggregate amounts held by all common carriers making reports and their aggregate storage capacity.

[Acts 1977, 65th Leg., p. 2587, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.140. Filing Monthly Statements

(a) On or before the 20th day of each calendar month, every common carrier in this state and every public utility shall file with the commission and shall post in a conspicuous place accessible to the general public in its principal office and each of its division offices in this state a statement, duly verified, containing information concerning its business during the preceding calendar month as follows:

(1) the amount of crude or refined petroleum in the actual and immediate custody of the common carrier or public utility at the beginning and close of the month and the location or holding point of this petroleum, including the location and designation of each plant or place of deposit and the name of its owner;

(2) the amount of crude or refined petroleum received by the common carrier or public utility during the month;

(3) the amount of crude or refined petroleum that was delivered by the common carrier or public utility during the month;

(4) the amount of crude or refined petroleum held by the common carrier or public utility for itself or parent or affiliated organizations; and

(5) the available empty storage owned or controlled by the common carrier or public utility and its location.

(b) The information to be provided under Subsection (a) of this section shall be set out separately as to crude petroleum and each refined product of crude petroleum in each statement.

[Acts 1977, 65th Leg., p. 2587, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.141. Grades of Oil

(a) The commission shall make rules for:

(1) the ascertainment of the amount of water and other foreign matter in oil tendered for transportation;

(2) deduction for water and other foreign matter; and

(3) the amount of deduction to be made for temperature, leakage, and evaporation.

(b) No common carrier may be required to receive or transport any crude petroleum except that which is marketable under rules prescribed by the commission.

[Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.142. Equitable Apportionment of Excessive Amount of Crude Petroleum

If more crude petroleum is offered for transportation by a common carrier than can be transported immediately, it shall be apportioned equitably, and

the commission may make and enforce general or specific rules for equitable apportionment.

[Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 111.143 to 111.180 reserved for expansion]

SUBCHAPTER F. RATES

§ 111.181. **Establishing and Promulgating Rates**

The commission shall establish and promulgate rates of charges for gathering, transporting, loading, and delivering crude petroleum by common carriers in this state and for use of storage facilities necessarily incident to this transportation.

[Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.182. **Items Included in Rates**

The rates established and promulgated by the commission shall include both single- and joint-line transportation, deduction for evaporation and shrinkage, demurrage, storage, and overage charges and all other similar items.

[Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.183. **Basis for Rate**

The basis of the rates shall be an amount that will provide a fair return on the aggregate value of the property of a common carrier used and useful in the services performed after providing reasonable allowance for depreciation and other factors and for reasonable operating expenses under honest, efficient, and economical management.

[Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.184. **Discretion of Commission**

The commission has reasonable latitude in establishing and adjusting competitive rates.

[Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.185. **Temporary Rates**

If a common carrier makes application or files a tariff to establish a new rate on either a new or old line, a temporary rate may be placed into effect immediately on filing the tariff with the commission.

[Acts 1977, 65th Leg., p. 2588, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.186. **Reparation and Reimbursement**

If rates have been filed, each shipper who pays these filed rates is entitled to reparation or reimbursement of all excess rates or transportation charges paid over and above the rate that is finally determined on the shipments.

[Acts 1977, 65th Leg., p. 2589, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.187. **Reimbursement of Excess Charges**

If a rate is filed by a common carrier and complaint against the rate or petition to reduce the rate is filed by a shipper, and the complaint is sustained in whole or part, all shippers who have paid the rates filed by the common carrier are entitled to reparation or reimbursement of all excess transportation charges paid over and above the proper rate as finally determined on all shipments made after the date of the filing of the complaint.

[Acts 1977, 65th Leg., p. 2589, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.188. **Annual Rate Hearing**

The commission shall hold a general hearing once each year for the purpose of adjusting rates to conform to the basis of rates and charges provided in this subchapter.

[Acts 1977, 65th Leg., p. 2589, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.189. **Hearing and Determination of Rates**

If a person at interest files an application for a change in a rate or rates, the commission shall call a hearing and immediately after the hearing shall establish and promulgate a rate or rates in accordance with the basis provided in this subchapter.

[Acts 1977, 65th Leg., p. 2589, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.190. **Hearings to Adjust Rates**

On its own motion or on motion of any interested person, the commission shall hold a hearing to adjust, establish, and promulgate a proper rate or rates if it has reason to believe that any rate or rates do not conform to the basis provided in this subchapter.

[Acts 1977, 65th Leg., p. 2589, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 111.191 to 111.220 reserved for expansion]

SUBCHAPTER G. ENFORCEMENT

§ 111.221. **Complaints; Jurisdiction to Hear Complaints**

Any person or the attorney general on behalf of the state may institute proceedings before the commission or apply for a hearing before the commission on any question relating to the enforcement of Subchapters C, D, and F of this chapter and Sections 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, and 111.140 of this code, and the commission has jurisdiction to hear and determine these questions after giving proper notice as provided by law.

[Acts 1977, 65th Leg., p. 2589, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.222. Application for Receivership

If a rule or order promulgated by the commission under Subchapter C, D, or F of this chapter or Section 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, or 111.140 of this code is found by a court to be valid in whole or part in a suit to which the commission is a party, and if another party to the suit or other proceedings violates the rule, order, or judgment or allows any property owned or controlled by him to be used in violation of the rule, order, or judgment, the commission shall make application to the judge of the trial court setting out the rule, order, or judgment and that the party subsequent to the date of the judgment violated or is violating the rule, order, or judgment and requesting a receiver be appointed as provided in Section 111.223 of this code.

[Acts 1977, 65th Leg., p. 2589, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.223. Appointment of Receiver

On application by the commission and after notice and hearing, the judge of the trial court may appoint a receiver of the property involved in violating the rule, order, or judgment and shall set a proper bond for the receiver.

[Acts 1977, 65th Leg., p. 2590, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.224. Duties and Responsibilities of Receiver

As soon as the receiver has qualified, he shall take possession of the property and shall perform his duties as receiver of the property under the orders of the court, strictly observing the rule, order, or judgment.

[Acts 1977, 65th Leg., p. 2590, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.225. Motion to Dissolve Receivership

A party whose property has been placed in the hands of a receiver may move to dissolve the receivership and discharge the receiver only on showing that the party has not wilfully violated nor allowed property owned or controlled by him to be used in violating the rule, order, or judgment or on other good cause shown.

[Acts 1977, 65th Leg., p. 2590, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.226. Bond

(a) Before dissolving the receivership or discharging the receiver, the court, in its discretion, may require the party applying for the dissolution or discharge to give bond with good and sufficient sureties in an amount to be fixed by the court, sufficient reasonably to indemnify all persons who may suffer damage by reason of the violation of the rule or order judged to be valid.

(b) In determining the amount of the bond, the judge shall take into consideration all the facts and circumstances surrounding the parties that he considers necessary to determine the reasonableness of the amount of the bond.

(c) If the bond is made by a bonding or surety company, it shall be made by a company authorized to do business in this state.

(d) The bond shall be made payable to and be approved by the judge of the court and shall be for the use and benefit of and may be sued on by all persons who suffer damage by reason of any further violation by the party giving the bond and who brings suit on the bond.

(e) From time to time on motion, the court may increase or decrease the amount of the bond and may require new or additional sureties as the facts may warrant or justify.

[Acts 1977, 65th Leg., p. 2590, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.227. Provisions Applicable to Enforcement

The provisions of Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, apply in the enforcement of Subchapters C, D, and F of this chapter and Sections 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, and 111.140 of this code.

[Acts 1977, 65th Leg., p. 2590, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 111.228 to 111.260 reserved for expansion]

SUBCHAPTER H. PENALTIES**§ 111.261. Penalty Recoverable by State**

A common carrier under this chapter is subject to a penalty of not less than \$100 nor more than \$1,000 for each offense, recoverable in the name of the state, if the common carrier:

(1) violates Section 111.013 through 111.024, 111.134, 111.135, 111.138, 111.139, 111.141, or 111.142 of this code or a valid order of the commission; or

(2) fails to perform a duty imposed by Section 111.013 through 111.024, 111.134, 111.135, 111.138, 111.139, 111.141, or 111.142 of this code.

[Acts 1977, 65th Leg., p. 2591, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.262. Penalty Recoverable by Aggrieved Party

A common carrier is subject to a penalty of not less than \$100 nor more than \$1,000 for each offense of unlawful discrimination as defined in Sections 111.015 through 111.017 of this code. The suit shall

be brought in the name of and for the use of the aggrieved person, corporation, or association of persons.

[Acts 1977, 65th Leg., p. 2591, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 111.263. Penalty Recoverable by State and Aggrieved Party

(a) Any person who violates a provision of Subchapter C, D, F, or G of this chapter or Section 111.004, 111.025, 111.131 through 111.133, 111.136, 111.137, or 111.140 of this code, a rule promulgated under these subchapters or sections, or an order passed by the commission under these subchapters or sections or one of these rules, on violation, is subject to a penalty of not less than \$100 nor more than \$1,000 for each offense recoverable in the name of the state in a district court in Travis County. Each day a violation continues constitutes a separate offense.

(b) One-half of the penalty may be recovered by and for the use of any person against whom there is an unlawful discrimination as defined in Subchapter D of this chapter, and this suit shall be brought in the name of and for the use of the party or parties aggrieved.

[Acts 1977, 65th Leg., p. 2591, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

**SUBCHAPTER I. COMMON CARRIER
COAL PIPELINES**

§ 111.301. Certificate Required

A person that is a common carrier under Subsection (5), Section 111.002 of this code must apply for and be issued a certificate of public convenience and necessity from the commission pursuant to the commission's authority to issue certificates under Section 111.302 of this code if the commission finds after a hearing that the public convenience and necessity will be served by the construction and operation of the pipeline.

[Acts 1977, 65th Leg., p. 2692, ch. 871, art. II, § 3, eff. Sept. 1, 1977.]

§ 111.302. Commission Authority to Issue Certificates

(a) The commission is further authorized, empowered, and directed to issue certificates of public convenience and necessity to pipelines transporting coal in whatever form or mixture for hire in Texas if the commission finds that the public convenience and necessity will be served in that existing facilities will not be able to provide the transportation as economically or efficiently as the proposed pipeline.

(b) In exercising its powers and duties under this section, the commission may not issue a permit for or attempt to regulate in any manner the condemna-

tion, appropriation, or acquisition of surface or ground water in Texas.

(c) The commission shall not issue a permit, certificate, or any authority to any applicant whose rates and charges are not regulated by government authority, either state or federal, and that state or federal regulations insure to the public and to the ultimate electric consumer that the contracts, rates, and charges shall be just and reasonable, nondiscriminatory, and offering no preference or advantage to any person, corporation, entity, or group.

(d) The commission shall not issue a permit, certificate, or any authority to any applicant whose pipeline transporting coal in whatever form unless the pipeline transporting coal in whatever form is to be buried at least 36 inches below the surface, except in such instances in which the commission specifically exempts the 36-inch depth requirement and unless the pipeline transporting coal in whatever form conforms to all applicable state or federal regulations concerning the operation, maintenance, and construction of that same pipeline.

(e) The commission shall condition the issuance of a certification upon the requirement that the pipeline company shall take no more than 50 feet in width of right-of-way under the power of eminent domain, except for temporary work areas adjacent to the right-of-way and then not to exceed 100 feet in width for the duration of the construction period only; and provided that any condemnation award granted under this chapter shall take into account the damages to the remainder caused by the exercise of eminent domain for the temporary work areas.

[Acts 1977, 65th Leg., p. 2693, ch. 871, art. II, § 3, eff. September 1, 1977.]

§ 111.303. Certification Procedure

(a) The coal pipeline applicant shall publish, in accordance with regulations promulgated by the commission and existing law, a notice that it has filed an application for a certificate of public convenience and necessity under this Act in a newspaper of general circulation in each county in which the project will be located. The notice shall, among other things, specify to the extent practicable the land which would be subject to the power of eminent domain.

(b) The commission shall then conduct public hearings in areas of the state along the prospective pipeline right-of-way as it shall determine shall be necessary to give property owners an opportunity to be heard. The commission is vested with authority to alter the right-of-way to meet with local objections.

[Acts 1977, 65th Leg., p. 2693, ch. 871, art. II, § 3, eff. Sept. 1, 1977.]

§ 111.304. Transportation Contract

No common carrier pipeline transporting coal in whatever form shall contract or otherwise agree to transport coal for a term in excess of three years without prior approval of that contract or agreement by the commission which approval shall be given on determination that the contract or agreement is in the public interest in which case the contract or agreement shall be enforceable.

[Acts 1977, 65th Leg., p. 3693, ch. 871, art. II, § 3, eff. Sept. 1, 1977.]

§ 111.305. Other Agencies

(a) The commission shall seek and act on the recommendations of the Texas Air Control Board, the Texas Water Quality Board, the Governor's Energy Advisory Council, or their successors responsible for environmental determinations and shall specify the proper use and disposal of nondischARGEABLE water.

(b) Neither the authority conveyed to the commission by this subchapter to issue certificates and to promulgate rules governing pipelines transporting coal in whatever form nor the powers and duties conveyed on those pipelines by this chapter shall affect, diminish, or otherwise limit the jurisdiction and authority of the Texas Water Commission and the Texas Water Quality Board, or their successors, to regulate by applicable rules the acquisition, use, control, disposition, and discharge of water or water rights in Texas.

[Acts 1977, 65th Leg., p. 2694, ch. 871, art. II, § 3, eff. Sept. 1, 1977.]

CHAPTER 112. USED OIL FIELD EQUIPMENT DEALERS

SUBCHAPTER A. GENERAL PROVISIONS

Section

- 112.001. Definitions.
112.002. Applicability.

SUBCHAPTER B. SALE OF USED EQUIPMENT

- 112.011. Bill of Sale.
112.012. Required Information.

SUBCHAPTER C. ENFORCEMENT; PENALTY

- 112.031. Injunctive Relief.
112.032. Criminal Penalty.

SUBCHAPTER A. GENERAL PROVISIONS

§ 112.001. Definitions

In this chapter:

(1) "Pipeline equipment" means all pipe, fittings, pumps, telephone and telegraph lines, and all other material and equipment used as part of or incident to the construction, maintenance,

and operation of a pipeline for the transportation of oil, gas, water, or other liquid or gaseous substance.

(2) "Oil and gas equipment" means equipment and materials that are part of or incident to the development, maintenance, and operation of oil and gas properties and includes equipment and materials that are part of or incident to the construction, maintenance, and operation of oil and gas wells, oil and gas leases, gasoline plants, and refineries.

(3) "Used materials" means pipeline equipment or oil and gas equipment after the equipment has once been placed in the use for which it first was manufactured and intended.

(4) "Dealer" means every person engaged in buying, selling, or otherwise dealing in used materials and who has a fixed, designated place or places of business within the state.

(5) "Broker" means every person engaged in buying, selling, or otherwise dealing in used materials as agent for the seller of the used materials, or as agent for the buyer of the used materials, or as agent for both.

(6) "Peddler" means every person who is not a dealer or broker and who is engaged in buying, selling, or otherwise dealing in used materials.

[Acts 1977, 65th Leg., p. 2592, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 112.002. Applicability

The provisions of this chapter shall not apply if the reasonable market value of the purchase made is less than \$25.

[Acts 1977, 65th Leg., p. 2592, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 112.003 to 112.010 reserved for expansion]

SUBCHAPTER B. SALE OF USED EQUIPMENT

§ 112.011. Bill of Sale

Before purchasing used materials, a dealer, broker, or peddler shall require that a bill of sale for the used materials be executed and acknowledged by the seller in the manner required by law for registration.

[Acts 1977, 65th Leg., p. 2592, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 112.012. Required Information

The bill of sale shall include:

- (1) the name and address of the dealer, broker, or peddler;
- (2) the serial number, if any;
- (3) the kind, make, size, weight, length, and quantity of the used materials purchased;

- (4) the date of the purchase, if different from the date of the bill of sale;
- (5) the name and address of the seller; and
- (6) the place of location of the property at the time purchased or acquired.

[Acts 1977, 65th Leg., p. 2592, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 112.013 to 112.030 reserved for expansion]

SUBCHAPTER C. ENFORCEMENT; PENALTY

§ 112.031. Injunctive Relief

In the name and on behalf of the State of Texas, the attorney general or any district attorney or county attorney in this state may enjoin a dealer, peddler, or broker from continuing in business in this state as a dealer, peddler, or broker on violation of any of the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2593, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 112.032. Criminal Penalty

A person, dealer, peddler, or broker who violates any of the provisions of this chapter is guilty of a misdemeanor and on conviction is subject to a fine of not less than \$10 nor more than \$50.

[Acts 1977, 65th Leg., p. 2593, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 113. LIQUEFIED PETROLEUM GAS INDUSTRY

SUBCHAPTER A. GENERAL PROVISIONS

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| Section | Title. |
| 113.001. | Definitions. |
| 113.002. | Exceptions. |

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

- 113.011. Liquefied Petroleum Gas Division.
- 113.012. General Duties.
- 113.013. Director of LPG Division.
- 113.014. Employees.
- 113.015. Funds for Financing LPG Division.

SUBCHAPTER C. RULES AND STANDARDS

- 113.051. Adoption of Rules and Standards.
- 113.052. Adoption of National Codes.
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SUBCHAPTER D. LICENSE OF DEALERS IN LPG

- 113.081. License Requirement.
- 113.082. Categories of Dealers; Fees.
- 113.083. Qualification in More Than One Category.
- 113.084. Application.
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- 113.090. Order.
- 113.091. Procedure for Refusal or Denial of License.
- 113.092. Issuance of License.
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- 113.094. Examination of Employees.
- 113.095. Qualified Employees Required.
- 113.096. Surety Bond.
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SUBCHAPTER E. MOTOR VEHICLES

- 113.131. Transport and Delivery Trucks and Transport Trailers.
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- 113.161. Suspension and Revocation.
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- 113.163. Investigation, Witnesses, Books, Records, Documents, Depositions, and Interrogatories.
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SUBCHAPTER G. FEES AND FUNDS

- 113.201. Fees.
- 113.202. Use of Fees.
- 113.203. Deposit and Expenditure of Funds and Fees.

SUBCHAPTER H. INJUNCTIONS AND PENALTIES

- 113.231. Injunctions.
- 113.232. General Penalty.
- 113.233. Supplying LPG After Warning Tag Attached.
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SUBCHAPTER A. GENERAL PROVISIONS

§ 113.001. Title

This chapter may be cited as the Liquefied Petroleum Gas Code or LPG Code.

[Acts 1977, 65th Leg., p. 2594, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.002. Definitions

In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Employee" means any individual who renders or performs any services or labor for another person for compensation and includes individuals hired on a part-time or temporary basis or on a full-time or permanent basis.

(3) "Liquefied petroleum gas" or "LPG" means any material that is composed predominantly of any of the following hydrocarbons or mixtures of hydrocarbons: propane, propylene, normal butane, isobutane, and butylenes.

(4) "Container" means any receptacle in which LPG is transported, delivered, or stored or in which LPG is injected for use or consumption by or through an LPG system.

(5) "Appliance" means any apparatus or fixture that uses or consumes LPG furnished or supplied by an LPG system to which it is connected or attached.

(6) "LPG system" or "system" means all piping, fittings, and valves exclusive of containers and appliances that connect one or more containers to one or more appliances that use or consume LPG.

[Acts 1977, 65th Leg., p. 2594, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.003. Exceptions

None of the provisions of this chapter apply to:

(1) the production, refining, or manufacture of LPG;

(2) the storage, sale, or transportation of LPG by pipeline or railroad tank car by a pipeline company, producer, refiner, or manufacturer;

(3) equipment used by a pipeline company, producer, refiner, or manufacturer in a producing, refining, or manufacturing process or in the storage, sale, or transportation by pipeline or railroad tank car; or

(4) any deliveries of LPG to another person at the place of production, refining, or manufacturing.

[Acts 1977, 65th Leg., p. 2595, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 113.004 to 113.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 113.011. Liquefied Petroleum Gas Division

There is created and organized a separate and distinct division of the commission known as the Liquefied Petroleum Gas Division or the LPG Division.

[Acts 1977, 65th Leg., p. 2595, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.012. General Duties

The LPG Division shall administer and enforce the laws of the state and the rules and standards of the commission relating to liquefied petroleum gas.

[Acts 1977, 65th Leg., p. 2595, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.013. Director of LPG Division

The commission shall appoint and employ a director of the LPG Division who shall serve at the pleasure of the commission and who shall devote his

full time and attention to administering the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2595, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.014. Employees

Sufficient employees shall be provided to the LPG Division for the enforcement of this chapter.

[Acts 1977, 65th Leg., p. 2595, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.015. Funds for Financing LPG Division

The commission shall look alone to the revenue derived from the operation of this chapter and appropriated by the legislature for expenses of conducting the Liquefied Petroleum Gas Division and administering this chapter.

[Acts 1977, 65th Leg., p. 2595, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 113.016 to 113.050 reserved for expansion]

SUBCHAPTER C. RULES AND STANDARDS

§ 113.051. Adoption of Rules and Standards

Except as provided in Section 113.003 of this code, the commission shall promulgate and adopt adequate rules or standards or both relating to any and all aspects or phases of the LPG industry that will protect or tend to protect the health, welfare, and safety of the general public.

[Acts 1977, 65th Leg., p. 2596, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.052. Adoption of National Codes

The commission may adopt by reference, in whole or in part, the published codes of the National Board of Fire Underwriters, the National Fire Protection Association, the American Society for Mechanical Engineers, and other nationally recognized societies or any one or more of these codes as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LPG or any one or more of these purposes.

[Acts 1977, 65th Leg., p. 2596, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.053. Effect on Certain Containers

Rules, standards, and codes adopted pursuant to Sections 113.051 through 113.052 of this code do not apply to containers used in accordance with and subject to the regulations of the Department of Transportation or to containers that are owned or used by the United States government.

[Acts 1977, 65th Leg., p. 2596, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 113.054 to 113.080 reserved for expansion]

SUBCHAPTER D. LICENSE OF DEALERS IN LPG

§ 113.081. License Requirement

(a) Unless a license is obtained from the commission under the provisions of this chapter, no person may engage in this state in:

(1) the manufacture, assembly, repair, sale, and installation of containers or any one or more of these activities;

(2) laying or connecting pipes or piping, including all types of fittings, either in connecting with or to liquefied petroleum gas systems or with or to house service lines or house pipes;

(3) laying or connecting in any manner pipes or piping, including all types of fittings, to serve a system or appliances to be used with liquefied petroleum gas as fuel;

(4) the service, installation, and repair of appliances using or to be used in connection with systems using liquefied petroleum gas as fuel or any one or more of these activities; or

(5) the sale, transportation, dispensing or storage of liquefied petroleum gas, except where stored by the ultimate consumer for consumption only.

(b) The provisions of Subsection (a) of this section do not apply to LPG handled in quantities of less than one gallon United States water capacity that is an integral part of a device for its use or if the person is not engaged in business as a dealer in LPG as provided in Section 113.082 of this code.

[Acts 1977, 65th Leg., p. 2596, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.082. Categories of Dealers; Fees

A prospective dealer in LPG may apply to the LPG Division for a license to engage as a dealer in any one or more of the following categories for the following fees:

(1) Manufacturers or fabricators. The manufacture, fabrication, assembly, and sale of LPG containers, tanks, and equipment or any one or more of these activities. Application and first year license fee of \$500. Annual renewal license fee of \$300.

(2) Limited installers or repairmen. The installation, service, and repair of cooking and space heating appliances excluding water heaters, floor furnaces, central heating units, and the installation of LPG systems of equipment other than an appliance connector approved by the LPG Division or any one or more of these activities. Application and first year license fee of \$50. Annual renewal license fee of \$25.

(3) Wholesalers or jobbers. Any person other than a producer or refiner who sells LPG to transporters, industrial consumers, processors,

distributors, and retail dealers or any one or more of these individuals or entities. Application and first year license fee of \$500. Annual renewal license fee of \$150.

(4) Carriers. The transportation only of LPG by carriers for hire or contract. Application and first year license fee of \$500. Annual renewal license fee of \$150.

(5) General installers and repairmen. The sale, service, installation, and repair of containers, tanks, systems, piping, and equipment that use LPG or any one or more of these activities and the service, installation, and repair of appliances that use LPG or any one or more of these activities. Application and first year license fee of \$50. Annual renewal license fee of \$35.

(6) Retail and wholesale dealers. The transportation, storage, sale, distribution, and/or delivery of LPG at retail or wholesale or any one or more of these activities, including the sale, service, installation, and/or repair of LPG containers, tanks, piping, and/or equipment, and the service, installation, and/or repair of LPG appliances or any one or more of these activities. Application and first year license fee of \$500. Annual renewal license fee of \$150.

(7) Carburetors. The installation, service, and repair of LPG motor fuel carburetion systems and equipment or any one or more of these activities. Application and first year license fee of \$50. Annual renewal license fee of \$25.

(8) Bottle exchanges. The operation of a Department of Transportation bottle, filling, and container exchange or a Department of Transportation bottle, filling, or container exchange including the buying and selling, but not delivery, pickup, or other transportation, of Department of Transportation bottles or containers. Application and first year license fee of \$100. Annual renewal license fee of \$50.

(9) Service station. The operation of an LPG motor fuel service station only. Application and first year license fee of \$50. Annual renewal license fee of \$25.

(10) Municipal corporations. The operation of an LPG system through mains, meters, or pipes by an incorporated city, village, or town. Application and first year license fee of \$150. Annual renewal license fee of \$150.

(11) Bottle dealers. The transportation, delivery, and pickup of Department of Transportation bottles and containers or any one or more of these activities. Application and first year license fee of \$500. Annual renewal license fee of \$150.

(12) Bottle installers. The installation or connection or both of Department of Transporta-

tion bottles or containers or both. Application and first year license fee of \$100. Annual renewal license fee of \$50.

[Acts 1977, 65th Leg., p. 2597, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.083. Qualification in More Than One Category

(a) No dealer in LPG who has authorization under one or more categories under Section 113.082 of this code may do or perform activities provided in another category for which he has not qualified unless he becomes qualified.

(b) Except as provided in Subsection (c) of this section, if a dealer in LPG elects and qualifies for a license under more than one category in Section 113.082 of this code, he shall pay the required application and first year license fee and the subsequent renewal license fees for each category.

(c) No dealer other than one qualifying under Subdivision (1) of Section 113.082 of this code may be required to pay renewal license fees totaling more than \$150 a year regardless of the number of categories for which he is licensed, and no dealer licensed under Subdivision (1) of Section 113.082 of this code may be required to pay renewal license fees totaling more than \$300 a year regardless of the number of categories for which he is licensed.

[Acts 1977, 65th Leg., p. 2598, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.084. Application

(a) An application for license as a dealer in LPG shall be submitted to the LPG Division on printed forms furnished by the LPG Division and shall include any pertinent information the LPG Division may require.

(b) The application and first year license fee required by Section 113.082 of this code together with proof of satisfactory completion of any required examinations shall accompany each original application.

[Acts 1977, 65th Leg., p. 2598, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.085. Hearings

(a) Except as provided in Subsection (b) of this section, the commission shall have public hearings on applications held on the second Monday in the months of January, April, July, and October of each year, or on any other occasions the commission, in compliance with this chapter, considers necessary.

(b) If the second Monday falls on a holiday, the hearing shall be held on the first weekday immediately following the holiday.

[Acts 1977, 65th Leg., p. 2598, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.086. Notice

(a) Notice of each hearing shall be posted at least 30 days before the date of the hearing in a conspicuous place in the office of the director of the LPG Division in Travis County.

(b) In addition to any other requirements provided by law, the notice shall state:

(1) the name, address, and business location of each applicant;

(2) the name or style of each applicant; and

(3) the category or categories applied for under Section 113.082 of this code.

[Acts 1977, 65th Leg., p. 2598, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.087. Examination

(a) The commission shall have prepared for each category under Section 113.082 of this code an examination based on recognized standard codes and practices promulgated by the commission that affect each category.

(b) The commission shall require the applicant or if the applicant is a partnership, firm, corporation, unincorporated association, or other business entity, or if the applicant is not actively engaged in LPG operations, the individual who is directly responsible for and actively supervising the operations of the dealership at each outlet or location, to provide good and sufficient proof that he can and will meet the safety requirements required by this chapter and the rules of the commission.

[Acts 1977, 65th Leg., p. 2599, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.088. Examination Fees

Each applicant shall pay to the commission in advance a nonrefundable examination fee for each required examination in the following amounts:

(1) categories (3) and (4) in Section 113.082 of this code: \$25;

(2) category (6) in Section 113.082 of this code: \$50; and

(3) other categories in Section 113.082 of this code for which an examination is required: \$5.

[Acts 1977, 65th Leg., p. 2599, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.089. Special Requirements for Retail and Wholesale Dealers

(a) If a person applies for a license as a retail and wholesale dealer under category (6) of Section 113.082 of this code, the commission, in addition to other requirements, shall have an actual inspection conducted of the facilities, bulk storage equipment, transportation equipment, and dispensing equipment of the applicant to verify satisfactory compliance with all current safety laws, rules, and practices.

(b) The inspection shall be performed within 30 days following receipt by the commission of the application and proof of compliance with the examination and other requirements of this chapter.

[Acts 1977, 65th Leg., p. 2599, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.090. Order

At a public hearing, if the applicant is found to be qualified to receive a license as a dealer in LPG for one or more of the categories for which he has applied, the commission shall enter an order in its records to that effect, noting the category or categories for which the applicant is found to be qualified. If the applicant fails to qualify, this fact shall be entered in the same manner.

[Acts 1977, 65th Leg., p. 2599, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.091. Procedure for Refusal or Denial of License

The procedure in Subchapter F of this chapter for suspension or revocation of a license or registration is applicable to the refusal or denial of the commission to grant a person a license as a dealer in LPG after proper application.

[Acts 1977, 65th Leg., p. 2599, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.092. Issuance of License

(a) The commission shall issue a license to the applicant in the name under or by which he conducts or proposes to conduct his business as a dealer.

(b) The license shall run to the dealership to or in connection with which it is issued and it shall confer no rights or privileges separate and apart from that dealership.

[Acts 1977, 65th Leg., p. 2599, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.093. Renewal

On the timely payment or tender of the renewal license fee and on furnishing the commission with the bond required in Section 113.096 of this code, a certificate of insurance evidencing that insurance required under Section 113.097 of this code is in full force and effect, and other information and data reasonably required by the commission, the license of a dealer in LPG is renewable.

[Acts 1977, 65th Leg., p. 2600, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.094. Examination of Employees

(a) No dealer in LPG may employ any person as a service or installation man or as both or as a delivery or transport truck driver unless the person has submitted to and passed an examination as prescribed by the commission to determine his competency to

perform safely the duties required of him in handling or dealing with LPG in the capacity in which he is to be employed.

(b) Notwithstanding the provisions of Subsection (a) of this section, a trainee employee is exempt from the examination for 45 days and until examined by a representative of the commission.

(c) An LPG dealer who employs a trainee employee shall notify the commission of the employment within 45 days of the commencement of the employment so that an examination may be scheduled.

(d) The examination shall be given in the field, and if the employee passes the examination, this fact shall be reported to the LPG Division and shall be noted in its records.

[Acts 1977, 65th Leg., p. 2600, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.095. Qualified Employees Required

No person may be granted or issued a license under Section 113.082 of this code as an authorized dealer in LPG nor may an existing or present license as an authorized dealer in LPG be renewed unless the person employs only qualified employees in accordance with Section 113.094 of this code.

[Acts 1977, 65th Leg., p. 2600, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.096. Surety Bond

(a) No person may be issued a license as an authorized dealer in LPG under Section 113.082 of this code nor may an existing license be continued or renewed unless the person furnishes the commission with a surety bond in the face amount of \$2,000 with a bonding company authorized to do business in this state.

(b) Each bond shall include a provision that the obligor on the bond will indemnify and pay to the state, to the extent of the face amount of the bond, all judgments that may be recovered in the name of the state against the person during the term of the bond and proximately caused by the person's violation of or failure to comply with this chapter and rules or standards or both promulgated and adopted under this chapter.

(c) All surety bonds issued under the provisions of this section shall be continuous in duration. Cancellation of such a bond becomes effective 30 days after the LPG Division receives written notice of intent to cancel or upon physical delivery to the LPG Division of an acceptable replacement bond and not before.

[Acts 1977, 65th Leg., p. 2600, ch. 871, art. I, § 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 2696, ch. 871, art. II, § 11, eff. Sept. 11, 1977.]

§ 113.097. Insurance

(a) No person may be issued a license as an authorized dealer in LPG under Section 113.082 of this

code nor may an existing license be continued or renewed unless the person for as long as he continues in business as a dealer takes out and maintains with a reliable insurance carrier qualified to do business in this state the following types and amounts of insurance to guarantee payment of damages proximately resulting from the negligent acts of the person while engaged in any of the activities hereinafter set forth:

(1) automobile bodily injury and property damage coverage on each motor vehicle, including trailers and semitrailers used to transport LPG, in an amount to be determined by the commission under reasonable rules adopted by it; but the minimum amount of the coverages shall not be less than the amounts required as proof of financial responsibility under the Texas Motor Vehicle Safety-Responsibility Act, as amended;

(2) manufacturers and contractors liability policy in an amount to be determined by the commission under reasonable rules adopted by it; and

(3) workmen's compensation or employer's liability coverage.

(b) As evidence that required insurance has been secured and is in force, certificates of insurance shall be filed with the division prior to licensing and license renewal. All certificates filed under the provision of this section shall be continuous in duration. Cancellation of a certificate of insurance becomes effective upon the occurrence of any of the following events and not before:

(1) division receipt of written notice stating the insurer's intent to cancel a policy of insurance and the passage of time thereafter equivalent to the notice period required by law to be given the insured prior to such insurance cancellation. Cancellation of certificate under this subsection is effected only when insurance evidenced by such certificate is legally cancelled;

(2) physical delivery to the LPG Division of an acceptable replacement insurance certificate;

(3) a dealer's voluntary surrender of the dealership's LPG license and the rights and privileges conferred thereby; or

(4) division receipt of an affidavit made by an authorized representative of an LPG licensee stating that such licensee is not actively engaging in any operations as an LPG dealership and will not engage in such operations unless and until certificates of required insurance are filed with the division.

[Acts 1977, 65th Leg., p. 2600, ch. 871, art. I, § 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 2696, ch. 871, art. II, § 12, eff. Sept. 1, 1977.]

1 West's Tex.Stats. & Codes '77 Supp.—16

§ 113.098. Entry for Inspection

An inspector, employee, or agent of the commission may enter at any reasonable time the premises of a licensee under this chapter to inspect any container, tank, apparatus, system, or equipment in which LPG is stored or by or through which LPG is used or consumed.

[Acts 1977, 65th Leg., p. 2601, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.099. Warning Tag

The inspector, employee, or agent may declare as unsafe or dangerous any container, tank, apparatus, system, or equipment that does not conform to the safety requirements of this chapter or rules or specifications or both adopted or promulgated under this chapter or is otherwise defective and shall have a warning tag attached to the container, tank, apparatus, system, or equipment in a conspicuous location.

[Acts 1977, 65th Leg., p. 2601, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 113.100 to 113.130 reserved for expansion]

SUBCHAPTER E. MOTOR VEHICLES

§ 113.131. Transport and Delivery Trucks and Transport Trailers

(a) Each transport truck, transport trailer, or other motor vehicle equipped with an LPG cargo tank and each truck used principally for transporting or delivering LPG in portable containers shall be registered under this chapter.

(b) Forms for registration of these trucks and motor vehicles shall be furnished by the commission and shall include any information that the commission may require.

(c) The registration fee for these trucks and motor vehicles is \$20 a truck or motor vehicle a year. [Acts 1977, 65th Leg., p. 2601, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.132. Rules and Orders Relating to Trucks, Trailers, and Other Motor Vehicles

(a) The commission shall prescribe rules or standards or both relating to trucks, trailers, and other motor vehicles on which containers, tanks, or vessels are mounted or located with facilities for dispensing LPG.

(b) The rules or standards or both shall require all rigid pipes and valves on those trucks, trailers, and other motor vehicles to be recessed or otherwise protected by heavy guardrails to afford maximum protection against damage if an accident should occur.

(c) The commission shall prescribe other rules or standards, or both relating to trucks, trailers, or other motor vehicles used or to be used in the transportation, delivery, or distribution of LPG that it considers proper or advisable.

[Acts 1977, 65th Leg., p. 2601, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.133. Motor Carrier Laws; Department of Public Safety

(a) None of the provisions of this chapter may be construed to alter, modify, amend, or revoke all or part of the motor carrier laws of this state.

(b) The Department of Public Safety shall cooperate with the commission in the administration and enforcement of this chapter and the rules or standards or both promulgated under this chapter as far as they are applicable to motor vehicles.

[Acts 1977, 65th Leg., p. 2602, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 113.134 to 113.160 reserved for expansion]

SUBCHAPTER F. SUSPENSION AND REVOCATION OF LICENSES AND REGISTRATIONS

§ 113.161. Suspension and Revocation

If it appears at a public hearing that the holder of a license, registration, or permit has violated or has failed to comply with or is violating or failing to comply with any of the provisions of this chapter or rules, standards, and specifications or any rule, standard, or specification prescribed, promulgated, or adopted by the commission under this chapter, the commission may suspend or revoke the license, registration, or permit.

[Acts 1977, 65th Leg., p. 2602, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.162. Violations of Chapter

(a) The commission shall notify any person in writing of acts, omissions, or conduct on his part that the commission considers to be in violation of or not in compliance with any provisions of this chapter or rules or standards or both promulgated and adopted under this chapter.

(b) The complaint shall specify the particular acts, omissions, or conduct complained of and shall designate a date by which the acts, omissions, or conduct must be corrected or discontinued.

(c) If a person has not corrected or discontinued the acts, omissions, or conduct complained of on or before the designated date, the commission shall hold a public hearing after proper notice.

[Acts 1977, 65th Leg., p. 2602, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.163. Investigation, Witnesses, Books, Records, Documents, Depositions, and Interrogatories

The commission may:

(1) conduct any investigation related to the subject matter of the hearing;

(2) summon and compel the attendance at the hearing of any witness;

(3) require the production of books, records, and documents related to the subject matter of an investigation or hearing; and

(4) provide for taking depositions of witnesses and the use of interrogatories and admissions as provided in the Texas Rules of Civil Procedure.

[Acts 1977, 65th Leg., p. 2602, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.164. Rights of Person Complained Against

A person against whom a complaint is filed shall be notified of the filing of the complaint as provided by law and is entitled to appear at the hearing, file an answer to the complaint, introduce evidence, and be heard either in person or by counsel or both.

[Acts 1977, 65th Leg., p. 2602, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.165. Findings and Judgment

(a) At the conclusion of a public hearing, the commission shall enter its findings and judgment in writing and they shall be filed in a permanent public record book maintained by the LPG Division. A copy of the findings and judgment shall be furnished to the person charged in the complaint.

(b) If the commission finds that the party charged in the complaint has violated or failed to comply with or is violating or failing to comply with this chapter or a rule or standard or both promulgated and adopted under this chapter, the commission may suspend the license or registration for a definite period not to exceed 90 days or may revoke the license or registration.

[Acts 1977, 65th Leg., p. 2603, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.166. Action for Reinstatement

(a) Not later than 30 days from the date the commission renders its order suspending or revoking a license or registration, the person who has had a license or registration suspended or revoked may file an action in the district court of the county or district in which he resides or maintains his principal place of business for reinstatement of the license or registration.

(b) The appeal in the district court shall be by trial de novo and shall be the same as if the action had been originally filed in the court.

(c) If a person who has a license or registration suspended or revoked should within 10 days after receipt of notice of the suspension or revocation give written notice to the commission of his intention to appeal from the order of the commission, the action of the commission suspending or revoking the license or registration is stayed for a period of 30 days from the expiration of the 10-day period.

(d) If no action is filed within this period, the order of the commission suspending or revoking the license or registration is final.

(e) If an action for reinstatement is timely filed, the order of the commission suspending or revoking the license or registration shall continue to be stayed until the action is heard and disposed of by the district court.

[Acts 1977, 65th Leg., p. 2603, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 113.167 to 113.200 reserved for expansion]

SUBCHAPTER G. FEES AND FUNDS

§ 113.201. Fees

(a) Renewal registration and license fees established and assessed under this chapter are payable by midnight, August 31, of each year.

(b) Application, first year examination, and other nonrecurring fees are payable in advance.

[Acts 1977, 65th Leg., p. 2603, ch. 871, art. I, § 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 2696, ch. 871, art. II, § 10, eff. Sept. 1, 1977.]

§ 113.202. Use of Fees

Funds realized from fees shall be applied first to pay necessary expenses of the Liquefied Petroleum Gas Division in enforcing and administering this chapter.

[Acts 1977, 65th Leg., p. 2603, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.203. Deposit and Expenditure of Funds and Fees

Funds held or controlled by the commission, fees received from licenses issued by the commission under this chapter, and funds subsequently received by the commission under this chapter shall be deposited in the State Treasury, as received, to the credit of the Liquefied Petroleum Gas Division and spent in accordance with appropriations made by law.

[Acts 1977, 65th Leg., p. 2603, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 113.204 to 113.230 reserved for expansion]

SUBCHAPTER H. INJUNCTIONS AND PENALTIES

§ 113.231. Injunctions

(a) On complaint or otherwise, if it appears to the commission that a person holding a license or registration under this chapter is engaged in or is about to engage in acts that are in violation of or not in compliance with the provisions of this chapter, the attorney general, on request of the commission, may bring an action in the name and on behalf of the state against the person to enjoin him from commencing or continuing to engage in the acts. This action shall be in addition to other actions.

(b) The district court of any county in which it is shown that all or part of the acts have been or are about to be committed has jurisdiction of an action brought under this section and this subdivision is superior to any other statutory provision fixing the jurisdiction or venue of suits for injunction.

(c) No bond for injunction may be required of the commission or the attorney general in this proceeding.

[Acts 1977, 65th Leg., p. 2604, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.232. General Penalty

(a) In addition to and supplemental of injunctive relief and other penalties provided in this chapter, a violation or failure to comply with this chapter and rules or standards or both promulgated and adopted under this chapter constitutes a misdemeanor and is punishable in a court of competent jurisdiction by a fine of not less than \$5 and not more than \$200.

(b) Each day the violation or failure to comply continues constitutes and is punishable as a separate violation.

[Acts 1977, 65th Leg., p. 2604, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.233. Supplying LPG After Warning Tag Attached

Any person who knowingly sells, furnishes, delivers, or supplies LPG for storage in or use or consumption by or through a container, tank, apparatus, system, or equipment to which a warning tag is attached is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 and not more than \$500 in a court of competent jurisdiction.

[Acts 1977, 65th Leg., p. 2604, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 113.234. Penalty for Unauthorized Removal of Tag

An unauthorized person who removes, destroys, or in any way obliterates a warning tag attached to a tank, apparatus, system, or equipment is guilty of a misdemeanor and on conviction is punishable by a

fine of not less than \$50 and not more than \$500 in a court of competent jurisdiction.
 [Acts 1977, 65th Leg., p. 2604, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

TITLE 4. MINES AND MINING

CHAPTER 131. SURFACE MINING AND RECLAMATION ACT

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SUBCHAPTER A. GENERAL PROVISIONS

§ 131.001. Short Title

This chapter may be cited as the Texas Surface Mining and Reclamation Act.
 [Acts 1977, 65th Leg., p. 2607, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.002. Declaration of Policy

The legislature finds and declares that:

(1) the extraction of minerals by surface mining operations is a basic and essential activity making an important contribution to the economic well-being of the state and nation;

(2) proper reclamation of surface-mined land is necessary to prevent undesirable land and water conditions that would be detrimental to the general welfare, health, safety, and property rights of the citizens of this state;

(3) surface mining takes place in diverse areas where the geologic, topographic, climatic, biological, and social conditions are significantly different and that reclamation operations and the specifications for reclamation operations must vary accordingly;

(4) it is not always possible to extract minerals required by our society without disturbing the surface of the earth and producing waste materials, and the very character of certain types of surface mining operations occasionally precludes complete restoration of the affected land to its original condition;

(5) unregulated surface mining may destroy or diminish the utility of land for commercial, industrial, residential, recreational, agricultural, and forestry purposes by causing erosion and landslides, by contributing to floods, by polluting the water, by destroying fish and wildlife habitats, by impairing natural beauty, by damaging the property of citizens, by creating hazards dangerous to life and property, by degrading the quality of life in local communities, and by counteracting governmental programs and efforts to conserve soil, water, and other natural resources, which results are declared to be inimical to the public interest and destructive to the public health, safety, welfare, and economy of the State of Texas;

(6) due to its unique character or location, some land within the state may be unsuitable for all or certain types of surface mining operations; and

(7) reclamation of surface-mined land as provided by this chapter will allow the mining of valuable minerals in a manner designed for the protection and subsequent beneficial use of land.

[Acts 1977, 65th Leg., p. 2607, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.003. Purposes

It is declared to be the purpose of this chapter:

(1) to prevent the adverse effects to society and the environment resulting from unregulated surface mining operations as defined in this chapter;

(2) to assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances to the land are protected from unregulated surface mining operations;

(3) to assure that surface mining operations are not conducted where reclamation as required by this chapter is not possible;

(4) to assure that surface mining operations are conducted in a manner that will prevent unreasonable degradation of land and water resources; and

(5) to assure that reclamation of all surface-mined land is accomplished as contemporaneously as practicable with the surface mining, recognizing that the extraction of minerals by responsible mining operations is an essential and beneficial economic activity.

[Acts 1977, 65th Leg., p. 2608, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.004. Definitions

In this chapter:

(1) "Minerals" means coal, lignite, uranium, and uranium ore.

(2) "Surface mining" means the mining of minerals by removing the overburden lying above the natural deposit of minerals and mining directly from the natural deposits that are exposed and those aspects of underground mining having significant effects on the surface.

(3) "Exploration activity" means the disturbance of the surface or subsurface for the purpose of or related to determining the location, quantity, or quality of a mineral deposit, except those exploration activities associated with the drilling of test holes or core holes that are not required by federal law.

(4) "Affected land" or "land affected" means:

(A) the area from which any materials are to be or have been displaced in a surface mining operation;

(B) the area on which any materials that are displaced are to be or have been deposited;

(C) the haul roads and impoundment basins within the surface mining area; and

(D) other land whose natural state has been or will be disturbed as a result of the surface mining operations.

(5) "Surface mining operation" means the activities conducted at a mining site, including extraction, storage, processing, and shipping of minerals and reclamation of the land affected.

(6) "Operator" means the individual or entity, including any public or governmental agency,

that is to engage or that is engaged in a surface mining operation, including any individual or entity whose permit has expired or been suspended or revoked.

(7) "Overburden" means all materials displaced in a mining operation which are not, or will not be, removed from the affected area.

(8) "Reclamation" means the process of restoring an area affected by a surface mining operation to its original or other substantially beneficial condition, considering past and possible future uses of the area and the surrounding topography.

(9) "Topsoil" means the unconsolidated mineral matter naturally present on the surface of the earth which has been subjected to and influenced by genetic and environmental factors of parent material, climate, macroorganisms and microorganisms, and topography, all acting over a period of time, and which is necessary for the growth and regeneration of vegetation on the surface of the earth.

(10) "Surface mining permit" means the written certification by the commission that the named operator may conduct the surface mining operations described in the certification during the term of the surface mining permit and in the manner established in the certification.

(11) "Person affected" means any person who is a resident of a county or any county adjacent or contiguous to the county in which a mining operation is or is proposed to be located, including any person who is doing business or owns land in the county or adjacent or contiguous county and any local government and who demonstrates that he has suffered or will suffer actual injury or economic damage.

(12) "Commission" means the Railroad Commission of Texas.

(13) "Fund" means the Land Reclamation Fund.

(14) "Toxic material" means any substance present in sufficient concentration or amount to cause injury or illness to plant, animal, or human life.

(15) "Approximate original contour" means that surface configuration achieved by backfilling and grading of the surface-mined area so that it resembles the surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls, spoil piles, and depressions eliminated, although the new contour may subsequently be at a moderately lower or higher elevation than existed prior to the surface mining operation.

(16) "Person" means an individual, partnership, society, jointstock company, firm, company, corporation, business organization, governmental agency, or any organization or association of citizens.

(17) "Party to the administrative proceedings" means any person who has participated in a public hearing or filed a valid petition or timely objection pursuant to any provision of this chapter.

(18) "Permit area" means all the area designated as such in the permit application and shall include all land affected by the surface mining operations during the term of the permit and may include any contiguous area that the operator proposes to surface mine after that time.

[Acts 1977, 65th Leg., p. 2608, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1320, ch. 524, § 1

Acts 1977, 65th Leg., p. 1320, ch. 524, § 1, purports to amend subs. (2) and (5) of § 4 of Civil Statutes, art. 5920-10 [now, subs. (2) and (5) of this section], without reference to repeal of said article by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(5). As so amended, subs. (2) and (5) read:

"(2) 'Surface mining' means the mining of minerals by removing the overburden lying above the natural deposit thereof and mining directly from the natural deposits thereby exposed, those aspects of underground mining having significant effects on the surface and in situ gasification of coal and lignite; provided, however, nothing herein shall be construed to include in situ mining activities associated with the removal of uranium or uranium ore."

"(5) 'Surface mining operation' means those activities conducted at or near the mining site and concomitant with the surface mining, including extraction, storage, processing, and shipping of minerals and reclamation of the land affected."

§ 131.005. Reclamation

(a) The basic objective of reclamation is to reestablish on a continuing basis, where required, vegetation and other natural conditions consistent with the anticipated subsequent use of the affected land.

(b) The process of reclamation may require contouring, terracing, grading, backfilling, resoiling, revegetation, compaction and stabilization and settling ponds, water impoundments, diversion ditches, and other water treatment facilities in order to minimize water diminution to existing water sources, pollu-

tion, soil and wind erosion, or flooding resulting from mining or any other activity that may be considered necessary to accomplish the reclamation of the land affected to a substantially beneficial condition.

[Acts 1977, 65th Leg., p. 2610, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.006. Exclusions and Exemptions

The provisions of this chapter do not apply to the following:

(1) surface mining operations conducted on public land regulated by the General Land Office if the land is reclaimed in a manner consistent with this chapter; and

(2) land on which the overburden has been removed and minerals have been produced before June 21, 1975.

[Acts 1977, 65th Leg., p. 2610, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1323, ch. 524, § 7

Acts 1977, 65th Leg., p. 1323, ch. 524, § 7, purports to amend § 5 of Civil Statutes, art. 5920-10 [now, this section], without reference to repeal of said article by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(5). As so amended, § 5 reads:

“(a) The provisions of this Act shall not apply to any of the following activities or areas:

“(1) surface mining operations conducted on public lands regulated by the General Land Office; provided that such affected lands are reclaimed in a manner consistent with the provisions of this Act; and

“(2) any land where the overburden has been removed and any minerals have been produced prior to the date of enactment of the Act.

“(b) In situ mining operations permitted by the Texas Water Quality Board prior to January 1, 1978, shall not require a permit pursuant to this Act until such time as the Texas Water Quality Board issued permit expires or is revised in accordance with this Act. On January 1, 1978, the permits issued pursuant to the authority of the Texas Water Quality Board shall be transferred to the commission and administered by the commission.”

[Sections 131.007 to 131.020 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF THE COMMISSION

§ 131.021. General Authority of Commission

In seeking to accomplish the purposes of this chapter, the commission shall have the authority:

(1) to adopt and amend rules pertaining to surface mining and reclamation operations consistent with the general intent and purposes of this chapter;

(2) to issue permits pursuant to the provisions of this chapter;

(3) to conduct hearings pursuant to the provisions of this chapter;

(4) to issue orders requiring an operator to take actions that are necessary to comply with this chapter and with rules adopted under this chapter;

(5) to issue orders modifying previous orders;

(6) to issue a final order revoking the permit of an operator who has failed to comply with an order of the commission to take action required by this chapter or rules adopted under this chapter;

(7) to order the immediate cessation of an ongoing surface mining operation if the commission finds that the operation creates an imminent danger to the health or safety of the public, or is causing or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources, and to take other action or make changes in a permit that are reasonably necessary to avoid or alleviate these conditions;

(8) to hire employees, adopt standards for employment of these persons, and hire and authorize the hiring of outside contractors to assist in carrying out the requirements of this chapter;

(9) to enter on and inspect, in person or by its agents, a surface mining operation that is subject to the provisions of this chapter to assure compliance with the terms of this chapter;

(10) to conduct, encourage, request, and participate in studies, surveys, investigations, research, experiments, training, and demonstrations by contract, grant, or otherwise;

(11) to prepare and require permittees to prepare reports;

(12) to collect and disseminate to the public information considered reasonable and necessary for the proper enforcement of this chapter;

(13) to accept, receive, and administer grants, gifts, loans, or other funds made available from any source for the purposes of this chapter;

(14) to enter into contracts with state boards and agencies that have pertinent expertise to

obtain professional and technical services necessary to carry out the provisions of this chapter; and

(15) to perform other duties and acts required by and provided for in this chapter.

[Acts 1977, 65th Leg., p. 2610, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.022. Jurisdiction of Commission

The commission is the mining and reclamation authority for the State of Texas and has exclusive jurisdiction for establishing reclamation requirements for mining operations in this state.

[Acts 1977, 65th Leg., p. 2611, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.023. Commission Procedure

The commission shall seek the accomplishment of the purposes of this chapter by all practicable methods.

[Acts 1977, 65th Leg., p. 2611, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.024. Compliance With Federal Surface Mining Laws

(a) On passage of federal surface mining legislation, the commission shall take actions necessary to establish the exclusive jurisdiction of this state over the regulation of surface mining and reclamation operations.

(b) If the federal administrative agency disapproves the regulatory program of this state as submitted, the commission shall take all necessary and appropriate action, including making recommendations for remedial legislation, to clarify, alter, or amend the program to comply with the requirements of the federal act.

[Acts 1977, 65th Leg., p. 2611, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.025. Hearing Procedure

At a hearing under this chapter, the commission may:

- (1) administer oaths or affirmations;
- (2) subpoena witnesses and compel their attendance;
- (3) take evidence; and
- (4) require production of books, papers, correspondence, memoranda, agreements, or other documents or records that are considered relevant or material to the administration of this chapter.

[Acts 1977, 65th Leg., p. 2611, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.026. Promulgation and Filing of Rules

(a) After publishing the proposed rules and conducting a public hearing on the proposed rules, the commission shall promulgate and publish rules covering a permanent regulatory procedure for surface mining and reclamation operations setting mining and reclamation performance standards based on the general intent and purposes of this chapter.

(b) A certified copy of rules adopted by the commission shall be filed with the Secretary of State and shall be effective 30 days after they are filed.

[Acts 1977, 65th Leg., p. 2612, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1320, ch. 524, § 2

Acts 1977, 65th Leg., p. 1320, ch. 524, § 2, purports to amend § 7 of Civil Statutes, art. 5920-10 by deleting subsec. (b) thereof [now, this section], without reference to repeal of said article by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(5).

§ 131.027. Public Hearing Required

Before adopting rules, the commission shall hold a public hearing.

[Acts 1977, 65th Leg., p. 2612, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1320, ch. 524, § 2

Acts 1977, 65th Leg., p. 1320, ch. 524, § 2, purports to amend § 7 of Civil Statutes, art. 5920-10 by deleting subsec. (a) thereof [now, this section and Sections 131.028 to 131.031], without reference to repeal of said article by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(5).

§ 131.028. Notice of Hearing

(a) Notice of the date, time, place, and purpose of the hearing shall be given 30 days before the scheduled date of the hearing.

(b) Notice shall be given by:

- (1) mail to all operators known by the commission to be actively engaged in surface mining;
- (2) mail to persons who request notification of the proposed rules; and
- (3) publication to other interested parties once a week for three consecutive weeks in the newspaper of greatest general circulation in Travis County and in each of the other five most populous counties in the state.

[Acts 1977, 65th Leg., p. 2612, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1320, ch. 524, § 2

See italicized note under Section 131.027.

§ 131.029. Written Comments and Evidence

Any person is entitled to submit written comments or to appear and offer evidence at the public hearing.

[Acts 1977, 65th Leg., p. 2612, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1320, ch. 524, § 2

See italicized note under Section 131.027.

§ 131.030. Consideration of Comments and Data

The commission shall consider all comments and relevant data presented at the hearing before final promulgation and publication of rules under this chapter.

[Acts 1977, 65th Leg., p. 2612, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1320, ch. 524, § 2

See italicized note under Section 131.027.

§ 131.031. Duty to Publish Rules

The commission shall publish proposed rules, including proposed rules governing practice and procedure pertaining to surface mining and reclamation operations to accomplish the purposes of this chapter.

[Acts 1977, 65th Leg., p. 2612, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1320, ch. 524, § 2

See italicized note under Section 131.027.

§ 131.032. Amending and Repealing Rules

Before amending or repealing any previously adopted rules and regulations or adopting additional rules and regulations, the commission shall comply with the notice, hearing, and filing requirements of Sections 131.026 through 131.031 of this code.

[Acts 1977, 65th Leg., p. 2612, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1320, ch. 524, § 2

Acts 1977, 65th Leg., p. 1320, ch. 524, § 2, purports to amend § 7 of Civil Statutes, art.

5920-10 by deleting subsec. (c) thereof [now, this section], without reference to repeal of said article by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(5).

§ 131.033. Differing Terms and Provisions of Rules

A rule or an amendment of a rule adopted by the commission may differ in its terms and provisions between particular conditions, particular mining techniques, type of minerals being extracted, particular areas of the state, or any other conditions that appear relevant and necessary so long as the action taken is consistent with attainment of the general intent and purposes of this chapter.

[Acts 1977, 65th Leg., p. 2612, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.034. Exploration Activities

The commission shall promulgate rules in the manner provided in Sections 131.026 through 131.031 of this code for the conduct of exploration activities.

[Acts 1977, 65th Leg., p. 2613, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.035. Rules Designating Unsuitable Land

(a) The commission shall develop rules that adopt appropriate procedures for identifying and designating land in this state as unsuitable for all or certain types of surface mining in accordance with Sections 131.036 through 131.041 of this code.

(b) The rules shall be in sufficient detail to provide reasonable notice to prospective operators of areas that might be designated as unsuitable for surface mining.

[Acts 1977, 65th Leg., p. 2613, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.036. Survey of Land

(a) When application is made to conduct surface mining operations and before a permit is issued, the commission shall immediately have the areas to be included in the proposed permit surveyed in accordance with the requirements of Sections 131.035 and 131.037 through 131.041 of this code.

(b) In conducting the survey and in declaring various areas to be unsuitable for mining, the commission shall employ competent and scientifically sound data and information as the basis for objective decisions with respect to each area surveyed.

[Acts 1977, 65th Leg., p. 2613, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.037. Commission Statement

Before designating a land area as unsuitable for surface mining operations, the commission shall prepare a detailed statement on the potential mineral and other resources in the area, the demand for

these resources, and the impact of the designation on the environment, the economy, and the supply of the mineral.

[Acts 1977, 65th Leg., p. 2613, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.038. Reasons for Unsuitable Designation

After the survey is made, an area may be designated unsuitable for all or certain types of surface mining if:

(1) the commission determines that reclamation under this chapter is not feasible;

(2) the operations will result in significant damage to important areas of historic, cultural, or archaeological value or to important natural systems;

(3) the operations will affect renewable resource land that includes aquifers and aquifer recharge areas, resulting in a substantial loss or reduction of long-range productivity of water supply or food or fiber products;

(4) the operations are located in an area subject to frequent flooding or an area that is geologically unstable and may reasonably be expected to endanger life and property;

(5) the operations will adversely affect any national park, national monument, national historic landmark, property listed on the national register of historic places, national forest, national wilderness area, national wildlife refuge, national wild and scenic river area, state park, state wildlife refuge, state forest, recorded Texas historic landmark, state historic site, state archaeological landmark, or city or county park; or

(6) the operations would endanger any public road, public building, cemetery, school, church, or similar structure or existing dwelling outside the permit area.

[Acts 1977, 65th Leg., p. 2613, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.039. Petition and Hearing on Designation

(a) Any person is entitled to petition the commission to have an area designated as unsuitable for surface mining operations or to have the designation terminated.

(b) The petition shall include allegations of facts with supporting evidence that in the opinion of the commission would tend to establish the allegations.

(c) The commission shall make a determination of the validity of the petition, and if the petition is found to be valid, it shall be kept on file by the commission and made available for public inspection.

(d) On application for a surface mining permit for which a valid petition has been filed, the commission shall hold a public hearing as provided in Section

131.163 of this code in the locality of the proposed mining operation.

(e) Any person affected may intervene before the public hearing by filing allegations of facts with supporting evidence that would tend to establish the allegations.

(f) Within 60 days after the hearing, the commission shall issue and furnish to the petitioner and any other party to the hearing a written decision regarding the petition and the reasons for the decision.

(g) If all the petitioners and the applicant stipulate agreement before the requested hearing, the hearing does not have to be held.

[Acts 1977, 65th Leg., p. 2614, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1322, ch. 524, § 5

Acts 1977, 65th Leg., p. 1322, ch. 524, § 5, purports to amend subsec. (d) of § 13 of Civil Statutes, art. 5920-10 by deleting the seventh sentence thereof [now, subsec. (f) of this section], without reference to repeal of said article by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(5).

§ 131.040. Modifying, Amending, and Terminating Designations

The commission may modify, amend, or terminate a designation pursuant to the requirements of Sections 131.035 through 131.039 of this code.

[Acts 1977, 65th Leg., p. 2614, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.041. Applicability of Subchapter

The provisions of Sections 131.035 through 131.040 of this code do not apply to land on which surface mining operations were being conducted on June 21, 1975.

[Acts 1977, 65th Leg., p. 2614, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.042. Records, Reports, Monitoring Equipment, and Information

The commission shall require each permittee to:

(1) establish and maintain appropriate records;

(2) make reports as frequently as the commission may prescribe;

(3) install, use, and maintain necessary monitoring equipment for observing and determining relevant surface or subsurface effects of the mining operation and reclamation program; and

(4) provide other information relative to mining and reclamation operations the commission determines to be reasonable and necessary.

[Acts 1977, 65th Leg., p. 2614, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.043. Inspection by Commission

Without advance notice and on presentation of appropriate credentials to the operation supervisor, if present, the authorized representatives of the commission are entitled to enter in, on, or through a surface mining operation or premises in which any records required under Section 131.042 of this code are located, and may at reasonable times and without delay have access to and copy any records and inspect monitoring equipment or methods of operation required under this chapter.

[Acts 1977, 65th Leg., p. 2614, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.044. Time and Procedures for Inspections

(a) The inspections by the commission shall occur on an irregular basis at a frequency necessary to insure compliance with the intent and purposes of this chapter and the commission's rules for the surface mining and reclamation operations covered by each permit.

(b) The inspections shall occur only during normal operating hours if practicable and without prior notice to the permittee or his agents or employees.

(c) An inspection shall include the filing of an inspection report adequate to enforce the requirements of and to carry out the terms and purposes of this chapter. The commission shall make each report a part of the record and furnish one copy of the report to the operator.

(d) Insofar as practicable, the commission shall establish a system of rotation of inspectors.

[Acts 1977, 65th Leg., p. 2615, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.045. Sign

Each permittee shall maintain at the entrances to the surface mining and reclamation operations a clearly visible sign that sets forth the name, business address, and phone number of the permittee and the permit number of the surface mining and reclamation operations.

[Acts 1977, 65th Leg., p. 2615, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.046. Procedure on Detection of Violation

On detection of each violation of a requirement of this chapter, each inspector shall inform the operator of the violation orally at the time of the detection and in writing at a later time and shall report the violation in writing to the commission.

[Acts 1977, 65th Leg., p. 2615, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.047. Judicial Review

(a) Any party to the administrative proceedings whose interest is or may be adversely affected by a ruling, order, decision, or other act of the commis-

sion may appeal by filing a petition in a district court of Travis County or in the county in which the greater portion of the land in question is located.

(b) The petition must be filed within 30 days after the date of the commission's action, or, in case of a ruling, order, or decision, within 30 days after its effective date.

(c) The plaintiff shall pursue his action with reasonable diligence, and if the plaintiff does not prosecute his action within one year after the action is filed, the court shall presume that the action has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the attorney general unless the plaintiff, after receiving due notice, can show good and sufficient cause for the delay.

(d) The court shall hear the complaint solely on the record made before the commission. The findings of the commission, if supported by substantial evidence on the record considered as a whole, shall be upheld.

(e) The court may, under conditions it may prescribe, grant temporary relief that it considers appropriate pending final determination of the proceedings.

(f) The commencement of a proceeding under this section shall not, unless specifically ordered by the court, operate as a stay of the action, order, or decision of the commission.

(g) Any action arising under this chapter shall be given precedence by the court over cases of a different nature.

[Acts 1977, 65th Leg., p. 2615, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1320, ch. 524, § 2

Acts 1977, 65th Leg., p. 1320, ch. 524, § 2, purports to amend § 18 of Civil Statutes, art. 5920-10 by deleting subsec. (b) thereof [now, subsec. (b) of this section], without reference to repeal of said article by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(5).

§ 131.048. Confidentiality

Information submitted to the commission concerning mineral deposits, test borings, core samplings, or trade secrets or privileged commercial or financial information relating to the competitive rights of the applicant and specifically identified as confidential by the applicant, if not essential for public review as determined by the commission, shall not be disclosed by any member, agent, or employee of the commission.

[Acts 1977, 65th Leg., p. 2616, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 131.049 to 131.100 reserved for expansion]

SUBCHAPTER C. PLANS AND STANDARDS

§ 131.101. Reclamation Plan

(a) A reclamation plan shall be developed in a manner consistent with local, physical, environmental, and climatological conditions and current mining and reclamation technologies.

(b) A reclamation plan submitted as part of a permit application shall include:

(1) the identification of the entire area to be mined and affected over the estimated life of the mining operation;

(2) the condition of the land to be covered by the permit prior to any mining, including:

(A) the uses existing at the time of the application, and if the land has a history of previous mining, the uses, if reasonably ascertainable, that immediately preceded any mining; and

(B) the capability of the land prior to any mining to support a variety of uses giving consideration to soil and foundation characteristics, topography, and vegetative cover;

(3) the capacity of the land to support its anticipated use following reclamation, including a discussion of the capacity of the reclaimed land to support alternative uses;

(4) a description of how the proposed post-mining land condition is to be achieved and the necessary support activities that may be needed to achieve the condition, including an estimate of the cost per acre of the reclamation;

(5) the steps taken to comply with applicable air and water quality and water rights laws and regulations and any applicable health and safety standards, including copies of any pertinent permit applications;

(6) a general timetable that the operator estimates will be necessary for accomplishing the major events included in the reclamation plan; and

(7) other information the commission, by rule, determines to be reasonably necessary to effectuate the purposes of this chapter.

(c) The operator may revise or amend the reclamation plan at any time in accordance with the requirements of this code.

[Acts 1977, 65th Leg., p. 2616, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.102. Reclamation Standards

(a) A permit issued under this chapter to conduct surface mining operations shall require that the surface mining operations meet all applicable reclamation standards of this chapter and any other requirements that the commission establishes by rule.

(b) Reclamation standards shall apply to all surface mining and reclamation operations that are not exempted or excluded and shall require the operator as a minimum to:

(1) conduct surface mining operations in a manner consistent with prudent mining practice, so as to maximize the utilization and conservation of the resource being recovered so that re-affecting the land in the future through surface mining can be minimized;

(2) restore the land affected to the same or a substantially beneficial condition considering the present and past uses of the land, so long as the condition does not present any actual or probable hazard to public health or safety or pose an actual or probable threat of water diminution or pollution, and the permit applicants' declared anticipated land use following reclamation is not considered to be impractical or unreasonable, to involve unreasonable delay in implementation, or to violate federal, state, or local law, provided that a variety of postmining land conditions that differ from the land condition immediately preceding the surface mining operation, including but not limited to stock ponds, fishing or recreational lakes, school or park sites, industrial, commercial, or residential sites, or open space uses, may be approved by the commission if the proposed condition is determined to be substantially beneficial and complies with the provisions of this section;

(3) reduce all highwalls, spoil piles, and banks to a degree to control erosion effectively and sufficiently to sustain vegetation, where required, consistent with the anticipated subsequent use of the affected land, provided that backfilling, compacting, and grading shall be required to restore the approximate original contour where required by federal law and for uranium and uranium ore where the volume of overburden is large in comparison to the volume of mineral deposit and the commission considers the requirement to be practical;

(4) stabilize and protect all surface areas affected by the mining and reclamation operation effectively to control erosion and attendant air and water pollution;

(5) remove the topsoil, if any, from the land in a separate layer, replace it on the backfill area, or if not utilized immediately, segregate it in a separate pile from other spoil and when the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, maintain a successful cover by quick growing plants or other means so that the topsoil is preserved from wind and water erosion, remains free of any contamination by acid or other toxic material, and is in a usable condition

for sustaining vegetation when restored during reclamation, except if topsoil is of insufficient quantity or of poor quality for sustaining vegetation and if other strata can be shown to be as suitable for vegetation requirements, then the operator shall remove, segregate, and preserve in a like manner the other strata which is best able to support vegetation, provided that the requirements of this provision shall not apply if a mixing of strata can be shown to be equally suitable for revegetation requirements;

(6) replace the topsoil or the best available subsoil, if any, on top of the land to be reclaimed;

(7) fill any auger holes with an impervious material in order to prevent drainage;

(8) minimize the disturbances to the prevailing hydrologic balance at the mine site and in associated offsite areas and to the quality and quantity of water in surface and groundwater systems both during and after surface mining operations and during reclamation by:

(A) avoiding acid or other toxic mine drainage by such measures as:

(i) preventing or removing water from contact with toxic-producing deposits,

(ii) treating drainage to reduce toxic content,

(iii) casing, sealing, or otherwise managing boreholes, shafts, and wells to keep acid or other toxic drainage from entering ground and surface water;

(B) conducting surface mining operations in a manner to prevent unreasonable additional contributions of suspended solids to streamflow or runoff outside the permit area above natural levels under seasonal flow conditions;

(C) removing temporary or large siltation structures from drainways consistent with good water conservation practices after disturbed areas are revegetated and stabilized; or

(D) other actions as the commission may prescribe pursuant to its rules;

(9) stabilize any waste piles;

(10) refrain from surface mining in proximity to active and abandoned underground mines in which mining would cause breakthroughs or would endanger the health or safety of miners;

(11) incorporate with respect to the use of impoundments for the disposal of mine wastes, processing wastes, or other liquid or solid wastes current engineering practices for the design and

construction of water retention facilities which, at a minimum, shall be compatible with the requirements of Section 6.0731,¹ Water Code, and applicable federal laws, ensure that leachate will not pollute surface or groundwater, and locate impoundments so as not to endanger public health and safety should failure occur;

(12) ensure that all debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated or disposed of in a manner designed to prevent contamination of ground or surface water or combustion;

(13) ensure that any explosives are used only in accordance with existing state and federal law and rules promulgated by the commission;

(14) ensure that all reclamation efforts proceed as contemporaneously as practicable with the surface mining operations;

(15) ensure that construction, maintenance, and postmining conditions of access roads into and across the site of operations will minimize erosion and siltation, pollution of air and water, damage to fish or wildlife or their habitat, or public or private property, provided that the commission may permit the retention after mining of certain access roads if compatible with the approved reclamation plan;

(16) refrain from the construction of roads or other access ways up a streambed or drainage channel or in proximity to such channel where such construction would seriously alter the normal flow of water;

(17) establish on all affected land, where required in the approved reclamation plan, a diverse vegetative cover native to the affected land where vegetation existed prior to mining and capable of self-regeneration and plant succession equal in extent of cover to the natural vegetation of the area, except that introduced species may be used in the revegetation process where desirable or necessary to achieve the approved reclamation plan;

(18) assume responsibility for successful revegetation for a period of four years beyond the first year in which the vegetation has been successfully established as evidenced by the land being used as anticipated in the reclamation plan, provided that the four-year period of responsibility shall commence no later than two complete growing seasons after the vegetation has been successfully established as determined by the commission;

(19) ensure with respect to permanent impoundments of water as part of the approved reclamation plan that:

(A) the size of the impoundment and the availability of water are adequate for its intended purpose;

(B) the impoundment dam construction will meet the requirements of Section 6.0731, Water Code, and applicable federal laws;

(C) the quality of impounded water will be suitable on a permanent basis for its intended use and the discharges from the impoundment will not degrade the water quality in the receiving stream;

(D) final grading will provide adequate safety and access for anticipated water users; and

(E) the water impoundments will not result in the diminution of the quality or quantity of water utilized by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses; and

(20) meet other criteria pursuant to the commission's rules as are necessary to achieve reclamation in accordance with the purposes of this chapter, taking into consideration the physical, climatological, and other characteristics of the site.

(c) The purpose of this section is to have land affected restored to the same condition as the land that existed enjoyed before the mining or some substantially beneficial condition.

(d) A method of reclamation other than that provided in this section may be approved by the commission after public hearing if the commission determines that any method of reclamation required by this section is not practicable and that the alternative method will provide for the affected land to be restored to a substantially beneficial condition.

(e) If an alternative method of reclamation is generally applicable to all surface mining operations involving a particular mineral, the commission shall promulgate rules in the manner provided in Section 131.033 of this code.

[Acts 1977, 65th Leg., p. 2616, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

¹ See, now, § 12.052.

[Sections 131.103 to 131.130 reserved for expansion]

SUBCHAPTER D. SURFACE MINING PERMITS

§ 131.131. Permit Required for Operation

(a) No person may conduct a surface mining operation unless he first obtains a surface mining permit issued by the commission under this subchapter.

(b) An operator who was conducting a surface mining operation in this state after the expiration of 180 days following the promulgation of the initial rules under Section 131.026 of this code and who has filed a permit application in accordance with the

provisions of this subchapter may continue to conduct the surface mining operation until the commission approves or denies his application.

[Acts 1977, 65th Leg., p. 2619, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1321, ch. 524, § 3

Acts 1977, 65th Leg., p. 1321, ch. 524, § 3, purports to amend subsec. (a) of § 8 of Civil Statutes, art. 5920-10 [now, this section], without reference to repeal of said article by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(5). As so amended, subsec. (a) reads:

"No person shall conduct any surface mining operation without having first obtained a surface mining permit issued by the commission pursuant to this Act; provided, however, that any operator conducting a surface mining operation in this state before September 20, 1976, who has filed a permit application in accordance with the provisions of this Act may continue to conduct such surface mining operation until such time as the commission approves or denies his application."

§ 131.132. Form of Permit Application

On application to the commission for a surface mining permit, an operator shall submit three copies of a permit application on a form prescribed by the commission, and the commission shall require in the form the information it considers reasonably necessary to process the application and to ensure compliance with the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2620, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.133. Required Information

The permit application shall include information concerning:

(1) the name, address, ownership, and management officers of the permit applicant and affiliated persons engaged in surface mining;

(2) legal and equitable interests of record, if reasonably ascertainable, in the surface and mineral estates of the permit area and in the surface estate of land located within 500 feet of the permit area, provided that the mineral estate includes only minerals as defined in this chapter;

(3) persons residing on the property at the time of the application;

(4) current or previous surface mining permits held by the applicant, including any revocations, suspensions, or bond forfeitures;

(5) the type and method of surface mining operation, the engineering techniques, and the equipment that is proposed to be used, including mining schedules, the nature and expected amount of overburden to be removed, the depth of excavations, a description of the affected land and permit area, the results of any test borings, test pits, or core samplings that have been gathered from the permit area, and the anticipated hydrologic consequences of the mining operation;

(6) the applicant's legal right to surface mine the affected land; and

(7) other pertinent matters that the commission considers reasonably necessary to effectuate the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2620, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.134. Documents to be Included With Application

An applicant shall include with his permit application a copy of a reclamation plan prepared as provided in Section 131.101 of this code and a copy of the notice published in compliance with the requirement of Section 131.159 of this code.

[Acts 1977, 65th Leg., p. 2620, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.135. Application Fees

(a) Each application for a surface mining permit shall be accompanied by an initial application fee as determined by the commission in accordance with a published fee schedule.

(b) An initial application fee shall be based as nearly as possible on the actual or anticipated cost of reviewing the application, but shall not exceed \$200.

(c) After approval but before issuance of the surface mining permit, the applicant shall pay an approved application fee in the amount of \$10 per acre of the affected land, which may be paid in annual installments apportioned over the term of the permit.

[Acts 1977, 65th Leg., p. 2620, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1321, ch. 524, § 3

Acts 1977, 65th Leg., p. 1321, ch. 524, § 3, purports to amend subsec. (d) of § 8 of Civil Statutes, art. 5920-10 [now, this section], without reference to repeal of said article by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(5). As so amended, subsec. (d) reads:

"After approval but prior to issuance of the surface mining permit, the applicant shall pay an approved application fee in the amount of

\$10 per acre of the permit area, which may be paid in annual installments apportioned over the term of the permit."

§ 131.136. Amendment to Permit Application

A permit application may be amended to exclude the part of an operation that lies within an area designated as unsuitable for surface mining under Sections 131.035 through 131.041 of this code.

[Acts 1977, 65th Leg., p. 2621, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.137. Combined Permit Application

(a) The commission shall adopt rules permitting an operator of more than one noncontiguous surface mining operation to submit a single application for a combined surface mining permit covering all his mining operations.

(b) A combined permit application shall require the same detailing of information as required by this subchapter for each separate location.

(c) An operator desiring to operate under a combined permit may submit a consolidated reclamation plan covering all his operations under rules prescribed by the commission, but he may be required to furnish specific information relating to reclamation of a single operating area if the commission determines that this is necessary to carry out the purposes of this chapter.

(d) Except as provided in this section, each surface mining operation submitted as part of a combined permit application shall be separate and independent of all other surface mining operations included in the same permit application.

(e) The commission may approve or deny an individual surface mining operation and the reclamation plan that relates to an individual surface mining operation without affecting other portions of the same permit application.

[Acts 1977, 65th Leg., p. 2621, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.138. Filing Application With County Clerk

After deleting confidential information as provided in Section 131.048 of this code, the commission shall file for public inspection with the county clerk at the county courthouse of the county in which any portion of the mining is proposed to occur a copy of each application.

[Acts 1977, 65th Leg., p. 2621, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.139. Submission of Application to Agencies for Comment

(a) The commission immediately shall submit copies of the permit application to the Parks and Wildlife Department, Texas Water Quality Board, Texas

Water Development Board, General Land Office, Texas Air Control Board, Texas Historical Commission, Texas Water Rights Commission, State Soil and Water Conservation Board, Bureau of Economic Geology, Texas Department of Health Resources, and other state agencies whose jurisdiction the commission feels the particular mining operation may affect.

(b) Each of these agencies shall review the permit application and submit any comments the agency cares to make within 30 days of receipt of the application.

(c) An agency's comments shall include an enumeration of permits or licenses required under the agency's jurisdiction.

(d) The comments of each agency shall be made a part of the record and a copy shall be furnished to the applicant.

[Acts 1977, 65th Leg., p. 2621, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.140. Approval of Permit

(a) The commission shall grant a surface mining permit if it is established that the permit application complies with the requirements of this chapter and applicable federal and state laws.

(b) The commission may approve a surface mining permit conditioned on the approval of other state permits or licenses that may be required.

[Acts 1977, 65th Leg., p. 2622, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.141. Denial of a Permit

The commission shall deny a permit if:

(1) it finds that the reclamation as required by this chapter cannot be accomplished by means of the proposed reclamation plan;

(2) part of the proposed operation lies within an area designated as unsuitable for surface mining in Sections 131.035 through 131.041 of this code;

(3) it is advised by the Texas Water Quality Board that the proposed mining operation will cause pollution of water of the state, or by the Texas Air Control Board that the proposed mining operation will cause pollution of the ambient air of the state, in violation of the laws of this state;

(4) the applicant has had another permit issued under this chapter revoked or any bond posted to comply with this chapter forfeited, with the conditions causing the forfeiture not being corrected to the satisfaction of the commission;

(5) it determines that the proposed operation will endanger the health and safety of the public;

(6) the surface mining operation will adversely affect a public highway or road; or

(7) the operator is unable to produce the bonds or otherwise meet the requirements of Sections 131.201 through 131.206 of this code.

[Acts 1977, 65th Leg., p. 2622, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1321, ch. 524, § 4

Acts 1977, 65th Leg., p. 1321, ch. 524, § 4, purports to amend subsec. (a)(4) of § 12 of Civil Statutes, art. 5920-10 [now, subd. (4) of this section], without reference to repeal of said article by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(5). As so amended, subsec. (a)(4) reads:

"the applicant has had any other permit issued hereunder revoked, or any bond posted to comply with this Act forfeited, and the conditions causing the permit to be revoked or the bond to be forfeited have not been corrected to the satisfaction of the commission;

§ 131.142. Term and Transferability of Permit

(a) A surface mining permit issued under this chapter for coal and lignite shall be issued for a term of not more than five years and for uranium and uranium ore shall be issued for a term of not more than 10 years.

(b) Except as provided in Sections 131.155 through 131.158 of this code, a surface mining permit is nontransferable.

[Acts 1977, 65th Leg., p. 2622, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.143. Liability Insurance Policy

(a) After a permit application is approved but before the permit is issued, the applicant shall file a certificate of insurance certifying that the applicant has in force a public liability insurance policy issued by an insurance company authorized to conduct business in this state.

(b) The liability insurance policy required by Subsection (a) of this section shall cover all surface mining operations of the applicant in this state and shall afford bodily injury protection and accidental business property damage protection in an amount determined by the commission to compensate adequately any persons damaged as a result of surface mining and reclamation operations.

(c) The liability insurance policy shall be maintained in full force and effect during the term of the permit or the renewal of the permit, including the length of all reclamation operations.

[Acts 1977, 65th Leg., p. 2622, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.144. Rules for Revision, Transfer, and Renewal of Permits

The commission shall promulgate rules for renewal, revision, and transfer of surface mining permits. [Acts 1977, 65th Leg., p. 2623, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.145. Right to Renewal

A valid surface mining permit issued under this chapter carries with it the right of successive renewal on expiration with respect to area within the boundaries of the existing permit.

[Acts 1977, 65th Leg., p. 2623, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.146. Application for and Issuance of Renewal

The holder of a permit may apply for renewal and the renewal shall be issued on the basis of the following requirements and written findings by the commission that:

(1) the terms and conditions of the existing permit are being satisfactorily met;

(2) the performance bond or substitute collateral required under the terms of this chapter will continue in full force and effect and unimpaired for the requested renewal, revision, or transfer;

(3) the operator has provided additional or revised information as required by the commission; and

(4) notice under Section 131.159 of this code has been provided with respect to the application for renewal, revision, or transfer.

[Acts 1977, 65th Leg., p. 2623, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.147. Renewal Application Fee

(a) Each application for renewal of a surface mining permit shall be accompanied by a renewal application fee as determined by the commission in accordance with a published fee schedule.

(b) The fee shall be based as nearly as possible on the actual or anticipated cost of reviewing the application, but in no event shall the amount exceed \$200.

(c) The approved application fee as provided in Section 131.135 of this code is not applicable to a renewal application except for the portion, if any, that addresses any new land areas.

[Acts 1977, 65th Leg., p. 2623, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.148. Extension of Permit Coverage

If an application for renewal of a valid permit includes a proposal to extend the mining operation beyond the boundaries authorized in the existing permit, the portion of the application for renewal of

a valid permit that addresses any new land areas shall be subject to the full standards, including application fees, applicable to new applications under this chapter.

[Acts 1977, 65th Leg., p. 2623, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.149. Term of Renewal Permit

A surface mining permit renewal shall be for a term not to exceed the period of the original permit established under this chapter.

[Acts 1977, 65th Leg., p. 2623, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.150. Time Limit for Renewal Application

Application for permit renewal shall be made at least 90 days before the expiration of the valid permit.

[Acts 1977, 65th Leg., p. 2623, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.151. Revision of Permit

During the term of a surface mining permit, the permittee may submit an application, together with a revised reclamation plan, to the commission for a revision of the permit.

[Acts 1977, 65th Leg., p. 2624, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.152. Approval or Disapproval of Permit Revision

(a) No application for a revision of a permit may be approved unless the commission finds that reclamation as required under this chapter can be accomplished under the revised reclamation plan.

(b) The revision shall be approved or disapproved within 60 days.

[Acts 1977, 65th Leg., p. 2624, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1322, ch. 524, § 6

Acts 1977, 65th Leg., p. 1322, ch. 524, § 6, purports to amend subsec. (b) of § 15 of Civil Statutes, art. 5920-10 by deleting the third sentence thereof [now, subsec. (b) of this section], without reference to repeal of said article by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(5).

§ 131.153. Guidelines for Revision

(a) The commission shall establish by rule guidelines for a determination of the scale or extent of a revision request to which all permit application information requirements and procedures, including notice and hearings, shall apply.

(b) A revision that proposes a substantial change in the intended future use of the land or significant alteration in the reclamation plan shall be subject at a minimum to the notice and hearing requirements provided in Sections 131.159 and 131.163 of this code. [Acts 1977, 65th Leg., p. 2624, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.154. Extensions to Area

Except for incidental boundary revisions, an extension to the area covered by a permit must be made by application for another permit or for revision of a permit.

[Acts 1977, 65th Leg., p. 2624, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.155. Transfer of Permit

(a) No transfer, assignment, or sale of the rights granted under a permit issued under this chapter shall be made without the written approval of the commission.

(b) A person desiring to succeed to the interests of a permittee under this chapter must file an application on a form prescribed by the commission and including any pertinent information the commission by rule may require.

[Acts 1977, 65th Leg., p. 2624, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.156. Required Information for Transfer

As part of the information for transfer, the commission shall require:

(1) the information required by Subdivisions (1) and (4) of Section 131.133 of this code relating to ownership and other mining activities of the applicant;

(2) proof that the public liability insurance requirement in Section 131.143 of this code will be fulfilled;

(3) proof that the performance bond or substitute collateral required by Sections 131.201 through 131.206 of this code will be furnished; and

(4) the statement of the applicant that he will faithfully carry out all of the requirements of the reclamation plan approved in the original application.

[Acts 1977, 65th Leg., p. 2624, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.157. Approval of Transfer

After notice and an opportunity for a public hearing, if required under Sections 131.159 and 131.163 of this code, and on a written finding by the commission that the requirements of Sections 131.146 through 131.150 of this code have been met, the application for transfer shall be approved.

[Acts 1977, 65th Leg., p. 2624, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.158. Denial of Application for Transfer

An application for transfer shall be denied if the applicant has had a permit issued under this chapter revoked or a bond posted to comply with this chapter forfeited, and the conditions causing forfeiture not being corrected to the satisfaction of the commission.

[Acts 1977, 65th Leg., p. 2625, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.159. Notice by Applicant

(a) At the time an application for a surface mining permit or an application for revision, renewal, or transfer of an existing surface mining permit is submitted under this chapter, the applicant shall publish notice of the ownership, location, and boundaries of the permit area sufficiently detailed for local residents to locate readily the proposed operation and the location at which the application is available for public inspection.

(b) The notice shall be published in the local newspaper of greatest general circulation in the locality in which the proposed surface mine is to be located.

(c) The notice shall be published at least once a week for four consecutive weeks.

[Acts 1977, 65th Leg., p. 2625, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.160. Notification by Commission

The commission shall contact various local governmental bodies, planning agencies, sewage, and water treatment authorities or water companies that have jurisdiction over or in the locality in which the proposed surface mining will occur, and the owners of record of surface areas within 500 feet of any part of the permit area and shall give them notice of the applicant's intention to surface mine a particularly described tract of land and indicate the applicant's permit number, if any, and the place at which a copy of the proposed mining and reclamation plan may be inspected.

[Acts 1977, 65th Leg., p. 2625, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.161. Comments

(a) Within 30 days after the last publication as provided in Section 131.159 of this code, each local body, agency, authority, or company may submit written comments with respect to the effect of the proposed operation on the environment within its area of responsibility.

(b) These comments shall be made part of the record, and one copy of the comments shall be furnished to the operator.

[Acts 1977, 65th Leg., p. 2625, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.162. Written Objections

(a) Within 30 days after the last publication of notice under Section 131.159 of this code, a person affected or a federal, state, or local governmental agency or authority is entitled to file with the commission written objections to the application for a surface mining permit or to the application for the renewal, revision, or transfer of a surface mining permit.

(b) The written objections shall be made part of the record and one copy of the written objections shall be furnished to the operator.

[Acts 1977, 65th Leg., p. 2625, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.163. Notice and Public Hearing

(a) If the commission determines that the application for a surface mining permit is of a significance sufficient to warrant a public hearing, the commission shall hold a public hearing in the locality of the proposed surface mining and reclamation operations.

(b) In determining whether to hold a public hearing, the commission shall consider any objections that have been filed.

(c) The commission shall publish notice of the date, time, and location of the public hearing in the newspaper with the greatest general circulation in the locality at least once a week for three consecutive weeks before the scheduled hearing date.

[Acts 1977, 65th Leg., p. 2625, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.164. Transcripts of Public Hearings

(a) The commission shall retain a verbatim transcript and complete record of the proceedings of each public hearing.

(b) On request, the commission shall transcribe all or part of these proceedings and shall furnish a verbatim transcript within a reasonable time to the requesting party.

(c) The commission may charge a fee based on the estimated cost of the service of transcribing and printing any requested material.

[Acts 1977, 65th Leg., p. 2626, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Repeal by Acts 1977, 65th Leg., p. 1323, ch. 524, § 8

Acts 1977, 65th Leg., p. 1323, ch. 524, § 8, purports to repeal subsec. (d) of § 16 of Civil Statutes, art. 5920-10 [now, this section], without reference to repeal of said article by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(5).

§ 131.165. Decision After Hearing

Within 30 days after a public hearing under Section 131.163 of this code, the commission shall issue

and furnish to all the parties to the proceedings written findings based on the record, granting or denying the application in whole or in part and stating the reasons for its decision.

[Acts 1977, 65th Leg., p. 2626, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1320, ch. 524, § 2

Acts 1977, 65th Leg., p. 1320, ch. 524, § 2, purports to rewrite § 17 of Civil Statutes, art. 5920-10 [now, this section and Section 131.166], without reference to repeal of said article by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(5). As so rewritten, § 17 reads:

"The commission shall comply with the Administrative Procedure and Texas Register Act in all proceedings under this Act except where inconsistent with this Act."

§ 131.166. Decision Without Initial Hearing

(a) If no public hearing is held under Section 131.163 of this code, the commission, within 45 days after the last publication of notice under Section 131.159 of this code, shall notify the applicant and any objectors whether the application has been approved or disapproved.

(b) If the application is approved, the permit shall be issued, but if the application is disapproved, specific reasons for disapproval shall be stated in the notice to the applicant and any objectors.

(c) Within 30 days after the applicant is notified that the permit or any portion of the permit is denied, the applicant may request a hearing on the reasons for the disapproval.

(d) Within 30 days after the applicant's request for a hearing, the commission shall hold a hearing and shall notify all interested parties of the hearing at the same time that the applicant is notified.

(e) Within 30 days after the hearing, the commission shall issue and furnish the applicant and all persons who participated in the hearing a written decision by the commission based on the record granting or denying the permit in whole or part and stating the reasons for the decision.

[Acts 1977, 65th Leg., p. 2626, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Amendment by Acts 1977, 65th Leg., p. 1320, ch. 524, § 2

See italicized note under Section 131.165.

[Sections 131.167 to 131.200 reserved for expansion]

SUBCHAPTER E. BONDS AND DEPOSITS

§ 131.201. Performance Bond Requirement

(a) After a surface mining permit application has been approved but before the permit is issued, the applicant shall file with the commission, on a form prescribed by rule, a bond for performance payable to the State of Texas and conditioned on full and faithful performance of all the requirements of this chapter and the permit.

(b) The bond shall cover that area of land within the permit area on which the operator will initiate and conduct surface mining and reclamation operations, and as succeeding increments of surface mining and reclamation operations are to be initiated and conducted within the permit area, the operator shall file with the commission an additional bond or bonds to cover the increments in accordance with Sections 131.202 through 131.206 of this code.

[Acts 1977, 65th Leg., p. 2626, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.202. Amount of Performance Bond

(a) The amount of the bond required for each bonded area depends on the reclamation requirements of the approved permit and shall be determined by the commission.

(b) The commission's determination shall be based on at least two independent estimates, one of which shall be submitted by the permit applicant and the other prepared at the commission's direction under procedures established by rule. Only one independent estimate need be submitted if the applicant waives his right to submit an estimate.

(c) The amount of the bond shall be determined by the commission and shall be sufficient to assure the completion of the reclamation plan if the work had to be performed by a third party in the event of forfeiture, but in no event shall the bond exceed the highest independent estimate made under this section.

[Acts 1977, 65th Leg., p. 2627, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.203. Bond Without Surety

The commission may accept the bond of the operator itself, without separate surety, if the operator demonstrates to the satisfaction of the commission the existence of a suitable agent to receive service of process and a history of financial solvency and continuous operation sufficient to self-insure or bond the amount.

[Acts 1977, 65th Leg., p. 2627, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.204. Extent of Liability Under Bond

Liability under the bond shall be for the duration of surface mining and reclamation operations and

for a period coincident with the operator's responsibility pursuant to Section 131.102 of this code. [Acts 1977, 65th Leg., p. 2627, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.205. Security for Bond

(a) The bond shall be executed by the operator and a corporate surety licensed to do business in this state, or the operator may elect to deposit cash or negotiable securities acceptable to the commission, or an assignment of a savings account in a Texas bank on an assignment deposit form prescribed by the commission's rules.

(b) A cash deposit or market value of the substitute collateral shall be equal to or greater than the amount of the bond required for the bonded area.

(c) Cash or other substitute collateral shall be deposited on the same terms as the terms on which surety bonds may be deposited.

[Acts 1977, 65th Leg., p. 2627, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.206. Increase or Decrease of Bond

(a) The amount of the bond or deposit required and the terms of acceptance of the applicant's bond or substitute collateral may be increased or decreased from time to time to reflect changes in the cost of future reclamation of land mined or to be mined.

(b) The amount of the bond or substitute collateral may be reduced only in accordance with the provisions of Sections 131.208 through 131.213 of this code.

[Acts 1977, 65th Leg., p. 2627, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.207. Forfeiture of Operator's Performance Bond

On issuance of a final order revoking an operator's permit for failure to comply with an order of the commission to take action as required by this chapter or rules adopted under this chapter, the operator's performance bond shall be forfeited if it is determined that forfeiture is necessary to reclaim land disturbed by the operator's surface mining operation.

[Acts 1977, 65th Leg., p. 2628, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.208. Application for Release of Performance Bond or Deposit

(a) At any time, an operator may file an application with the commission for the release of all or part of the performance bond or deposit.

(b) The application shall be on a form prescribed by the commission and in addition to other information the commission may require, shall include the type and the approximate date of reclamation work

performed and a description of the results achieved as they relate to the operator's reclamation plan.

(c) The commission shall file a copy of the bond release application for public inspection with the county clerk at the county courthouse of the county in which the surface mining and reclamation operation is located.

[Acts 1977, 65th Leg., p. 2628, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.209. Notice

(a) The operator shall submit a copy of a notice that has been published once a week for four consecutive weeks in the newspaper of greatest general circulation in the locality of the surface mining and reclamation operation.

(b) The advertisement shall be considered part of any bond release application and shall include:

- (1) notice of the location and boundaries of the land affected;
- (2) the permit number and the date approved;
- (3) the amount of the bond filed and the portion sought to be released; and
- (4) the location at which the bond release application has been placed for public inspection.

[Acts 1977, 65th Leg., p. 2628, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.210. Inspection and Evaluation

(a) On receipt of the notice and request, the commission shall conduct an inspection and evaluation of the reclamation work involved, the inspection and evaluation to occur within a reasonable time not to exceed 45 days.

(b) The evaluation shall consider among other things:

- (1) the degree of difficulty to complete remaining reclamation;
- (2) whether pollution of surface and subsurface water is occurring;
- (3) the probability of continuance or future occurrence of pollution; and
- (4) the estimated cost of abating pollution.

[Acts 1977, 65th Leg., p. 2628, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.211. Basis for Release of Bond or Deposit

The commission may release in whole or part the bond or deposit if it is satisfied that reclamation covered by the bond or deposit or a portion of the bond or deposit has been accomplished as required by this chapter according to the following schedule:

- (1) when the operator completes required backfilling, regrading, and drainage control of a bonded area as provided in his approved reclamation plan, the commission may authorize the release of up to 75 percent of the bond or substitute collateral for the applicable permit area, provided the amount of the unreleased portion of the bond or substitute collateral is not less than the amount necessary to assure completion of the reclamation work by a third party in the event of forfeiture; and

(2) when the operator has successfully completed the remaining reclamation activities, but not before the expiration of the period specified for operator responsibility in Section 131.102 of this code, the commission may release the remaining portion of the bond or substitute collateral, provided that no bond is fully released until all reclamation requirements of this chapter are fully met.

[Acts 1977, 65th Leg., p. 2628, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.212. Disapproval of Application for Bond or Deposit Release

If the commission disapproves the application for release of the bond or deposit or a portion of the bond or deposit, it shall notify the operator in writing of the reasons for disapproval and recommend corrective actions necessary to secure the release.

[Acts 1977, 65th Leg., p. 2629, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.213. Notice of Release to Local Governmental Agency

Within 30 days after an application for total or partial bond or deposit release is filed with the commission, the commission shall notify the local governmental agency in which the surface mining operation is located by certified mail.

[Acts 1977, 65th Leg., p. 2629, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.214. Objections to Release

(a) Any person or the officer or head of a federal, state, or local governmental agency is entitled to file written objections to the proposed release from the bond or deposit.

(b) The objections must be filed with the commission within 30 days after the last publication of notice as provided in Section 131.209 of this code.

(c) If the commission determines that the application is of a significance sufficient to warrant a public hearing considering the objections that have been filed, the commission shall hold a public hearing.

(d) The commission shall give notice to all interested parties of the time and place of the hearing which shall be conducted as provided in Sections 131.160 through 131.164 of this code.

(e) The hearing shall be held in the locality of the surface mining operation proposed for bond or deposit release.

(f) Notice of the date, time, and location of the public hearing shall be published by the commission as provided in Section 131.163 of this code.

[Acts 1977, 65th Leg., p. 2629, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 131.215 to 131.230 reserved for expansion]

SUBCHAPTER F. FUNDS

§ 131.231. Land Reclamation Fund

(a) Money received through the payment of fees, loans, grants, gifts, penalties, bond forfeitures, and other money received by the commission shall be deposited in the State Treasury and credited to a special account to be designated the land reclamation fund.

(b) The fund shall be available to the commission and may be spent for the administration and enforcement of this chapter and for the reclamation of land affected by surface mining operations.

[Acts 1977, 65th Leg., p. 2629, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.232. Appropriation

Money for the operation of the commission under this chapter shall be appropriated by the legislature. [Acts 1977, 65th Leg., p. 2630, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.233. Use of Proceeds From Bond Forfeitures and Penalties

Proceeds from the forfeiture of bonds and penalties recovered shall be spent to reclaim land as provided in this chapter with respect to which the bonds were provided and the penalties assessed.

[Acts 1977, 65th Leg., p. 2630, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.234. Reclamation of Land

(a) In the reclamation of land affected by surface mining for which funds are available, the commission may use services of other state agencies or the federal government and may compensate them for the services.

(b) The commission may have reclamation work done by its own employees or by employees of other governmental agencies or through contracts with qualified persons.

(c) The contracts shall be awarded to the lowest bidder on competitive bids after reasonable advertisement.

(d) The commission and any other agency and any contractor under a contract are entitled to access to the land affected to carry out the reclamation. [Acts 1977, 65th Leg., p. 2630, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 131.235 to 131.260 reserved for expansion]

SUBCHAPTER G. ENFORCEMENT

§ 131.261. Conditions, Practices, and Violations Creating Imminent Danger or Causing Imminent Harm

(a) On the basis of any inspection, if the commission or its authorized representative or agent determines that a condition or practice exists or that a permittee is in violation of a requirement of this chapter or a permit condition required by this chapter, and that this condition, practice, or violation also creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant imminent harm to land, air, or water resources, a member of the commission shall immediately order a cessation of surface mining operations on the portion of the area relevant to the condition, practice, or violation.

(b) The cessation order shall set a time and place for a hearing to be held before the commission and shall be held as soon after the order is issued as is practicable.

(c) The requirements of Section 131.159 of this code relating to time for notice, newspaper notice, and method of giving notice do not apply to a hearing under this section, but general notice shall be given in the manner that the commission judges to be practicable under the circumstances.

(d) No more than 24 hours after the commencement of the hearing and without adjournment, the commission shall affirm, modify, or set aside the order.

[Acts 1977, 65th Leg., p. 2630, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.262. Violations Not Creating Imminent Danger or Causing Imminent Harm

(a) On the basis of an inspection, if the commission or its authorized representative or agent determines that a permittee is in violation of a requirement of this chapter or a permit condition required by this chapter, but the violation does not create an imminent danger to the health or safety of the public or is not causing or reasonably expected to cause significant imminent harm to land, air, or water resources, the commission shall issue a notice to the permittee or his agent setting a reasonable time not to exceed 30 days for the abatement of the violation.

(b) If, on expiration of the period of time as originally set or subsequently extended, for good cause shown, and on written finding of the commission, the commission finds that the violation has not been abated, it may order a cessation of surface mining operations on the portion of this area relevant to the violation. However, if requested by the operator, a hearing must be held prior to a commission finding or order.

(c) The cessation order shall remain in effect until the commission determines that the violation has been abated or until modified, vacated, or terminated by the commission under Section 131.263 of this code.

[Acts 1977, 65th Leg., p. 2631, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.263. Continuous Violations

(a) On the basis of an inspection, if the commission has reason to believe that a pattern of violations of any requirements of this chapter or any permit conditions required by this chapter exists or has existed, and if the commission also finds that these violations are caused by the unwarranted failure of the permittee to comply with requirements of this chapter or permit conditions or that the violations are wilfully caused by the permittee, the commission shall issue an order to the permittee forthwith to show cause as to why the permit should not be suspended or revoked.

(b) The order shall set a time and place for a public hearing to be held in accordance with the notice and procedural requirements of Sections 131.159 through 131.164 of this code.

(c) On failure of a permittee to show cause why the permit should not be suspended or revoked, the commission shall promptly suspend, or revoke the permit.

[Acts 1977, 65th Leg., p. 2631, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.264. Form of Notices and Orders

(a) Notices and orders issued under Sections 131.261 through 131.263 of this code shall set forth with reasonable specificity:

- (1) the nature of the violation and the remedial action required;
- (2) the period of time established for abatement; and
- (3) a reasonable description of the portion of the surface mining and reclamation operation to which the notice or order applies.

(b) Each notice or order issued under this section shall be given promptly to the permittee or his agent by the commission.

(c) Notices and orders shall be in writing and shall be signed by the commission or its authorized representative.

(d) A notice or order issued under Sections 131.261 through 131.263 of this code may be modified, vacated, or terminated by the commission.

[Acts 1977, 65th Leg., p. 2631, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.265. Civil Actions

(a) The commission may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or other appropriate order, if the permittee:

- (1) violates or fails or refuses to comply with an order or decision issued by the commission under this chapter;
- (2) interferes with, hinders, or delays the commission or its authorized representative in carrying out the provisions of this chapter;
- (3) refuses to admit an authorized representative to the mine;
- (4) refuses to permit inspection of the mine by an authorized representative;
- (5) refuses to furnish information or a report requested by the commission under the commission's rules; or
- (6) refuses to permit access to and copying of records the commission determines reasonably necessary to carry out the provisions of this chapter.

(b) The action shall be brought in a district court in Travis County or in the county in which the greater portion of the surface mining and reclamation operation is located.

(c) The court has jurisdiction to provide the relief that is appropriate, and relief granted by the court to enforce Subdivision (1) of Subsection (a) of this section shall continue in effect until the completion or final termination of all proceedings for review of the order under this chapter unless before that time the district court granting the relief sets the order aside or modifies it.

[Acts 1977, 65th Leg., p. 2632, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.266. Injunctive Relief and Civil Penalty

(a) The commission may have a civil suit instituted for injunctive relief to restrain a permittee from continuing a violation or threatening a violation or for the assessment of a civil penalty of not more than \$5,000 as the court considers proper for each day of violation, or for both.

(b) In determining the amount of the civil penalty, consideration shall be given to:

- (1) the permittee's history of previous violations under this chapter;
- (2) the appropriateness of the penalty to the size of the business of the permittee;

(3) the seriousness of the violation, including irreparable harm to the environment and hazard to the health or safety of the public;

(4) whether the permittee was negligent; and

(5) the demonstrated good faith of the permittee charged in attempting to achieve rapid compliance after notice of the violation.

[Acts 1977, 65th Leg., p. 2632, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.267. Criminal Penalty for Violating Permits and Orders

A person who wilfully and knowingly violates a condition of a permit issued under this chapter or fails or refuses to comply with an order issued under Section 131.264 of this code or an order incorporated in a final decision issued by the commission under this chapter, on conviction by a district court, shall be punished by a criminal penalty of not more than \$10,000 or by imprisonment for not more than one year or by both.

[Acts 1977, 65th Leg., p. 2632, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.268. Criminal Penalty for Corporate Permittee

If a corporate permittee violates a condition of a permit issued under this chapter or fails or refuses to comply with an order issued under Section 131.264 of this code or an order incorporated in a final decision issued by the commission under this chapter, a director, officer, or agent of the corporation who wilfully and knowingly authorized, ordered, or carried out the violation, failure, or refusal, on conviction by a district court, is punishable by a criminal penalty of not more than \$10,000 or by imprisonment for not more than one year or by both.

[Acts 1977, 65th Leg., p. 2632, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.269. Criminal Penalty for False Statement, Representation, or Certification

A person who knowingly makes a false statement, representation, or certification or who knowingly fails to make a statement, representation, or certification in an application, record, report, plan, or other document filed or required to be maintained under this chapter, on conviction by a district court, is punishable by a criminal penalty of not more than \$10,000 or by imprisonment for not more than one year or by both.

[Acts 1977, 65th Leg., p. 2633, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 131.270. Recovery of Civil Penalties

(a) The commission may request the attorney general to institute a suit to recover civil or criminal penalties or to obtain injunctive relief or for both as

provided in Sections 131.265 through 131.269 of this code.

(b) Suit shall be brought in a district court in Travis County or in the county in which the greater portion of the surface mining and reclamation operation is located.

[Acts 1977, 65th Leg., p. 2633, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 132. INTERSTATE MINING COMPACT

Section

- 132.001. Adoption of Compact.
- 132.002. Text of Compact.
- 132.003. Establishment and Duties of Texas Mining Council.
- 132.004. Membership of Texas Mining Council.
- 132.005. Terms of Office.
- 132.006. Compensation and Travel Expenses.
- 132.007. Membership in Employees Retirement System.
- 132.008. Filing Bylaws and Amendments.

§ 132.001. Adoption of Compact

The Interstate Mining Compact is enacted into law and entered into with all other jurisdictions legally joining in the compact in the form provided in Section 132.002 of this code.

[Acts 1977, 65th Leg., p. 2633, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Application of Sunset Act

Acts 1977, 65th Leg., p. 1841, ch. 735, § 2.063, purports to add § 1a to Acts 1975, 64th Leg., ch. 136 [now, this Chapter], without reference to repeal of said Act by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(5). As so added, § 1a reads:

"The office of Interstate Mining Compact Commissioner for Texas is subject to the Texas Sunset Act [Civil Statutes, art. 5429k]; and unless continued in existence as provided by that Act the office is abolished, and this Act expires effective September 1, 1983."

§ 132.002. Text of Compact

The Interstate Mining Compact reads as follows:

INTERSTATE MINING COMPACT

ARTICLE I. FINDINGS AND PURPOSES

(a) The party states find that:

(1) Mining and the contributions thereof to the economy and well-being of every state are of basic significance.

(2) The effects of mining on the availability of land, water, and other resources for other uses present special problems which properly

can be approached only with due consideration for the rights and interests of those engaged in mining, those using or proposing to use these resources for other purposes, and the public.

(3) Measures for the reduction of the adverse effects of mining on land, water, and other resources may be costly and the devising of means to deal with them are of both public and private concern.

(4) Such variables as soil structure and composition, physiography, climatic conditions, and the needs of the public make impracticable the application to all mining areas of a single standard for the conservation, adaptation, or restoration of mined land, or the development of mineral and other natural resources, but justifiable requirements of law and practice relating to the effects of mining on land, water, and other resources may be reduced in equity or effectiveness unless they pertain similarly from state to state for all mining operations similarly situated.

(5) The states are in a position and have the responsibility to assure that mining shall be conducted in accordance with sound conservation principles and with due regard for local conditions.

(b) The purposes of this compact are to:

(1) advance the protection and restoration of land, water, and other resources affected by mining;

(2) assist in the reduction or elimination or counteracting of pollution or deterioration of land, water, and air attributable to mining;

(3) encourage, with due recognition of relevant regional, physical, and other differences, programs in each of the party states which will achieve comparable results in protecting, conserving, and improving the usefulness of natural resources, to the end that the most desirable conduct of mining and related operations may be universally facilitated;

(4) assist the party states in their efforts to facilitate the use of land and other resources affected by mining, so that such use may be consistent with sound land use, public health, and public safety, and to this end to study and recommend, wherever desirable, techniques for the improvement, restoration, or protection of such land and other resources;

(5) assist in achieving and maintaining an efficient and productive mining industry and in increasing economic and other benefits attributable to mining.

ARTICLE II. DEFINITIONS

As used in this compact, the term:

(a) "Mining" means the breaking of the surface soil in order to facilitate or accomplish the extraction or removal of minerals, ores, or other solid matter, any activity or process constituting all or part of a process for the extraction or removal of minerals, ores, and other solid matter from its original location, and the preparation, washing, cleaning, or other treatment of minerals, ores, or other solid matter so as to make them suitable for commercial, industrial, or construction use; but shall not include those aspects of deep mining not having significant effect on the surface, and shall not include excavation or grading when conducted solely in aid of on-site farming or construction.

(b) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or possession of the United States.

ARTICLE III. STATE PROGRAMS

Each party state agrees that within a reasonable time it will formulate and establish an effective program for the conservation and use of mined land, by the establishment of standards, enactment of laws, or the continuing of the same in force, to accomplish:

(a) the protection of the public and the protection of adjoining and other landowners from damage to their land and the structures and other property thereon resulting from the conduct of mining operations or the abandonment or neglect of land and property formerly used in the conduct of such operations;

(b) the conduct of mining and the handling of refuse and other mining wastes in ways that will reduce adverse effects on the economic, residential, recreational, or aesthetic value and utility of land and water;

(c) the institution and maintenance of suitable programs of adaptation, restoration, and rehabilitation of mined land;

(d) the prevention, abatement, and control of water, air, and soil pollution resulting from mining, present, past, and future.

ARTICLE IV. POWERS

In addition to any other powers conferred on the Interstate Mining Commission established by Article V of this compact, such commission shall have power to:

(a) study mining operations, processes, and techniques for the purpose of gaining knowledge concerning the effects of such operations, processes, and techniques on land, soil, water, air, plant and animal life, recreation, and pat-

terns of community or regional development or change;

(b) study the conservation, adaptation, improvement, and restoration of land and related resources affected by mining;

(c) make recommendations concerning any aspect or aspects of law or practice and governmental administration dealing with matters within the purview of this compact;

(d) gather and disseminate information relating to any of the matters within the purview of this compact;

(e) cooperate with the federal government and any public or private entities having interest in any subject coming within the purview of this compact;

(f) consult, on the request of a party state and within resources available therefor, with the officials of such state in respect to any problem within the purview of this compact;

(g) study and make recommendations with respect to any practice, process techniques, or course of action that may improve the efficiency of mining or the economic yield from mining operations;

(h) study and make recommendations relating to the safeguarding of access to resources which are or may become the subject of mining operations to the end that the needs of the economy for the products of mining may not be adversely affected by unplanned or inappropriate use of land and other resources containing minerals or otherwise connected with actual or potential mining sites.

ARTICLE V. THE COMMISSION

(a) There is hereby created an agency of the party states to be known as the "Interstate Mining Commission," hereinafter called "the commission." The commission shall be composed of one commissioner from each party state who shall be the governor thereof. Pursuant to the laws of his party state, each governor shall have the assistance of any advisory body (including membership from mining industries, conservation interests, and such other public and private interests as may be appropriate) in considering problems relating to mining and in discharging his responsibilities as the commissioner of his state on the commission. In any instance where a governor is unable to attend a meeting of the commission or perform any other function in connection with the business of the commission, he shall designate an alternate, from among the members of the advisory body required by this paragraph, who shall represent him and act in his place and stead. The designation of an alternate shall be communicated by the governor to the commission in such manner as its bylaws may provide.

(b) The commissioners shall be entitled to one vote each on the commission. No action of the commission making a recommendation pursuant to Articles IV(c), IV(g), and IV(h) of this compact, or requesting, accepting, or disposing of funds, services, or other property pursuant to this paragraph or Article V(g), V(h), or VII of this compact, shall be valid unless taken at a meeting at which a majority of the total number of votes on the commission is cast in favor thereof. All other action shall be by a majority of those present and voting; provided that action of the commission shall be only at a meeting at which a majority of the commissioners, or their alternates, is present. The commission may establish and maintain such facilities as may be necessary for the transacting of its business. The commission may acquire, hold, and convey real and personal property and any interest therein.

(c) The commission shall have a seal.

(d) The commission shall elect annually, from among its members, a chairman, a vice-chairman, and a treasurer. The commission shall appoint an executive director and fix his duties and compensation. Such executive director shall serve at the pleasure of the commission. The executive director, the treasurer, and such other personnel as the commission shall designate shall be bonded. The amount or amounts of such bond or bonds shall be determined by the commission.

(e) Irrespective of the civil service, personnel, or other merit system laws of any of the party states, the executive director with the approval of the commission, shall appoint, remove, or discharge such personnel as may be necessary for the performance of the commission's functions, and shall fix the duties and compensation of such personnel.

(f) The commission may establish and maintain independently or in conjunction with a party state, a suitable retirement system for its employees. Employees of the commission shall be eligible for social security coverage in respect of old age and survivor's insurance provided that the commission takes such steps as may be necessary pursuant to the laws of the United States, to participate in such program of insurance as a governmental agency or unit. The commission may establish and maintain or participate in such additional programs of employee benefits as it may deem appropriate.

(g) The commission may borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, or corporation.

(h) The commission may accept for any of its purposes and functions under this compact any and all donations, and grants of money, equipment, supplies, materials, and service, conditional or otherwise, from any state, the United States, or any other

governmental agency, or from any person, firm, association, or corporation, and may receive, utilize, and dispose of the same. Any donation or grant accepted by the commission pursuant to this paragraph or services borrowed pursuant to Paragraph (g) of this article shall be reported in the annual report of the commission. Such report shall include the nature, amount, and conditions, if any, of the donation, grant, or services borrowed and the identity of the donor or lender.

(i) The commission shall adopt bylaws for the conduct of its business and shall have the power to amend and rescind these bylaws. The commission shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendment thereto, with the appropriate agency or officer in each of the party states.

(j) The commission annually shall make to the governor, legislature, and advisory body required by Article V(a) of each party state a report covering the activities of the commission for the preceding year, and embodying such recommendations as may have been made by the commission. The commission may make such additional reports as it may deem desirable.

ARTICLE VI. ADVISORY, TECHNICAL, AND REGIONAL COMMITTEES

The commission shall establish such advisory, technical, and regional committees as it may deem necessary, membership on which shall include private persons and public officials, and shall cooperate with and use the services of any such committees and the organizations which the members represent in furthering any of its activities. Such committees may be formed to consider problems of special interest to any party states, problems dealing with particular commodities or types of mining operations, problems related to reclamation, development, or use of mined land, or any other matters of concern to the commission.

ARTICLE VII. FINANCE

(a) The commission shall submit to the governor or designated officer or officers of each party state a budget of its estimated expenditures for such period as may be required by the laws of that party state for presentation to the legislature thereof.

(b) Each of the commission's budgets of estimated expenditures shall contain specific recommendations of the amount or amounts to be appropriated by each of the party states. The total amount of appropriations requested under any such budget shall be apportioned among the party states as follows: one-half in equal shares, and the remainder in proportion to the value of minerals, ores, and other solid matter mined. In determining such values, the commission shall employ such available public source

or sources of information as, in its judgment, present the most equitable and accurate comparisons among the party states. Each of the commission's budgets of estimated expenditures and requests for appropriations shall indicate the source or sources used in obtaining information concerning value of minerals, ores, and other solid matter mined.

(c) The commission shall not pledge the credit of any party state. The commission may meet any of its obligations in whole or in part with funds available to it under Article V(h) of this compact; provided that the commission takes specific action setting aside such funds prior to incurring any obligation to be met in whole or in part in such manner. Except where the commission makes use of funds available to it under Article V(h) of this compact, the commission shall not incur any obligation prior to the allotment of funds by the party states adequate to meet the same.

(d) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the audit and accounting procedures established under its bylaws. All receipts and disbursements of funds handled by the commission shall be audited yearly by a qualified public accountant and the report of the audit shall be included in and become part of the annual report of the commission.

(e) The accounts of the commission shall be open at any reasonable time for inspection by duly constituted officers of the party states and by any persons authorized by the commission.

(f) Nothing contained herein shall be construed to prevent commission compliance with laws relating to audit or inspection of accounts by or on behalf of any government contributing to the support of the commission.

ARTICLE VIII. ENTRY INTO FORCE AND WITHDRAWAL

(a) This compact shall enter into force when enacted into law by any four or more states. Thereafter, this compact shall become effective as to any other state on its enactment thereof.

(b) Any party state may withdraw from this compact by enacting a statute repealing the same, but no such withdrawal shall take effect until one year after the governor of the withdrawing state has given notice in writing of the withdrawal to the governors of all other party states. No withdrawal shall affect any liability already incurred by or chargeable to a party state prior to the time of such withdrawal.

ARTICLE IX. EFFECT ON OTHER LAWS

Nothing in this compact shall be construed to limit, repeal, or supersede any other law of any party state.

ARTICLE X. CONSTRUCTION AND SEVERABILITY

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable, and if any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any state or of the United States, or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating herein, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters.

[Acts 1977, 65th Leg., p. 2633, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 132.003. **Establishment and Duties of Texas Mining Council**

The Texas Mining Council is established in the office of the governor and shall perform the duties of the advisory board provided in Section (a), Article V of the Interstate Mining Compact.

[Acts 1977, 65th Leg., p. 2639, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 132.004. **Membership of Texas Mining Council**

(a) The Texas Mining Council is composed of 11 members appointed by the governor.

(b) Each member of the Texas Mining Council shall be a member of the general public who has demonstrated a continuing interest in conservation matters, the head of a state agency, board, or commission, or a representative of the mining industry.

(c) Of the 11 members of the Texas Mining Council, at least three shall be members of the general public who have demonstrated an interest in conservation matters, at least three shall be representatives of the mining industry, and at least two shall be heads of state agencies, boards, or commissions.

(d) The service of members who are heads of state agencies, boards, or commissions is in addition to their other duties.

(e) A person serving as a member of the Texas Mining Council who is the head of a state agency, board, or commission ceases to be a member of the council if he ceases to be head of a state agency, board, or commission.

[Acts 1977, 65th Leg., p. 2639, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 132.005. **Terms of Office**

Members of the Texas Mining Council shall serve for terms of two years.

[Acts 1977, 65th Leg., p. 2639, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 132.006. **Compensation and Travel Expenses**

(a) The members of the Texas Mining Council are not entitled to compensation for their services.

(b) The members of the Texas Mining Council are entitled to receive actual expenses incurred for attendance at council meetings or attendance at meetings of the Interstate Mining Commission as alternate for the governor.

[Acts 1977, 65th Leg., p. 2639, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 132.007. **Membership in Employees Retirement System**

(a) The Employees Retirement System of Texas may enter into agreements with the Interstate Mining Commission for participation in the retirement system and other benefit programs for state employees administered by the agency or agencies.

(b) An agreement made under this section shall provide, as nearly as possible, for rights, contributions, obligations, and benefits comparable to those accorded employees of this state participating in or benefiting from the program involved.

[Acts 1977, 65th Leg., p. 2639, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 132.008. **Filing Bylaws and Amendments**

A copy of the bylaws and all amendments to the bylaws of the Interstate Mining Commission promulgated under Section (i), Article V of the Interstate Mining Compact shall be filed in the office of the Secretary of State.

[Acts 1977, 65th Leg., p. 2639, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

TITLE 5. GEOTHERMAL ENERGY AND ASSOCIATED RESOURCES

CHAPTER 141. GEOTHERMAL RESOURCES

SUBCHAPTER A. GENERAL PROVISIONS

- Section
- 141.001. Short Title.
- 141.002. Declaration of Policy.
- 141.003. Definitions.

SUBCHAPTER B. POWERS AND DUTIES OF THE RAILROAD COMMISSION

- 141.011. General Duty of the Railroad Commission.
- 141.012. Rules.

SUBCHAPTER C. POWERS AND DUTIES OF THE COMMISSIONER AND BOARD

- 141.071. General Authority of Commissioner.
- 141.072. Deposit of Fees.
- 141.073. Lease of Permanent School Fund Land.
- 141.074. Furnishing Lists of Land to Other Agencies.
- 141.075. Notice of Sale.
- 141.076. Bids.
- 141.077. Leases and Permits for Governmental Agencies.

Section

141.078. Unit Agreements.

141.079. Report to Legislature.

SUBCHAPTER A. GENERAL PROVISIONS

§ 141.001. Short Title

This chapter may be cited as the Geothermal Resources Act of 1975.

[Acts 1977, 65th Leg., p. 2640, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 141.002. Declaration of Policy

It is declared to be the policy of the State of Texas that:

(1) the rapid and orderly development of geothermal energy and associated resources located within the State of Texas is in the interest of the people of the State of Texas;

(2) in developing the state's geothermal energy and associated resources, the primary purpose is to provide a dependable supply of energy in an efficient manner that avoids waste of the energy resources; and

(3) consideration shall be afforded to protection of the environment, to protection of correlative rights, and to conservation of natural resources by all agencies and officials of the State of Texas involved in directing and prescribing rules or orders governing the exploration, development, and production of geothermal energy and associated resources and by-products in Texas.

[Acts 1977, 65th Leg., p. 2640, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 141.003. Definitions

In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Board" means the School Land Board. (New.)

(3) "Commissioner" means the Commissioner of the General Land Office.

(4) "Geothermal energy and associated resources" means:

(A) products of geothermal processes, embracing indigenous steam, hot water and hot brines, and geopressured water;

(B) steam and other gasses, hot water and hot brines resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(C) heat or other associated energy found in geothermal formations; and

(D) any by-product derived from them.

(5) "By-product" means any element found in a geothermal formation that when brought to

the surface is not used in geothermal heat or pressure inducing energy generation.

[Acts 1977, 65th Leg., p. 2641, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 141.004 to 141.010 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF THE RAILROAD COMMISSION

§ 141.011. General Duty of the Railroad Commission

Except for duties and responsibilities given to other agencies and officials under this chapter, the commission shall regulate the exploration, development, and production of geothermal energy and associated resources on public and private land for the purpose of conservation and the protection of correlative rights.

[Acts 1977, 65th Leg., p. 2641, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 141.012. Rules

(a) The commission, in consultation with the commissioner, executive director of the Texas Water Quality Board, and the executive director of the Texas Air Control Board, shall make, publish, and enforce rules providing for the rapid and orderly exploration, development, and production of geothermal energy and associated resources and to accomplish the purposes of this chapter.

(b) The rules made under this section shall include rules governing:

(1) protection of the environment against damage resulting from the exploration, development, and production of geothermal energy and associated resources;

(2) prevention of waste of natural resources, including geothermal energy and associated resources, in connection with the exploration, development, and production of geothermal energy and associated resources;

(3) protection of the general public against injury or damage resulting from the exploration, development, and production of geothermal energy and associated resources; and

(4) protection of correlative rights against infringement resulting from the exploration, development, and production of geothermal energy and associated resources.

(c) Rules shall be made and enforced only after a public hearing.

[Acts 1977, 65th Leg., p. 2641, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 141.013 to 141.070 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES OF THE COMMISSIONER AND BOARD

§ 141.071. General Authority of Commissioner

To facilitate and encourage the rapid and orderly development of geothermal energy and associated resources, the commissioner may:

(1) provide for the orderly exploration of land that belongs to the permanent school fund, excluding wildlife refuges and recreational areas except as provided in Section 141.077 of this code; and

(2) issue permits and charge reasonable fees for the permits in accordance with rules promulgated under this chapter by the board.

[Acts 1977, 65th Leg., p. 2642, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 141.072. Deposit of Fees

The fees collected from issuance of the permits shall be deposited in General Land Office Fund 80 and used as the legislature may direct.

[Acts 1977, 65th Leg., p. 2642, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 141.073. Lease of Permanent School Fund Land

(a) On direction of the commissioner, the board may lease land that belongs to the permanent school fund, excluding wildlife refuges and recreational areas, for the production of geothermal energy and associated resources.

(b) The board has full authority to set the terms and conditions of leases and may adopt rules relating to exploration, development, and production of geothermal energy and associated resources as the board determines to be in the best interest of the state.

(c) The board may require the taking in kind of the state's interest in the geothermal energy and associated resources or its by-products provided from this land.

[Acts 1977, 65th Leg., p. 2642, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 141.074. Furnishing Lists of Land to Other Agencies

Before advertising land for lease, the commissioner shall furnish a list of the tracts considered by the board for lease to the Texas Water Quality Board, the Texas Air Control Board, the commission, and any other state or federal agency that might have information that would be beneficial to the board in its determination of terms and conditions of the proposed lease.

[Acts 1977, 65th Leg., p. 2642, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 141.075. Notice of Sale

Land offered for lease to the public by the board shall be advertised in four daily newspapers in the state that have general circulation at least 30 days in advance of the sale date. The notice shall be published in three issues of each newspaper.

[Acts 1977, 65th Leg., p. 2642, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 141.076. Bids

(a) Sales of leases shall be made by sealed bids.

(b) The board is entitled to reject any and all bids, but if it accepts a bid, the bid must be determined by the board to be in the best interest of the State of Texas.

[Acts 1977, 65th Leg., p. 2642, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 141.077. Leases and Permits for Governmental Agencies

(a) The board may grant permits and leases to state and federal institutions, organizations, or groups desiring to do exploratory or experimental research of geothermal energy and associated resource potentials.

(b) These permits and leases may be granted on land that belongs to the permanent school fund, excluding wildlife refuges and recreational areas.

(c) The permits and leases may be issued or granted for research or experimental purposes under rules and conditions the board determines to be in the best interest of the state.

(d) In granting these leases, the commissioner and board do not have to follow the procedures in this subchapter for leasing to the public.

[Acts 1977, 65th Leg., p. 2643, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 141.078. Unit Agreements

(a) The board may approve unit agreements of one or more leased tracts on application of the lessees.

(b) Before approving any unit agreement, the board must find that the unit agreement if approved by the board will be in the best interest of the state.

[Acts 1977, 65th Leg., p. 2643, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 141.079. Report to Legislature

During the first 30 days of each regular session of the legislature, the commissioner shall report on the status of the exploration, development, and production of geothermal energy and associated resources under the land governed by this subchapter.

[Acts 1977, 65th Leg., p. 2643, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

TITLE 6. TIMBER

CHAPTER 151. PROVISIONS GENERALLY APPLICABLE

SUBCHAPTER A. BRANDING AND FLOATING TIMBER

Section

- 151.001. Definitions.
- 151.002. Timber to be Branded.
- 151.003. Recording Brand.
- 151.004. Filing Written Report.
- 151.005. Evidence of Ownership.
- 151.006. Penalties.
- 151.007. Venue.

SUBCHAPTER B. BILL OF SALE FOR PURCHASE OF TREES AND TIMBER

- 151.041. Required Bill of Sale.
- 151.042. Information in Bill of Sale.
- 151.043. Expenses in Connection With Bill of Sale.
- 151.044. Statement in Lieu of Bill of Sale for Staves or Crossties.
- 151.045. Penalty.
- 151.046. Applicability.

SUBCHAPTER A. BRANDING AND FLOATING TIMBER

§ 151.001. Definitions

In this subchapter:

(1) "Lumber" means lumber attached or bound together in some way for floating, but does not include loose lumber.

(2) "Shingles" means shingles in bunches or bundles, but does not include loose shingles.

[Acts 1977, 65th Leg., p. 2644, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 151.002. Timber to be Branded

A person engaged in floating or rafting timber on the water of a river or creek of this state shall have a log brand and shall brand distinctly each log or stick which he floats or hauls and puts in the water for sale or market.

[Acts 1977, 65th Leg., p. 2644, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 151.003. Recording Brand

(a) A person engaged in floating or rafting timber on the water of a river or creek of this state shall have his log brand recorded by the county clerk in:

- (1) each county in which he cuts timber; and
- (2) the county in which he proposes to sell or market the timber.

(b) The brand shall be recorded in a book kept by the county clerk for that purpose or on microfilm as permitted in Article 1941(a), Revised Civil Statutes of Texas, 1925.

(c) The county clerk shall receive the same fee as is allowed by law for recording stock brands.

[Acts 1977, 65th Leg., p. 2644, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 151.004. Filing Written Report

(a) A person who floats any logs or timber in this state shall make a written report under oath on the first day of January, April, July, and October of each year, or within 15 days of those dates, showing:

- (1) the number of logs cut or floated during the next preceding three months;
- (2) the survey or surveys of land from which the logs were cut or carried;
- (3) the number of logs cut from each survey; and
- (4) a description of the brand placed on the logs.

(b) The person who floats the logs or timber shall file the report required in Subsection (a) of this section with the county clerk of the county in which the timber was cut. The county clerk shall record and index the report in a book kept for that purpose or on microfilm as permitted in Article 1941(a), Revised Civil Statutes of Texas, 1925.

(c) This section of the code does not apply to pickets, posts, rails, or firewood.

[Acts 1977, 65th Leg., p. 2644, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 151.005. Evidence of Ownership

A certificate signed by the county clerk, containing a description of a log brand and the name of the owner of the brand, with a transfer on the back of it, signed and acknowledged by the owner or proved as other instruments for record, shall be prima facie evidence that the person to whom the transfer is made owns the logs described in the certificate.

[Acts 1977, 65th Leg., p. 2644, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 151.006. Penalties

(a) A person who buys or sells any timber or log floating, or that has been floated, in this state before it is branded shall be fined not more than \$10 for each unbranded log or piece of timber purchased, sold, or traced.

(b) A person shall be fined not more than \$200 for each offense if he:

- (1) floats any unbranded log or timber for market;
- (2) fails to make the reports required under Section 151.004 of this code;
- (3) brands any log or timber of another without his authority;
- (4) defaces a brand on any log or timber except when it is in the act of being sawed or manufactured into lumber or other commodity for use in building; or
- (5) is not an employee of the owner and without the written consent of the owner takes into

possession any branded or unbranded log or timber cut for floating or sawing, or any sawed timber, lumber, or shingle floating in any water of this state or deposited on the banks of a river or stream in this state.

[Acts 1977, 65th Leg., p. 2645, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 151.007. **Venue**

The accused may be prosecuted in any county in which the timber or lumber was deposited in the water or in which it was unlawfully taken into possession or unlawfully defaced, sold, purchased, or branded.

[Acts 1977, 65th Leg., p. 2645, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 151.008 to 151.040 reserved for expansion]

SUBCHAPTER B. BILL OF SALE FOR PURCHASE OF TREES AND TIMBER

§ 151.041. **Required Bill of Sale**

Before purchasing any trees or timber in the form of logs or pulpwood, a person, firm, partnership, or corporation shall require a bill of sale for the trees or timber, executed and acknowledged by the seller in the manner required by law for registration.

[Acts 1977, 65th Leg., p. 2645, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 151.042. **Information in Bill of Sale**

The bill of sale shall include:

- (1) the name and address of the seller and purchaser;
- (2) a description of the survey or tract of land from which the logs or pulpwood were cut;
- (3) the number of logs or pulpwood; and
- (4) the markings, if any, on the logs or pulpwood.

[Acts 1977, 65th Leg., p. 2645, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 151.043. **Expenses in Connection With Bill of Sale**

Notarial fees, filing fees, and other expenses in connection with the bill of sale shall be assumed and paid by the purchaser.

[Acts 1977, 65th Leg., p. 2645, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 151.044. **Statement in Lieu of Bill of Sale for Staves or Crossties**

(a) On or before the 10th day of each succeeding month from the date of purchase, a purchaser of staves or crossties who does not secure a bill of sale or deed to the staves or crossties shall file a verified

statement with the county clerk of the county in which the land is located from which the staves or crossties were cut.

(b) The verified statement shall include:

- (1) the name and address of the seller and purchaser;
- (2) a description of the survey or tract of land from which the staves or crossties were cut;
- (3) the number of staves or crossties; and
- (4) the markings, if any, on the staves or crossties.

(c) The verified statement shall be kept by the county clerk as a record for public inspection for a period of at least two years.

[Acts 1977, 65th Leg., p. 2645, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 151.045. **Penalty**

A seller or purchaser who fails to see that a bill of sale is given in a sale as provided for in this subchapter, or a purchaser who does not secure a bill of sale and fails to file the statement required by Section 151.044 of this code, is guilty of a misdemeanor and on conviction is subject to a fine of not more than \$100 or confinement for not more than 30 days in the county jail, or both.

[Acts 1977, 65th Leg., p. 2646, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 151.046. **Applicability**

The provisions of this subchapter shall not apply to the sale of finished lumber, cedar staves, wood, or posts.

[Acts 1977, 65th Leg., p. 2646, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 152. FOREST PEST CONTROL

SUBCHAPTER A. GENERAL PROVISIONS

- Section 152.001. Policy.
- 152.002. Public Nuisance.
- 152.003. Definitions.

SUBCHAPTER B. POWERS AND DUTIES OF THE TEXAS FOREST SERVICE

- 152.011. In General.
- 152.012. Surveys and Investigations.
- 152.013. Determination of Area Control Measures.
- 152.014. Notice of Finding of Infestation.
- 152.015. Hearing.
- 152.016. Procedures for Control.
- 152.017. Specific Control Measures.
- 152.018. Notice to Specific Landowner.
- 152.019. Notice to Forest Owner.
- 152.020. Supervision.
- 152.021. Control Measures Applied by Forest Service.
- 152.022. Expense of Control Measures Taken by Service.
- 152.023. Claim Against Landowner.
- 152.024. Suit.

Section

- 152.025. Landowner Reimbursement.
152.026. Cooperative Agreements.

SUBCHAPTER C. POWERS AND DUTIES OF
THE LANDOWNER

- 152.061. General Duty of Landowner.
152.062. Duty to Apply Control Measures.
152.063. Reports and Consultation With Service.
152.064. Notifying Service of Forest Owner.

SUBCHAPTER D. JUDICIAL REVIEW

- 152.101. Judicial Review of Service Notice.
152.102. Venue.
152.103. Control Measures Pending Litigation.
152.104. Priority.
152.105. Injunctive Relief for Landowner.
152.106. Notice Final.

SUBCHAPTER A. GENERAL PROVISIONS

§ 152.001. Policy

It is the public policy of the State of Texas to control forest pests in or threatening forests in this state in order to protect forest resources, enhance the growth and maintenance of forests, promote stability of forest-using industries, protect recreational wildlife uses, and conserve other values of the forest.

[Acts 1977, 65th Leg., p. 2647, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.002. Public Nuisance

Forest pests are declared to be a public nuisance.

[Acts 1977, 65th Leg., p. 2647, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.003. Definitions

In this chapter:

- (1) "Service" means the Texas Forest Service.
- (2) "Forest pests" means insects and diseases that are harmful, injurious, or destructive to forests and whose damage, if uncontrolled, is of considerable economic importance, and includes:
 - (A) pine bark beetles of the genera *Dendroctonus*, *Ips*, *Pissodes*, and *Hylobius*;
 - (B) sawflies of the genus *Neodiprion*;
 - (C) defoliators in the genera *Datana*, *Malacosoma*, *Hyphantria*, *Diapheromera*, and *Galerucella*;
 - (D) pine shoot moth of the genus *Rhyacionia*;
 - (E) wilt of the genus *Chalora*; and
 - (F) rots of the genera *Fomes* and *Polyporus*.

(3) "Forest land" means land on which the trees are potentially valuable for timber products, protection of watersheds, wildlife habitat, recreational uses, or for other purposes, but does not include land within the incorporated limits of a village, town, or city.

(4) "Forest" means the standing trees on forest land.

(5) "Control" means prevent, retard, suppress, eradicate, or destroy.

(6) "Infestation" means actual infestation or infection at conditions beyond normal proportion causing abnormal epidemic loss to present or future commercial timber supply or both.

(7) "Landowner" and "owner" mean a person who owns forest land or has forest land under his direction irrespective of ownership.

(8) "Forest owner" means a person who owns the standing trees on forest land, either by a present right or by a future right under the terms of a valid existing contract.

(9) "Tract" means all contiguous land in common ownership.

[Acts 1977, 65th Leg., p. 2647, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 152.004 to 152.010 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES OF THE
TEXAS FOREST SERVICE

§ 152.011. In General

The Texas Forest Service shall administer the provisions of this chapter and make all relevant determinations.

[Acts 1977, 65th Leg., p. 2648, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.012. Surveys and Investigations

(a) The service shall make surveys and investigations to determine the existence of infestations of forest pests and means practical for their control by landowners.

(b) Duly delegated representatives of the service may enter private land and public land, including that held by the United States if permission is obtained, for the purpose of conducting surveys and investigations.

(c) All the service's information shall be available to all interested landowners.

[Acts 1977, 65th Leg., p. 2648, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.013. Determination of Area Control Measures

If the service finds an infestation existent or threatened in the state, it shall determine:

- (1) when control measures are needed;
- (2) the nature of the control measures;
- (3) availability of control measures; and
- (4) the techniques by which the control measures shall be applied.

[Acts 1977, 65th Leg., p. 2648, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.014. Notice of Finding of Infestation

After determining that an infestation exists, the service shall give notice of the fact by:

(1) placing a notice in a newspaper or newspapers in the county or counties in which any infested land is located, or, if there is no newspaper in the county, placing a notice in a newspaper or newspapers with general circulation in the county or counties in which any infested land is located, stating its findings and setting a time and place for a hearing on the need for the control of the pest, to be held not less than 10 days from the date of the notice;

(2) mailing copies of the notice to owners of forest land known to the service to have holdings in the affected area; and

(3) arranging for publicity on the subject by all news media serving the affected area.

[Acts 1977, 65th Leg., p. 2648, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.015. Hearing

At the hearing, the agent of the service who presides shall:

(1) describe the conditions that have been found;

(2) explain the measures needed to control the pest infestation;

(3) hear all suggestions and protests; and

(4) record the proceedings.

[Acts 1977, 65th Leg., p. 2648, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.016. Procedures for Control

(a) As soon as practicable after the hearing, the service shall promulgate procedures to be followed for the control of the infestation and shall:

(1) mail a copy to all appearing at the hearing and to all to whom notices were originally sent; and

(2) publish a copy in a newspaper circulated in the affected area in the same manner as publication of preliminary notice.

(b) Publication as provided in Subsection (a) of this section is notice to each landowner and each tract of land in the affected area on the date of publication.

[Acts 1977, 65th Leg., p. 2649, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.017. Specific Control Measures

If the provisions of Sections 152.013 through 152.016 of this code have not been applied and control measures are needed to check the spread of the forest pests on forest land owned or controlled by any person, written notice, signed by a duly authorized representative of the service whose mailing

address is shown on the notice, shall be given to the person owning or controlling the forest land.

[Acts 1977, 65th Leg., p. 2649, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.018. Notice to Specific Landowner

(a) The notice required by Section 152.017 of this code shall inform the landowner of:

(1) the facts found to exist;

(2) his responsibilities for the control measures;

(3) the control technique recommended;

(4) the law under which control must be accomplished; and

(5) the authority of the service in the event the landowner takes no action toward controlling the pest.

(b) The notice may be given by:

(1) personal service on the landowner or on the person having control of the forest land;

(2) registered or certified mail directed to the landowner or person having control of the forest land at his last known address; or

(3) if the person or his address is unknown, publication in one issue of a newspaper of general circulation in the county in which the land is located.

(c) A published notice under Subsection (b) of this section shall include the information specified in Subsection (a) of this section, state the name of the owner, if known, and briefly describe the land to which the notice applies.

(d) No other notice is necessary under the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2649, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.019. Notice to Forest Owner

If the landowner has given notice to the service of an interest in the forest on his land owned by another, as provided for in Section 152.064 of this code, the service shall furnish the same information to the forest owner that it is required by the provisions of this chapter to give to the landowner.

[Acts 1977, 65th Leg., p. 2649, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.020. Supervision

(a) The service shall keep informed of what is done by the landowner to take measures to control the infestation and the result of it.

(b) The service may change its prescribed procedures as conditions or new information may require.

(c) On request, the service shall certify when all reasonably practicable measures to be done by the landowner, pursuant to its prescribed procedures, have been completed.

[Acts 1977, 65th Leg., p. 2649, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.021. Control Measures Applied by Forest Service

If pest control measures prescribed by the service are not applied by the landowner or any other person within 10 days from the time notice is given as provided in this chapter, exclusive of the date the notice is given, representatives of the service shall enter the land and have the forest pests controlled or destroyed.

[Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.022. Expense of Control Measures Taken by Service

(a) Except as provided in Subsection (b) of this section, all charges and expenses of destruction or control measures taken by the service shall be paid by the owner of the land on which the infestation occurred.

(b) If the tract with respect to which the service conducted control measures contains 50 acres of forest land or less and the landowner in whose name the record title to the land stands owns no more than 50 acres of forest land in the county in which the infestation occurred, the cost of control shall be borne by the service.

[Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.023. Claim Against Landowner

If control is undertaken by the service, the cost, not to exceed \$10 for each infested acre or part of an acre on which control measures have been employed, constitutes a legal claim against the landowner, but does not constitute a lien on any land owned by the landowner.

[Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.024. Suit

The attorney general may bring suit on behalf of the service in the county in which the infestation occurred to recover the claim against the landowner, together with all costs incurred in the suit.

[Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.025. Landowner Reimbursement

If the landowner has given the service notice of an interest owned by another in the forest on his land and the landowner has made expenditures for pest control purposes as provided in Section 152.062 of this code, or has paid a legal claim against him under the provisions of Sections 152.022 through 152.024 of this code, the landowner is entitled to a reasonable reimbursement for the expenses from the forest owner. The reimbursement shall be proportional to the interest owned in the forest by the forest owner.

[Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.026. Cooperative Agreements

The service may enter into cooperative agreements with private landowners or forest owners, the federal government, or other public or private agencies to accomplish the control of forest pests.

[Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 152.027 to 152.060 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES OF THE LANDOWNER

§ 152.061. General Duty of Landowner

Each owner of forest land shall control the forest pests on land owned by him or under his direction as provided in this chapter.

[Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.062. Duty to Apply Control Measures

Within 10 days after notice is given as provided in Section 152.014 or 152.018 of this code, exclusive of the date the notice is given, each affected landowner shall commence diligently to take measures to control the infestation as prescribed and continue this activity with all practical expedition and efficiency under the direction of the service.

[Acts 1977, 65th Leg., p. 2650, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.063. Reports and Consultation With Service

(a) The landowner shall notify the service of his actions and the result of his actions.

(b) The landowner may report to and consult with a representative of the service as often as necessary.

[Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.064. Notifying Service of Forest Owner

If all or part of the standing trees are owned by someone other than the landowner, either by a present right or by a future right under the terms of a valid existing contract, the landowner shall notify the service of that fact and furnish the names and addresses of the forest owner within 10 days after receiving the notice from the service as provided for in Section 152.014 or 152.018 of this code.

[Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 152.065 to 152.100 reserved for expansion]

SUBCHAPTER D. JUDICIAL REVIEW

§ 152.101. Judicial Review of Service Notice

A landowner or person having control of forest land who is aggrieved by the notice given by the service is entitled to seek relief but only if the proceedings to obtain the relief are initiated within 10 days from the time notice is given, exclusive of the date the notice is given.

[Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.102. Venue

The proceeding to obtain relief shall be in the district court of the county in which the land is located.

[Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.103. Control Measures Pending Litigation

The service shall not proceed with any control measures while the litigation is pending unless permission to do so is given by the court on a showing of probable harm due to a delay in using the control measures.

[Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.104. Priority

The district court shall give priority to a case seeking relief from notice given by the service.

[Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.105. Injunctive Relief for Landowner

If the final judgment in an action seeking relief from a notice is in favor of the landowner, the landowner may be entitled to injunctive relief against the use of any control measures on his forest land by the service until such time as the court may determine.

[Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 152.106. Notice Final

If the final judgment is against the landowner, or if the landowner fails to seek relief in the district court of the county in which the land is located, the notice from the service is final, and the service shall summarily take the measures necessary to control the infestation.

[Acts 1977, 65th Leg., p. 2651, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

TITLE 7. RESOURCES PROGRAMS

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SUBCHAPTER A. GENERAL PROVISIONS

§ 161.001. Definitions.

In this chapter:

- (1) "Board" means the Veterans Land Board.
- (2) "Commissioner" means the Commissioner of the General Land Office.
- (3) "Land office" means the General Land Office.
- (4) "Program" means the Veterans Land Program.
- (5) "Fund" means the veterans land fund.
- (6) "Bonds" means veterans land bonds.
- (7) "Veteran," "Texas veterans of the present war or wars, commonly known as World War II," and "Texas veterans of service in the Armed Forces of the United States of America subsequent to 1945" used in Article III, Section 49-b of the Texas Constitution, are synonymous and mean any citizen of the United States either male or female over 18 years of age, who served not less than 90 consecutive days, unless sooner discharged because of a service-connected disability, on active duty in the Army, Navy, Air Force, Coast Guard, or Marine Corps of the United States after September 16, 1940, who on the date of filing his or her application has not been dishonorably discharged from the branch of the service in which he or she served, who was a bona fide resident of this state at the time of his or her enlistment, induction, commission, or drafting, and who is a bona fide resident of this state at the time of seeking benefits under this chapter; or who has resided in this state for at least five years immediately before the date of filing his or her application.

[Acts 1977, 65th Leg., p. 2655, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Application of Sunset Act

Acts 1977, 65th Leg., p. 1845, ch. 735, § 2.098, purports to add § 2(D) to Civil Statutes, art. 5421m, without reference to repeal of said article by Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 2(a)(1). As so added, § 2(D) reads:

"The Veterans' Land Board is subject to the Texas Sunset Act [Civil Statutes, art. 5429k], but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1985 and of every 12th year after 1985 are reviewed."

[Sections 161.002 to 161.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 161.011. **Veterans Land Board Designated**

The Veterans Land Board is a state agency designated to perform the governmental functions authorized in Article III, Section 49-b of the Texas Constitution.

[Acts 1977, 65th Leg., p. 2655, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.012. **Bond**

(a) Each citizen member of the board shall execute a bond payable to the state in the amount of \$50,000, to be approved by the governor and conditioned on the faithful performance of the member's duties.

(b) The premiums on the member's bond shall be paid from funds appropriated by the legislature for the operation of the land office.

[Acts 1977, 65th Leg., p. 2655, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.013. **Executive Secretary and Assistant Executive Secretary**

(a) The board shall select an executive secretary and an assistant executive secretary, each of whom shall be nominated by the commissioner and approved by a majority of the board.

(b) The executive secretary and assistant executive secretary shall perform all duties required of them by the board.

[Acts 1977, 65th Leg., p. 2655, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.014. **Employees**

(a) The commissioner may employ all other employees that may be necessary for the discharge of the board's duties. The employees may include stenographers, typists, bookkeepers, surveyors, appraisers, and other employees in the number and for the time necessary to perform these duties.

(b) The employees of the board are considered to be employees of the land office, and civil and criminal laws regulating the conduct and relations of the employees of the land office apply to the employees of the board.

[Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.015. **Compensation and Duties of Employees**

The employees of the board shall be paid their compensation and shall perform their duties with the same rules and requirements of the general law governing other state employees in those respects.

[Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.016. **Fiscal Agent**

(a) The board may designate the State Treasurer as the fiscal agent for payment of principal of and interest on the bonds.

(b) The State Treasurer shall act as fiscal agent without compensation.

(c) In the alternative, the board may employ a private fiscal agent to perform these services and shall pay him adequate compensation.

[Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.017. **Meetings of Board**

(a) When necessary, the board shall meet on the first and third Tuesdays of each month in the land office, where its session shall be held and continue until its docket is cleared. The board may recess at its own discretion.

(b) The chairman of the board may call special meetings of the board at any time he thinks necessary by giving the other members notice.

[Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.018. **Minutes of Board**

Minutes of each meeting of the board shall be kept, and only those matters that actually transpire at the meeting shall be entered in the minutes.

[Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.019. **Depository for Papers, Records, and Archives**

Papers, records, and archives of the board shall be deposited and kept in the land office.

[Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.020. **Purchase of Supplies**

The board may purchase at state expense through the board of control supplies, including stationery, stamps, printing, record books, and other things that may be needed to carry on the board's functions as a state agency in performing the duties imposed by this chapter.

[Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.021. **Seal**

The board shall procure and adopt a seal bearing the words "Veterans Land Board" encircled by the oak and olive branches common to other official seals.

[Acts 1977, 65th Leg., p. 2656, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.022. Chapter Application to Successor Boards

The provisions of this chapter shall apply to any successor of the board.

[Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 161.023 to 161.060 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

§ 161.061. General Duties of Board

The board shall:

- (1) authorize and execute negotiable bonds as provided by law;
- (2) provide by resolution for use of the fund in a manner that will effectuate the intent of the constitution and the law;
- (3) fix the interest rates as provided by law;
- (4) provide for the forfeiture of contracts of sale and purchase and resale of forfeited land;
- (5) conduct investigations it considers necessary; and
- (6) formulate policies and rules necessary and not in conflict with the law to ensure the proper administration and to carry out the intent and purposes of the law.

[Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.062. General Duties of Commissioner

The commissioner is the chairman of the board and administrator of the program as provided in Article III, Section 49-b of the Texas Constitution, and shall perform the duties and functions of the board prescribed by law except for those duties and functions provided in Section 161.061 of this code, which shall be performed by the board.

[Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.063. Rules

(a) The board may adopt rules that are not inconsistent with this chapter and that it considers necessary or advisable.

(b) The rules shall be considered a part of this chapter and violation of the rules subject the offender to prosecution under Sections 161.401 through 161.403 of this code.

[Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.064. Board Authority to Make Investigations

The board may make any investigation it considers necessary relating to transactions involving land purchases or sales under this chapter.

[Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.065. Oaths; Books, Records, and Documents

(a) The board is specifically authorized to administer oaths and to examine the books, records, or other documents dealing with or relating to the transactions of any person involved in the transaction.

(b) The board may make copies of the books, records, and other documents that in its judgment may show or tend to show fraud on the board or a veteran or a violation or attempted violation under this chapter.

[Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.066. Subpoena Duces Tecum

The board may issue a subpoena duces tecum to require a person to produce books, records, or any other documents for the board's examination.

[Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.067. Forfeiture of Charter and Rights

(a) If a corporation fails or refuses to comply with the orders of the board under Sections 161.064 through 161.066 of this code, the corporation shall forfeit its right to do business in this state, and its permit or charter shall be canceled or forfeited by the attorney general.

(b) The failure or refusal by a person is presumed to be prima facie evidence of fraud on the board and veteran in violation of this chapter, and the person shall lose and forfeit all rights and benefits under this chapter.

[Acts 1977, 65th Leg., p. 2657, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.068. Form of Instruments

The board may prescribe the form and contents of notices, bids, applications, awards, contracts, deeds, and instruments used by the board in carrying out a project or plan if it is not in conflict with the law.

[Acts 1977, 65th Leg., p. 2658, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.069. Fees

(a) The board shall collect the fee it considers necessary from each applicant under Subchapter G of this chapter and deposit the fee in a bank. Interest received on the deposit shall be credited to the General Land Office special fund and shall be spent for administrative purposes.

(b) The board shall collect a fee of \$35 from each successful bidder under Section 161.319 of this code. This fee shall be held in a trust fund to be used to pay for examination of title, recording fees, and other expenses, or any one or more of these items and, except as provided in Section 161.319 of this code, the unused balance remaining after the payment for these items shall be refunded.

[Acts 1977, 65th Leg., p. 2658, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.070. Additional Fees

(a) The board shall charge and collect for the use of the state the following fees:

- (1) fee for each appraisal for each application under Subchapter G of this chapter \$35
- (2) contract of sale and purchase transfer fee for each transfer \$35
- (3) mineral lease service fee for each lease executed by purchasers \$10
- (4) reappraisal fee if required by the board \$35
- (5) fee for each loan of abstract \$10
- (6) fee for servicing and filing each easement \$10
- (7) service fee for each contract of sale and purchase \$35
- (8) fee for homesite, severance, or paid-in-full deed. \$20

(b) The fees shall be used for the processing and servicing of purchase applications and contracts of sale and purchase and matters incidental to these purposes.

(c) Fees or portions of fees that are in the opinion of the board unused shall be refunded.

(d) Money received from payment of these fees and not refunded shall be deposited in the State Treasury and credited to the fund and shall be spent as provided in the General Appropriations Act. [Acts 1977, 65th Leg., p. 2658, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.071. Pamphlets

The board shall have published pamphlets containing the provisions of this chapter and rules the board desires, and these pamphlets shall be made available to any interested veteran, veterans organization, or other interested person in the state.

[Acts 1977, 65th Leg., p. 2658, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.072. Lease by Board

(a) The board may lease any property that it owns on terms it considers proper.

(b) A lease for agricultural and grazing purposes is subject to cancellation on the sale of the property to a veteran.

(c) The board may execute oil, gas, and mineral leases on land purchased by it before it sells the land by following the same procedure provided for the school land board in the lease of public school land. [Acts 1977, 65th Leg., p. 2658, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 161.073 to 161.110 reserved for expansion]

SUBCHAPTER D. BONDS

§ 161.111. Issuance and Sale of Bonds; Disposition of Proceeds

By appropriate action, the board may provide by resolution for the issuance and sale of negotiable bonds authorized by the constitution, and the proceeds shall be a part of the fund.

[Acts 1977, 65th Leg., p. 2659, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.112. Installments

The board, at its option, may issue bonds in one or several installments.

[Acts 1977, 65th Leg., p. 2659, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.113. Interest Rate

(a) The bonds shall bear the rate of interest prescribed by the board.

(b) The weighted average annual interest rate of the bonds, as that phrase is commonly and ordinarily used and understood in the municipal bond market, may not be more than six percent in each installment.

[Acts 1977, 65th Leg., p. 2659, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.114. Payment and Maturity of Bonds

(a) The bonds shall be payable as provided by the board and shall mature serially or otherwise not later than 40 years from their date.

(b) Bonds previously issued shall mature according to their provisions.

(c) The board shall determine the medium of payment for both principal of and interest on the bonds.

(d) The board at its own option may make the bonds redeemable before maturity at the price and under the terms and conditions fixed by the board in the resolution providing for the issuance and sale of the bonds.

[Acts 1977, 65th Leg., p. 2659, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.115. Form, Denomination, and Place of Payment of Bonds

The board shall determine the form of the bonds, including the forms of interest coupons attached to the bonds, and shall fix the denomination or denominations of the bonds and the place or places for payment of the principal of and interest on the bonds.

[Acts 1977, 65th Leg., p. 2659, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.116. Manner of Execution

(a) The bonds shall be executed by and on behalf of the board as obligations of the state in the manner provided in Subsection (b) of this section.

(b) The bonds shall be signed by the chairman and the secretary of the board and the seal of the board shall be impressed on the bonds. In addition, the bonds shall be signed by the governor and attested by the Secretary of State with the seal of the state impressed on the bonds.

[Acts 1977, 65th Leg., p. 2659, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.117. Signatures and Seals

(a) The resolution authorizing the issuance of an installment or series of bonds may prescribe the extent to which facsimile signatures and facsimile seals may be used in lieu of manual signatures and manually impressed seals in executing the bonds and attached coupons.

(b) Interest coupons may be signed with the facsimile signatures of the chairman and secretary of the board.

(c) If an officer whose manual or facsimile signature appears on a bond, or whose facsimile signature appears on a coupon, ceases to be an officer before the bonds are delivered, the signature shall still be valid and sufficient for all purposes the same as if the officer had remained in office until the delivery of the bonds.

[Acts 1977, 65th Leg., p. 2660, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.118. Approval by Attorney General

Before bonds are delivered to the purchasers, the record relating to the bonds shall be examined by the attorney general and the record and bonds shall be approved by the attorney general.

[Acts 1977, 65th Leg., p. 2660, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.119. Registration With Comptroller

After the bonds are approved by the attorney general, they shall be registered in the office of the state comptroller.

[Acts 1977, 65th Leg., p. 2660, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.120. Validity of Bonds

(a) After the bonds are approved by the attorney general and registered with the state comptroller, they shall be held as valid and binding obligations of the state in every action, suit, or proceeding in which their validity is or may be brought into question.

(b) In each action brought to enforce collection of the bonds or rights incident to the bonds, the certificate of approval by the attorney general or a certified copy of that certificate shall be admitted and received in evidence as to the validity of the bonds.

(c) The only defense that can be offered against the validity of the bonds shall be forgery or fraud.

[Acts 1977, 65th Leg., p. 2660, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.121. Bonds as Negotiable Instruments

Bonds issued under this chapter have and are declared to have all qualities and incidents of negotiable instruments under the laws of this state.

[Acts 1977, 65th Leg., p. 2660, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.122. Preferential Right of Purchase

Immediately after bonds are offered for sale, written notice shall be given to the proper administrators of the various teacher retirement funds, the permanent university fund, and the permanent free school fund of the preferential right given by the constitution to purchase the bonds offered for sale.

[Acts 1977, 65th Leg., p. 2660, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.123. Notice for Bids on Bonds

(a) If the board authorizes the issuance of a series of bonds and decides to call for bids, it shall publish an appropriate notice at least one time not less than 10 days before the date of the sale in a daily newspaper of general statewide circulation that is published not less than seven times a week.

(b) The notice shall be published for the number of times the board determines in one or more popularly recognized financial journals of general circulation.

[Acts 1977, 65th Leg., p. 2660, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.124. Security for Bid

At its option, the board may require bidders, other than administrators of state funds listed in Section 161.122 of this code, to accompany their bids with exchange or bank cashier's checks in an amount considered adequate by the board to be a forfeit guaranteeing the acceptance and payment for bonds covered by the bids and accepted by the board.

[Acts 1977, 65th Leg., p. 2661, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.125. Sale of Bonds

(a) No bonds may be sold for less than their face value with accrued interest from their date and shall be sold after competitive bidding to the highest and best bidder.

(b) The provisions of Subsection (a) of this section do not apply to administrators of the state funds that are given a priority if they exercise the right of priority to take the bonds at the highest price bid by another within 15 days after notice is given.

(c) If two or more administrators of state funds desire to exercise their right of priority to purchase the bonds, the board shall prorate the bonds to the administrators who desire to make the purchase.

[Acts 1977, 65th Leg., p. 2661, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.126. Replacement Bonds

The board may provide for replacement of bonds that are mutilated, lost, or destroyed.

[Acts 1977, 65th Leg., p. 2661, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.127. Refunding Bonds

(a) The board may provide by resolution for issuance of refunding bonds for the purpose of refunding outstanding bonds issued under this chapter together with accrued interest on the bonds.

(b) As far as applicable, the preceding provisions of this subchapter shall govern:

- (1) the issuance of the refunding bonds;
- (2) the maturities and other details of the refunding bonds;
- (3) the rights of bondholders; and
- (4) the duties of the board with respect to the refunding bonds.

[Acts 1977, 65th Leg., p. 2661, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.128. Bonds as Investments and Security

(a) Bonds issued under Article III, Section 49-b of the Texas Constitution, and this chapter are legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians, and for the sinking funds of cities, towns, villages, counties, school districts, and other political subdivisions and public agencies of the state.

(b) The bonds, if accompanied by unmatured coupons appurtenant to them, are legal and sufficient security for the deposits in the amount of the par value of the bonds.

[Acts 1977, 65th Leg., p. 2661, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.129. Taxation of Bonds

Bonds issued under Article III, Section 49-b of the Texas Constitution, and laws implementing that section of the constitution, are exempt from any tax by the state and by cities, towns, villages, counties, school districts, and other political subdivisions and public agencies of the state.

[Acts 1977, 65th Leg., p. 2661, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 161.130 to 161.170 reserved for expansion]

SUBCHAPTER E. VETERANS LAND FUND

§ 161.171. Money and Land Included in Veterans Land Fund

(a) The veterans land fund shall include:

- (1) land purchased by the board until the sale price, interest, and penalties due have been received by the board;

(2) money attributable to bonds issued and sold by the board, including proceeds from the issuance and sale of the bonds;

(3) money received from the sale or resale of land or rights in land purchased with the proceeds from the bonds;

(4) money received from the sale or resale of land or rights in land purchased with other money attributable to the bonds;

(5) interest and penalties received from the sale or resale of the land or rights in the land;

(6) bonuses, income, rents, royalties, and any other pecuniary benefit received by the board from the land;

(7) money received as indemnity or forfeiture for the failure of any bidder for purchase of bonds to comply with his bid and accept and pay for the bonds or for the failure of a bidder for purchase of land comprising a part of the fund to comply with his bid and accept and pay for the land; and

(8) interest received from investments of this money.

(b) Money in the fund shall be deposited in the State Treasury to the credit of the fund.

(c) The provisions of this section may not be construed to prevent the board from accepting¹ for a portion of a tract of land.

[Acts 1977, 65th Leg., p. 2662, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

¹So in enrolled bill; words "full payment" probably should be inserted.

§ 161.172. Deposit and Use of Bond Money

(a) Money attributable to bonds issued and sold under this chapter shall be credited to the fund and shall be used to retire the bonds and to pay interest on them.

(b) At the time there is sufficient money to retire the bonds, money remaining in the fund over this amount or coming into the fund at a later time shall be governed as provided in this chapter.

[Acts 1977, 65th Leg., p. 2662, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.173. Payment of Principal and Interest; Investments

(a) The principal of and interest on bonds issued by the board shall be paid from money in the fund as provided in the constitutional provision authorizing the bonds.

(b) Money in the fund that is not immediately committed to paying principal of and interest on the bonds, to the purchase of land, or to the payment of expenses as provided in this chapter may be invested in bonds or obligations of the United States until the funds are needed for these purposes.

[Acts 1977, 65th Leg., p. 2662, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.174. Divisions; Use of Money in Divisions to Pay for Various Bond Issues

(a) A division consists of money attributable to bonds issued and sold under a single constitutional authorization and land purchased with money from that issue.

(b) If a division of the fund contains sufficient money to retire bonds secured by the division, the money attributable to that division, except that portion necessary to retire bonds in that division, may be used at the discretion and direction of the board to pay principal of and interest on and authorized expenses for other bonds issued and sold by the board. However, the amount of money necessary to retire bonds in the division shall be set aside and shall remain a part of that division for the purpose of retiring those bonds.

(c) No use of money as provided in Subsection (b) of this section may be made contrary to the rights of a holder of bonds issued and sold by the board or violative of a contract to which the board is a party. [Acts 1977, 65th Leg., p. 2662, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.175. Use of Fund for Expenses Related to the Land

(a) The board may use money in the fund attributable to bonds that have been issued and sold to pay:

- (1) expenses of surveying and monumenting the land and the tracts of land;
- (2) the cost of constructing roads on the land or the tracts of land;
- (3) legal fees, recordation fees, and advertising costs arising from the purchase and sale or resale of the land and the tracts of land; and
- (4) other similar costs necessary or incidental to the purchase and sale of land acquired by the board.

(b) These expenses shall be added to the price of the land when sold or resold by the board.

(c) No money in the fund before November 11, 1967, may be used to pay the expenses listed in Subsection (a) of this section until there is sufficient money in the division to retire all bonds secured by the division, at which time, all money except that needed to retire the bonds secured by the division, which shall be retained in the division to retire the bonds, may be used to pay the expenses as fully as the money attributable to bonds.

[Acts 1977, 65th Leg., p. 2663, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.176. Use of Fund to Pay Bond Expenses

(a) The board may use money in the fund attributable to bonds issued and sold to pay:

(1) legal fees and fees for financial advice necessary in the opinion of the board to the sale of bonds;

(2) the expense of publishing notice of sale of an installment of bonds;

(3) the expense of printing the bonds;

(4) the expenses of delivering the bonds, including the costs of travel, lodging, and meals of officers or employees of the board, the state comptroller, the State Treasurer, and the attorney general that are necessary in the opinion of the board to effectuate the delivery of the bonds;

(5) the cost of manually signing the bonds; and

(6) remuneration to any agent employed by the board to pay the principal of and interest on the bonds.

(b) No money in a division of the fund created before November 11, 1967, may be used to pay the expenses listed in Subsection (a) of this section until there is sufficient money for the division to retire all bonds secured by the division, at which time all money, except that which may be needed to retire the bonds, may be used to pay the expenses under Subsection (a) of this section as fully as money attributable to bonds issued and sold in the future. The money in the division needed to retire the bonds shall remain in the division.

[Acts 1977, 65th Leg., p. 2663, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.177. Purchase and Destruction of Bonds

(a) The board may use money in the fund to purchase on the open market any bonds it has issued and sold, and the debt represented by these bonds when purchased is considered canceled.

(b) Bonds purchased by the board under Subsection (a) of this section shall be mutilated, burned, or otherwise destroyed by the State Treasurer, who shall certify this fact to the board under the seal of his office.

(c) No further interest shall be paid on these bonds.

[Acts 1977, 65th Leg., p. 2664, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.178. Disposal of Excess Funds

(a) Money in the fund that is not spent for the purposes provided in this chapter shall remain in the fund until there is sufficient money to retire fully bonds issued and sold by the board.

(b) Money in the fund that is in addition to that necessary to retire the bonds shall be deposited to the credit of the General Revenue Fund to be appropriated as provided by law, and the money necessary to retire the bonds shall be set aside and shall remain in the fund.

(c) Money that becomes at a later time a part of the fund after there is sufficient money to retire the bonds shall be deposited to the credit of the General Revenue Fund.

[Acts 1977, 65th Leg., p. 2664, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.179. Legislative Appropriations

(a) During the existence of the fund, if the board determines that there will not be sufficient money in the fund during the following biennium to pay principal of or interest on the bonds or both principal and interest that are to come due during the following biennium, the legislature shall appropriate from the General Revenue Fund sufficient money to pay the obligations.

(b) The money appropriated shall be used to pay the obligations only if at the time the principal or interest or both actually become due there is not sufficient money in the fund to pay the amount due.

[Acts 1977, 65th Leg., p. 2664, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 161.180 to 161.210 reserved for expansion]

SUBCHAPTER F. PURCHASE, SALE, AND OTHER DISPOSITION OF LAND

§ 161.211. Purchase of Land and Payment of Bonds

(a) A series of bonds is all bonds issued and sold in a single transaction as a single installment of bonds.

(b) Money attributable to any series of bonds issued and sold by the board may be used for the purchase of land that is likewise located and owned, if the land is sold as provided in this chapter, for a period ending eight years after the date of sale of the series of bonds.

(c) As much of the money as is necessary to pay interest on the bonds issued and sold shall be set aside for that purpose in accordance with the resolution adopted by the board authorizing the issuance and sale of the series of bonds.

(d) At the end of the eight-year period, and until there is sufficient money to retire all the bonds, the money shall be set aside to retire the bonds issued and sold and to pay interest on them, together with any expenses, in accordance with the resolution authorizing the issuance and sale of the additional bonds.

(e) Money coming into the fund not necessary to retire the bonds and pay interest on them under Subsection (d) of this section shall be governed as provided in this chapter.

[Acts 1977, 65th Leg., p. 2664, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.212. Appraisal

(a) Before purchasing land under the provisions of this chapter, the board shall have an appraisal of the property made to determine its value.

(b) An appraiser representing the board shall be reasonably qualified to give competent appraisals of land.

(c) The appraiser shall make a written report to the board in affidavit form, duly sworn to before a notary public or other official authorized to administer oaths, and showing:

- (1) the appraised value of the land;
- (2) the name and address of any person contacted relative to the valuation of the land;
- (3) that the appraiser has examined the records of the county clerk's office relative to the amount paid by the vendor for the land;
- (4) that he has checked past sales of adjacent land to aid in determining valuation;
- (5) if the purchase is being made under Subchapter G of this chapter, that the appraiser has met the veteran on the land and has explained the transaction to him in detail as authorized by this chapter; and
- (6) that neither the appraiser nor any member of his family has received any personal benefits from the transaction and does not expect to receive any future personal benefits from the transaction.

(d) If a veteran is in the active military service and is stationed overseas or in Alaska, Hawaii, or United States territories or possessions, or aboard a ship with a mission outside the continental United States including Alaska, his representative designated by him in writing may meet the board appraiser on the land for the purpose expressed in this section.

[Acts 1977, 65th Leg., p. 2665, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.213. Sworn Report

(a) Before the board purchases land under Section 161.211 of this code or Subchapter G of this chapter, it shall require the seller to execute a sworn report to the board that shall include the following:

- (1) the date the seller purchased the land;
- (2) the amount the seller paid for the land if purchased subsequent to June 7, 1949;
- (3) from whom the seller purchased the land; and
- (4) the improvements made on the land since the seller purchased it and the cost of the improvements.

(b) If the land is purchased under Subchapter G of this chapter, the sworn report shall include the following additional information:

(1) if the seller by any manner or method is making the down payment to the board on behalf of the veteran;

(2) if there is a lease arrangement between the seller and the veteran, and if so, the duration, term, and amount to be paid; and

(3) if there is an agreement or contract of any nature between the seller and the veteran to transfer, sell, or convey at any time in the future.

[Acts 1977, 65th Leg., p. 2665, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.214. Title

(a) Before making payment for land, the board shall have the title of the property sought to be purchased examined and may require for this purpose an abstract of title or policy of title insurance. The board may submit the title to the attorney general for examination and opinion.

(b) The board may purchase land that is subject to outstanding mineral leases or that has all or part of the mineral interests outstanding, but the title must otherwise be marketable and good.

[Acts 1977, 65th Leg., p. 2666, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.215. Purchase of Land

Land purchased by the board shall be acquired at the lowest price that can be obtained in the opinion of the board, taking into consideration the quality, location, natural advantages, and improvements of the land. The land shall be paid for in cash and shall be clear of all liens and shall be a part of the fund.

[Acts 1977, 65th Leg., p. 2666, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.216. Cost of Land to Board

Except for forfeited land that may be resold to the board at less than actual cost under Section 161.319 of this code, land shall not be sold to the board at less than its actual cost.

[Acts 1977, 65th Leg., p. 2666, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.217. Appointment of Local Committee

The commissioners court of each county in the state shall appoint a committee composed of three resident real property owners of the county.

[Acts 1977, 65th Leg., p. 2666, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.218. Work of Local Committee

(a) A person who considers himself an eligible veteran under this chapter and who desires to benefit under this chapter shall submit to the local committee the forms prescribed by the board before he

submits his application of purchase and sales contract to the board. If the veteran is a resident of one county and is seeking to purchase land located in another, he shall submit the forms to the local committee in both counties.

(b) The local committee shall consider the forms and shall submit to the board a report concerning the financial responsibility of the veteran, if it is known, a statement of opinion as to whether or not the transaction is bona fide, a statement as to the amount the committee considers to be the reasonable value of the land in question, and a statement of the credit rating of the veteran applicant.

[Acts 1977, 65th Leg., p. 2666, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.219. Board Investigation

(a) The board may make other inquiries and investigations it considers proper to determine the veteran's eligibility and qualifications.

(b) If the board determines from the information submitted or from its own inquiries and investigations that the financial responsibility of the veteran leaves reasonable doubt as to his ability to carry the contract through to completion and make all payments, the board shall reject the application.

[Acts 1977, 65th Leg., p. 2666, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.220. Exemption

The provisions of Sections 161.217 through 161.219 of this code do not apply to sales under Sections 161.175, 161.231 through 161.234, and 161.319 of this code unless the board so desires.

[Acts 1977, 65th Leg., p. 2666, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.221. Initiation of Sale

The sale of land by the board may be properly initiated by contract of sale and purchase, and the contract shall be recorded in the deed records in the county in which the land is located.

[Acts 1977, 65th Leg., p. 2667, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.222. Purchase Payments

(a) The purchaser shall make an initial payment of at least five percent of the selling price of the land if sold under Sections 161.175 and 161.231 through 161.234 of this code or at least five percent of the amount the board agrees to pay for the land if sold under Subchapter G of this chapter. In neither event shall the payment be more than five percent of \$15,000 together with an additional down payment as provided in Sections 161.175 and 161.231 through 161.234 of this code or Subchapter G of this chapter.

(b) The balance of the selling price shall be amortized over a period determined by the board not to exceed 40 years together with interest at a rate to be determined by the board. The interest may not exceed one and one-half percent a year more than the accepted bid price for each series in the bond sale division.

(c) The purchaser is entitled to pay any or all installments still remaining unpaid on any installment date.

(d) In an individual case, the board may postpone for good cause the payment of the whole or any part of an installment of the selling price or interest on the selling price on terms the board considers proper. [Acts 1977, 65th Leg., p. 2667, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.223. Board to Specify Terms

The board may specify in each individual case the terms of the contract entered into with the purchaser as long as they are not contrary to the provisions of this chapter. [Acts 1977, 65th Leg., p. 2667, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.224. Time Limit on Transfer

(a) No property sold under this chapter may be transferred, sold, or conveyed in whole or part until the original veteran purchaser has enjoyed possession for a period of three years from the date of purchase of the property and complied with the terms and conditions of this chapter and rules of the board.

(b) If the veteran purchaser dies or becomes financially incapacitated or if there is an involuntary transfer by court order or proceedings including bankruptcy, sheriff or trustee sale, or divorce, the property may be conveyed before the expiration of the three-year period by the purchaser or his heirs, administrators, or executors by complying with rules of the board and by securing the approval of the board.

(c) After the three-year period, a purchaser may transfer, sell, or convey land purchased under this chapter at any time if all mature interest, principal, and taxes have been paid, the terms and conditions of this chapter and rules of the board have been met, and the approval of the board has been obtained. [Acts 1977, 65th Leg., p. 2667, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.225. Sale to a Nonveteran

If the sale is made to a person other than a qualified Texas veteran, the assignee and all subsequent assignees shall assume an interest rate on the indebtedness to the board determined by the board at an amount not less than one percent a year greater than the rate determined by the board for

sale to veterans under Sections 161.175 and 161.231 through 161.234 of this code or Subchapter G of this chapter on the date on which the transfer, sale, or conveyance is approved. If the purchase contract is awarded in a divorce action or incident to a written separation agreement, the interest rate shall not change.

[Acts 1977, 65th Leg., p. 2667, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.226. Disposition of Land That is Paid For

Property sold under this chapter may be transferred, sold, or conveyed at any time after the entire indebtedness due to the board has been paid.

[Acts 1977, 65th Leg., p. 2668, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.227. Lease of Land

(a) No land purchased under this chapter may be leased by the purchaser for a term of more than 10 years except for oil, gas, and other minerals and as long after 10 years as minerals are produced from the land in commercial quantities.

(b) No lease may contain a provision for option or renewal of the lease or re-lease of the property for any term, and the taking of an option, renewal, or re-lease agreement in a separate instrument to take effect in the future is prohibited. A lease or instrument that contains an option, renewal, or re-lease agreement in violation of this section is expressly declared to be void.

[Acts 1977, 65th Leg., p. 2668, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.228. Conditions of Leases

(a) While the veteran is indebted to the board for land purchased, if he executes or there exists a lease or contract of sale of oil, gas, or other minerals, chemicals, or hard metals or a lease or contract of sale for timber, sand, gravel, or other materials that covers all or part of the land and that would result in the depletion of the corpus of the tract, at least one-half of all bonus money, delay rentals, and royalties received as consideration for or payment under the oil, gas, and mineral lease and at least one-half of all money received under a lease or contract of sale of any other minerals, chemicals, hard metals, timber, sand, gravel, and other materials or as much as is required, shall be paid to the board by the owner of the lease or contract of sale and applied by the board to the satisfaction of the indebtedness.

(b) No oil, gas, or mineral lease may be for a primary term of more than 10 years and the lease may provide that it shall remain in force as long as production is obtained in paying quantities.

[Acts 1977, 65th Leg., p. 2668, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.229. Deeds

(a) When the entire indebtedness due the state under the contract of sale is paid, the chairman of the board shall execute a deed under seal to the original purchaser of the land or to the last assignee whose assignment has been approved by the board.

(b) None of the provisions of this chapter shall be construed to prohibit the board from accepting full payment for a portion of a tract and issuing a deed to the land according to the rules of the board.

(c) Deeds issued by the board and executed by the chairman under seal are ratified, confirmed, and validated whether they convey all or only a part of the land contracted to be sold to the veteran.

(d) If a deed is executed to a person other than the legal owner or to a deceased grantee, the deed and the rights conveyed still inure to the benefit of the legal owner.

[Acts 1977, 65th Leg., p. 2668, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.230. Death of Purchaser

(a) If the purchaser of the land dies while indebted to the board under a contract, his rights, acquired under this chapter and the contract devolve on his heirs, devisees, or personal representatives under the laws of this state, but subject to all rights, claims, and charges of the board.

(b) Default by an heir, devisee, or personal representative with respect to a right, claim, or charge of the board has the same effect as default by the purchaser before his death.

[Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.231. Subdividing Land

Land acquired by the board may be subdivided for sale into tracts of the size the board may consider advisable.

[Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.232. Conditions for Sale of Land

Land acquired and subdivided under Sections 161.175, 161.231, 161.233, and 161.234 of this code shall be offered for sale according to rules adopted by the board and shall be sold by the board to veterans qualified to participate in the program in conformity with the provisions of this chapter relating to the sale of land purchased generally by the board.

[Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.233. Down Payment

(a) Unless the purchaser pays in cash as a down payment under board rules in addition to the initial payment required by Section 161.222 of this code the amount of the sale price in excess of \$15,000 not

later than the sale date, no tract may be sold under Sections 161.175 and 161.231, 161.232, and 161.234 of this code at a price including the addition of the expenses provided in Section 161.175 of this code of more than \$15,000.

(b) If the sale is not consummated, the down payment shall be refunded to the veteran.

[Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.234. Sale to Other Purchasers

The provisions of Sections 161.175 and 161.231 through 161.233 of this code notwithstanding, land acquired and subdivided under these sections that has first been offered for sale to veterans and that has not been sold to the purchasers may be sold to any purchaser in the same manner as land forfeited under this chapter.

[Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.235. Rights of Surviving Spouse

If an eligible Texas veteran dies after he has filed with the board an application and contract of sale to purchase through the board the tract selected by him or her and before the purchase is completed, the surviving spouse of the veteran may complete the transaction.

[Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.236. Number of Tracts Purchased

No veteran may purchase more than one tract of land under this chapter.

[Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 161.237 to 161.280 reserved for expansion]

SUBCHAPTER G. PURCHASE AND SALE OF SELECTED LAND

§ 161.281. Selection of Land

If a veteran desires a particular tract of land located in this state that contains not less than 10 acres, on proper showing of eligibility to benefits under this chapter, he may be authorized by the board to select the land that he desires and submit his selection to the board on its prescribed form.

[Acts 1977, 65th Leg., p. 2669, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.282. Processing Applications

As far as practical, applications shall be processed in the order in which they are received by the board.

[Acts 1977, 65th Leg., p. 2670, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.283. Purchase by Board

(a) If the board is satisfied with the value and desirability of the property selected by the veteran, it may purchase the land from its owner on the agreed terms.

(b) The board shall pay not more than \$15,000 for the property, but may pay more if the veteran pays to the board in cash, in accordance with its rules, that portion of the purchase price in excess of the amount that the board agrees to pay. The amount shall be paid not later than the date on which the board acquires title to the property.

(c) A cash payment by the veteran is considered a down payment on the price of the land when sold to the veteran by the board and is in addition to the initial payment required by Section 161.222 of this code.

[Acts 1977, 65th Leg., p. 2670, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.284. Appraisal and Title

The board shall have an appraisal of the property made as it considers necessary to determine the value and, before consummating the purchase, shall satisfy itself regarding the title as provided in Section 161.214 of this code.

[Acts 1977, 65th Leg., p. 2670, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.285. Separate Transactions

(a) No transaction under this chapter may be considered together with any other transaction to constitute a block deal between the state and two or more veteran purchasers, and each tract of land is considered as a wholly separate entity without dependence on any other tract of land, substance, matter, person, or thing in determining its value, purchase, or sale under this chapter.

(b) None of the provisions of this chapter may be construed to prevent the purchase or sale or both of contiguous tracts of land to separate purchasers as long as the value of the land is determined in the manner provided in Section 161.284 of this code.

[Acts 1977, 65th Leg., p. 2670, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.286. Purchase Preference

(a) The property acquired by the board becomes a part of the fund, but the veteran who has selected the land has a preference right to purchase the land from the board.

(b) To be entitled to the preference right, the veteran shall agree in writing before the board purchases the land to purchase the land from the board for the price paid for it.

(c) If the veteran fails or refuses to exercise the preference right, the land may be sold by the board in the same manner provided for the sale of land forfeited under this chapter.

[Acts 1977, 65th Leg., p. 2670, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.287. Rules Governing Sale

The rules governing the sale of land under this subchapter are governed by the provisions of this chapter relating to sale of land generally by the board except where those provisions conflict with this subchapter.

[Acts 1977, 65th Leg., p. 2670, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.288. Refund

If the title to the land is not approved and accepted by the board, any amount paid to the board in excess of the amount that the board agreed to pay for the selected land shall be refunded to the veteran together with any other down payment remitted to the board.

[Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 161.289 to 161.310 reserved for expansion]

SUBCHAPTER H. FORFEITURE

§ 161.311. Board Judge of Forfeiture

The board is the sole judge of forfeiture of any purchase contract under this chapter and any person availing himself of the provisions of this chapter by so doing agrees to abide by this chapter.

[Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.312. Forfeiture by Board

(a) If a portion of the principal of or interest on any sale is not paid when due, or if the provisions of this chapter, the contract, or the rules of the board are not complied with, the contract of sale and purchase is subject to forfeiture by action of the board on 30 days written notice to the original purchaser and his vendee.

(b) The notice shall state the reason why the contract of sale and purchase is subject to forfeiture and is sufficient if given by registered mail to the last known address of the original purchaser and his vendees.

[Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.313. Correction of Reason for Forfeiture

If the person corrects or cures the reason for forfeiture within the 30-day notice period, the board shall not enter an order of forfeiture.

[Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.314. Time of Forfeiture

The forfeiture is effective at the time the board meets and adopts a resolution directing its chairman to endorse on the wrapper that contains the papers

of the sale or on the purchase contract filed in the land office the word "forfeited" or words of similar import and the date of the action and to officially sign the document. At that time, the land and all payments previously made are forfeited.

[Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.315. Notice to County Clerk

Notice of the board's action in forfeiting the original contract shall be mailed to the county clerk of the county in which the land is located and the clerk shall enter a notation of the forfeiture on the margin of the page or pages containing the record of the original contract.

[Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.316. Effect of Forfeiture on Leases

On forfeiture, the full title to the land, including both surface and mineral estates, shall revert in the board, and the board shall recognize and continue in force and effect any outstanding valid oil, gas, or mineral lease and collect all rentals, royalties, or other amounts payable under the lease.

[Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.317. Reinstatement of Purchase

(a) If a sale is forfeited and the title to the land reverted in the fund, the original purchaser or his vendee is entitled to reinstate his purchase contract at any time before the date on which the board meets and orders the land to be advertised for resale or for lease for mineral development but not after that time.

(b) A person who exercises a right of reinstatement shall pay all delinquent installments, penalties, and costs incident to the reinstatement as prescribed by the board.

[Acts 1977, 65th Leg., p. 2671, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.318. Resale of Land

Land included in a forfeited contract is subject to resale under Section 161.319 of this code.

[Acts 1977, 65th Leg., p. 2672, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.319. Resale of Forfeited Land

(a) Resale of forfeited land under this chapter may be made to the highest bidder, but the sale shall be made only to a qualified purchaser under Article III, Section 49-b of the Texas Constitution, and under terms and conditions and at the time and in the manner prescribed by the board in its rules, the provisions of this chapter notwithstanding.

(b) The board may reject any and all bids.

(c) If the successful bidder refuses to execute a contract of sale and purchase, the money submitted with his bid is forfeited and shall be deposited in the State Treasury and credited to the fund.

[Acts 1977, 65th Leg., p. 2672, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.320. Interest Rate on Delinquent Principal and Interest

Principal and interest that become delinquent shall bear interest at a rate fixed by the board from time to time but shall not be more than 10 percent a year from the date the principal and interest become delinquent until paid.

[Acts 1977, 65th Leg., p. 2672, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.321. Vacating Premises

If the board declares a forfeiture under a purchase contract, the purchaser shall vacate the premises within 45 days after the date of the letter giving notice of the declaration. The letter shall be sent by registered mail to the last known address of the purchaser.

[Acts 1977, 65th Leg., p. 2672, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.322. Enforcement of Forfeiture and Protection of Rights

The board, by and through the attorney general, shall institute legal proceedings that are necessary to enforce the forfeiture or to recover the full amount of the delinquent installments, interest, and other penalties that may be due to the board at the time the forfeiture occurred or to protect any other right to the land.

[Acts 1977, 65th Leg., p. 2672, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.323. Liability

The liability of the original veteran purchaser and any subsequent assignee or assignees of the veteran are joint and several, but the original veteran purchaser is primarily liable for payment of the money under the original contract of sale and purchase.

[Acts 1977, 65th Leg., p. 2672, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.324. Defenses in Lawsuits

After obtaining the permission of the legislature, in any action brought in the courts against the state involving the title to a tract of land to which the state has a warranty deed, the state is entitled to plead all statutes of limitations in the general laws of this state, but this shall not be considered as a limitation to any other defense the state may have.

[Acts 1977, 65th Leg., p. 2672, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 161.325 to 161.360 reserved for expansion]

SUBCHAPTER I. INSURANCE

§ 161.361. Definitions

In this subchapter:

(1) "Persons purchasing land under the program" means a person or his successor or assign who buys land from the board under contract of sale and purchase regardless of whether the land is sold under Sections 161.175 and 161.231 through 161.234 or Section 161.319 of this code or Subchapter G of this chapter.

(2) "Person in the group" means a person purchasing land under the program who has elected to accept the offer of the insurance coverage provided in this subchapter.

(3) "The indebtedness due to the board" means the principal of and interest on the indebtedness necessary to pay in full the obligation set forth in any contract of sale and purchase under which a person in the group is purchasing land from the board, exclusive of delinquent principal, interest, and penalties.

[Acts 1977, 65th Leg., p. 2673, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.362. Insurance Requirement

(a) Each veteran purchaser shall carry insurance on the improvements on the property under contract of purchase that the board considers necessary, and failure to do so will subject the contract to forfeiture under Subchapter H of this chapter.

(b) The board may promulgate rules it considers necessary to enforce this section.

(c) If the board desires, it may require each veteran applicant to make additional semiannual payments to be held in trust to pay premiums that may become due and unpaid on the contracted insurance covering the improvements. The payments shall be deposited in a trust fund with the State Treasurer and shall be used to make the premium payments. The unused balance of the veteran's deposit shall be held by the board until the time that maintenance of the account is unnecessary and then shall be refunded to the veteran.

[Acts 1977, 65th Leg., p. 2673, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.363. Master Insurance Contract

The board may enter into a master contract or agreement with one or more life insurance companies authorized to do business in this state to provide group life insurance coverage cancelling on death the indebtedness due to the board of persons purchasing land under the program.

[Acts 1977, 65th Leg., p. 2673, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.364. Provisions of Insurance

In addition to the provisions of Article 3.50, Insurance Code, as amended, the master contract or agreement shall provide that the life insurance coverage will be offered by the insurer to all persons without physical examination and that no person may be denied coverage because he is disabled at the time of application for the coverage.

[Acts 1977, 65th Leg., p. 2673, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.365. Approval of Contract; Contractual Relationship

The policy contract shall be approved by the State Board of Insurance under the provisions of the Insurance Code, as amended, and shall express and control the contractual relationship between the parties to it.

[Acts 1977, 65th Leg., p. 2673, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.366. Insurance Not Mandatory

It is not mandatory that a person purchasing land under the program accept the offer of the insurance coverage, and refusal by the person to accept the offer of the coverage shall not be a ground for the board to decline to enter into a contract of sale and purchase with the person.

[Acts 1977, 65th Leg., p. 2674, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.367. Amount of Coverage

The total insurance coverage for any person in the group shall not at any time exceed the indebtedness due to the board and in no event shall the total insurance coverage exceed the amount provided in the master contract.

[Acts 1977, 65th Leg., p. 2674, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.368. Collection of Premium

The board may collect or provide for collection of the premium for insurance coverage in a reasonable manner.

[Acts 1977, 65th Leg., p. 2674, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.369. Death of Insured

If a person in the group dies while the insurance coverage is in force, the benefits of the coverage shall be paid to the board for credit to the fund and the indebtedness due the board shall be canceled.

[Acts 1977, 65th Leg., p. 2674, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.370. Cancellation by Insurer

The master contract or agreement shall not prohibit cancellation by the insurer of the entire con-

tract on reasonable notice to the board but shall prohibit cancellation of individual coverage except as provided in this subchapter.

[Acts 1977, 65th Leg., p. 2674, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.371. Termination of Insurance

(a) The insurance coverage shall be terminated for any person in the group on:

(1) the satisfaction of the indebtedness due the board;

(2) the board's approval of a transfer of interest in the land being purchased from the board; or

(3) failure to make timely payment of the premium to be paid for the coverage.

(b) The master contract may provide that coverage will terminate on the person purchasing land under the program attaining the age of 65 years.

(c) If the coverage is terminated for a member of the group for failure to make timely payment of the premium, renewal coverage is subject to evidence of insurability as required by and satisfactory to the insurer and to payment of the premium due plus any penalty that may be provided.

[Acts 1977, 65th Leg., p. 2674, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 161.372 to 161.400 reserved for expansion]

SUBCHAPTER J. PENALTIES

§ 161.401. Penalty for Certain Transactions

Any person, seller, veteran, or appraiser who knowingly makes, utters, publishes, passes, or uses any false, fictitious, or forged paper, document, contract, affidavit, application, assignment, or other instrument in writing in connection with or pertaining to any transaction under this chapter is guilty of a felony and on conviction shall be punished by imprisonment in the state penitentiary for not less than two nor more than 10 years, or by a fine of not less than \$1,000 nor more than \$10,000, or by both. [Acts 1977, 65th Leg., p. 2674, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.402. Penalty Relating to Certain Purchases, Sales, and Resales of Land

A person who knowingly files a false, fictitious, or forged paper, document, contract, affidavit, application, assignment, or other instrument in writing relating to the purchase, sale, or resale of land under this chapter is guilty of a felony and on conviction shall be punished by imprisonment in the state penitentiary for not less than two nor more than 10 years or by a fine of not less than \$1,000 nor more than \$10,000, or by both.

[Acts 1977, 65th Leg., p. 2675, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 161.403. Penalty for Defrauding Veteran and State

A person who defrauds a veteran of his rights and benefits under this chapter by an act of fraud, duress, deceit, coercion, or misrepresentation or a person who uses the purposes or provisions of this chapter to defraud the state or any veteran by an act of fraud, duress, coercion, misrepresentation, or deceit, is guilty of a felony, and on conviction shall be punished by imprisonment in the state penitentiary for not less than two nor more than 10 years or by a fine of not less than \$1,000 nor more than \$10,000, or by both.

[Acts 1977, 65th Leg., p. 2675, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

TITLE 8. ACQUISITION OF RESOURCES

CHAPTER 181. TEXAS CONSERVATION FOUNDATION

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SUBCHAPTER A. GENERAL PROVISIONS

§ 181.001. Purpose

The Texas Conservation Foundation is established to encourage private gifts of real and personal property or income from or other interest in real and personal property and make timely acquisition by purchase or option of any property for the benefit of

or in connection with the Texas state system of parks, refuges, wildlife preserves, wildlife management areas, and scientific and recreational areas, and thereby further the conservation of natural, scenic, historical, scientific, educational, inspirational, wildlife, or recreational resources for future generations of Americans.

[Acts 1977, 65th Leg., p. 2676, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Application of Sunset Act

Acts 1977, 65th Leg., p. 1844, ch. 735, § 2.086, purports to add § 1a to Civil Statutes, art. 6145-7, without reference to repeal of said article by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(4). As so added, § 1a reads:

"The Texas Conservation Foundation is subject to the Texas Sunset Act [Civil Statutes, art. 5429k]; and unless continued in existence as provided by that Act the foundation is abolished, and this Act expires effective September 1, 1985."

§ 181.002. Definitions

In this chapter:

(1) "Foundation" means the Texas Conservation Foundation.

(2) "Board" means the board of the Texas Conservation Foundation.

[Acts 1977, 65th Leg., p. 2676, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 181.003 to 181.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 181.011. Texas Conservation Foundation

A charitable and nonprofit corporation known as the Texas Conservation Foundation is established to accept and administer gifts and otherwise to acquire and hold property or interests in property in accordance with the provisions of Section 181.001 of this code.

[Acts 1977, 65th Leg., p. 2676, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 181.012. Members of Board

(a) The foundation shall be governed by a board that shall have as members:

(1) the executive director of the Parks and Wildlife Department;

(2) the chairman of the Parks and Wildlife Commission;

(3) the executive director of the Texas Historical Commission; and

(4) nine interested private citizens of the State of Texas, appointed by the governor with the advice and consent of two-thirds of the senate.

(b) Two of the private citizens must have a generally recognized and special competence in one or more of the following areas: ecology, biology, botany, or private, volunteer, land, water, and wildlife conservation work. At least one of these members must be from statewide conservation groups. Each of the seven other private citizens must have a generally recognized and special competence in one or more of the following areas: investments, real estate transactions and holdings, oil and gas, industry, banking, and general business.

(c) Membership on the board is not considered to be an office within the meaning of the statutes and the Texas Constitution.

[Acts 1977, 65th Leg., p. 2676, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 181.013. Terms of Office

(a) The initial terms of the appointed members shall be staggered so that the terms of one-third of the initial members will expire every two years.

(b) After the initial terms, the term of each appointed member shall be six years, with the terms of one-third of the appointed members expiring on January 31 of each odd-numbered year.

[Acts 1977, 65th Leg., p. 2677, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 181.014. Board Officers

(a) The board shall select its chairman from among its membership.

(b) The executive director of the Parks and Wildlife Department shall be secretary of the board.

[Acts 1977, 65th Leg., p. 2677, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 181.015. Board Meetings

(a) The board shall meet at the call of the chairman.

(b) There shall be at least one meeting each year.

[Acts 1977, 65th Leg., p. 2677, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 181.016. Quorum

A majority of the members of the board serving at any one time constitutes a quorum for the transaction of business.

[Acts 1977, 65th Leg., p. 2677, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 181.017. Compensation; Expenses

(a) No compensation shall be paid to the members of the board for their services as members.

(b) The members of the board shall be reimbursed for actual and necessary travel and subsistence expenses incurred by them in the performance of their duties as members of the board. Reimbursement shall be paid from the foundation funds available to the board for this purpose.

[Acts 1977, 65th Leg., p. 2677, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 181.018. Suits; Liability

(a) The foundation has perpetual succession with all the usual powers and obligations of a corporation acting as a trustee, including the power to sue and be sued in its own name.

(b) The members of the board are not personally liable, except for malfeasance.

(c) The State of Texas shall not be liable for any debts, defaults, acts, or omissions of the foundation.

[Acts 1977, 65th Leg., p. 2677, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 181.019. Seal

The foundation shall have an official seal, which shall be judicially recognized.

[Acts 1977, 65th Leg., p. 2678, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 181.020 to 181.050 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

§ 181.051. In General

The foundation may:

- (1) contract in its own name;
- (2) act through agents and employees;
- (3) execute and acknowledge instruments;
- (4) contract for necessary services; and
- (5) do any lawful acts necessary or appropriate to its statutory purposes.

[Acts 1977, 65th Leg., p. 2678, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 181.052. Rules and Regulations

The board may adopt bylaws and rules necessary for the administration of its functions in carrying out the provisions of this chapter.

[Acts 1977, 65th Leg., p. 2678, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 181.053. Annual Report

As soon as practicable after the end of each fiscal year, the foundation shall transmit to the legislature and the governor an annual report of its proceedings and activities, including a full and complete statement of its receipts, expenditures, and investments.

[Acts 1977, 65th Leg., p. 2678, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 181.054. Gifts, Devises, Trusts, and Bequests

(a) The foundation may accept, receive, solicit, hold, administer, and use gifts, devises, trusts, or bequests, either absolutely or in trust, of real or personal property or income from or other interest in real or personal property for the benefit of or in connection with the Texas system of parks, refuges, scientific, historical, prehistoric, educational, inspirational, wildlife preservation, wildlife management, or recreational areas and sites.

(b) An interest in real property includes easements or other rights for preservation, conservation, protection, or enhancement by and for the public of natural, scenic, historical, archeological, scientific, educational, inspirational, wildlife, or recreational resources anywhere in the State of Texas.

[Acts 1977, 65th Leg., p. 2678, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 181.055. Gifts, Devises, and Bequests Subject to Restriction or Beneficial Interest

The foundation may accept a gift, devise, or bequest that is encumbered, restricted, or subject to a beneficial interest of private persons or corporations as long as any current or future use or interest in the gift, devise, or bequest is for the benefit of the Texas system of parks, refuges, and scenic, wildlife preservation, wildlife management, or scientific areas.

[Acts 1977, 65th Leg., p. 2678, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 181.056. Purchase or Other Acquisition of Land

(a) To the extent that funds are available to it for this purpose, the foundation may enter into and exercise purchase options, buy by outright purchase, or contract for, trade for, or otherwise acquire in the title and name of the foundation any land or interest in land that the foundation considers significant and necessary for the purposes of the foundation.

(b) Unless specially restricted by the instrument of transfer, the foundation may hold this land or interest in land in undeveloped and protective holdings that the foundation considers necessary for the accomplishment of its statutory purposes.

[Acts 1977, 65th Leg., p. 2678, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 181.057. Management and Disposition of Property or Income

(a) Except as otherwise limited or required by the instrument of transfer, the foundation may sell, lease, trade, invest, reinvest, retain, or otherwise dispose of or deal with any property or income from any property in a manner the board may from time to time determine.

(b) The foundation shall not engage in any business, nor shall it make any investment that may not

lawfully be made under the Texas Trust Act, as amended (Article 7425b—1, Vernon's Texas Civil Statutes), except that the foundation may make any investment that is authorized by the instrument of transfer and may retain any property accepted by the foundation.

[Acts 1977, 65th Leg., p. 2679, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 181.058. Private Benefit or Profit Prohibited

No property, income, or interest in property that passes to the foundation may enure thereafter to the private benefit or profit of any individual, firm, or corporation.

[Acts 1977, 65th Leg., p. 2679, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 181.059. Services and Facilities of Other Agencies

The foundation may use the services and facilities of the Parks and Wildlife Department, the Texas Historical Commission, and the office of the attorney general. These services and facilities may be made available on request to the extent practicable without reimbursement.

[Acts 1977, 65th Leg., p. 2679, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 181.060. Eminent Domain

None of the provisions of this chapter confer on the foundation the right of eminent domain.

[Acts 1977, 65th Leg., p. 2679, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 181.061 to 181.100 reserved for expansion]

SUBCHAPTER D. TAX EXEMPTIONS

§ 181.101. Exempt Gifts or Transfers

Contributions, gifts, and other transfers made to or for the use of the foundation are contributions, gifts, or transfers to or for the use of the State of Texas for scientific, educational, and benevolent purposes and shall be made without tax to the transferor.

[Acts 1977, 65th Leg., p. 2679, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 181.102. Tax on Beneficial Interest

If a beneficial interest is retained, it shall be taxable to the grantor to the extent of the fair market value of the beneficial interest by the State of Texas or any taxing authority created by the laws of the State of Texas.

[Acts 1977, 65th Leg., p. 2679, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 181.103. Exemption of Foundation

(a) The foundation and any income or property received or owned by it, and all transactions relating to the income or property received or owned by the foundation, are exempt from all forms of taxation.

(b) In the discretion of the board, the foundation may contribute toward the costs of local government in amounts not to exceed those that it would be obligated to pay the government if it were not exempt from taxation by virtue of Subsection (a) of this section or by virtue of its being a charitable and nonprofit corporation. The foundation may agree to contribute with respect to property transferred to it and the income derived from property transferred to it if the agreement is a condition of the transfer.

[Acts 1977, 65th Leg., p. 2679, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

CHAPTER 182. TEXAS HISTORICAL RESOURCES DEVELOPMENT COUNCIL

SUBCHAPTER A. GENERAL PROVISIONS

Section

182.001. Definition.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

- 182.011. Creation of Council.
- 182.012. Council Membership.
- 182.013. Compensation.
- 182.014. Council Officers.
- 182.015. Quorum.
- 182.016. Council Meetings.
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SUBCHAPTER C. POWERS AND DUTIES

- 182.041. Communication Between Agencies.
- 182.042. Study.
- 182.043. Soliciting and Considering Suggestions.
- 182.044. Recommendations.
- 182.045. Semiannual Reports.

SUBCHAPTER A. GENERAL PROVISIONS

§ 182.001. Definition

In this chapter, "council" means the Texas Historical Resources Development Council.

[Acts 1977, 65th Leg., p. 2680, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Application of Sunset Act

Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.081, purports to add § 1a to Civil Statutes, art. 6145—10, without reference to repeal of said article by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(4). As so added, § 1a reads:

"The Texas Historical Resources Development Council is subject to the Texas Sunset Act [Civil Statutes, art. 5429k]; and unless continued in

existence as provided by that Act the council is abolished, and this Act expires effective September 1, 1983."

[Sections 182.002 to 182.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 182.011. Creation of Council

To encourage the best use of the unique historical resources of this state, the Texas Historical Resources Development Council is created.

[Acts 1977, 65th Leg., p. 2680, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 182.012. Council Membership

(a) The council consists of the following ex officio members:

(1) the executive director of the Texas Historical Commission;

(2) the director and librarian of the Texas State Library;

(3) the executive director of the Texas Tourist Development Agency;

(4) the director of the Travel and Information Division of the State Department of Highways and Public Transportation;

(5) the director of the Park Services Division of the Parks and Wildlife Department; and

(6) the chairman of the State Antiquities Committee.

(b) Membership on the council shall not be considered to be an office within the meaning of the statutes and Constitution of the State of Texas.

[Acts 1977, 65th Leg., p. 2680, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 182.013. Compensation

No compensation may be paid to the members of the council for their services as members.

[Acts 1977, 65th Leg., p. 2681, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 182.014. Council Officers

The executive director of the Texas Historical Commission is chairman of the council, and the director and librarian of the Texas State Library is the secretary.

[Acts 1977, 65th Leg., p. 2681, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 182.015. Quorum

A majority of the members of the council constitute a quorum authorized to transact business of the council.

[Acts 1977, 65th Leg., p. 2681, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 182.016. Council Meetings

(a) The council meets at least four times a year.

(b) Additional meetings may be held on the call of the chairman or on written request of any two members of the council.

[Acts 1977, 65th Leg., p. 2681, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 182.017. Use and Provision of Services of Certain Agencies

The council may use the services and facilities of the Texas Historical Commission, the Texas State Library and Historical Commission, the Texas Tourist Development Agency, the State Department of Highways and Public Transportation, the Parks and Wildlife Department, and the State Antiquities Committee, and these services and facilities may be made available on request to the extent practicable without reimbursement for them.

[Acts 1977, 65th Leg., p. 2681, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 182.018 to 182.040 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

§ 182.041. Communication Between Agencies

The council shall establish communication between the Texas Historical Commission, the Texas State Library and Historical Commission, the Texas Tourist Development Agency, the State Department of Highways and Public Transportation, the Parks and Wildlife Department, and the State Antiquities Committee in order to coordinate the efforts of these agencies to develop and publicize the historical resources of this state.

[Acts 1977, 65th Leg., p. 2681, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 182.042. Study

The council shall make a continuous study of the means that state agencies and private promotional and historical organizations in Texas may employ to develop and publicize the historical resources of this state.

[Acts 1977, 65th Leg., p. 2681, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 182.043. Soliciting and Considering Suggestions

The council shall solicit and consider suggestions from state officials, interested private citizens, and private promotional and historical organizations in Texas for improving the methods employed to develop and publicize the historical resources of this state.

[Acts 1977, 65th Leg., p. 2681, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 182.044. Recommendations

The council shall make recommendations for effective methods that may be used by state agencies and private promotional and historical organizations in Texas to develop and publicize the historical resources of this state.

[Acts 1977, 65th Leg., p. 2682, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 182.045. Semiannual Reports

The council shall make a complete and detailed report semiannually of all of its proceedings, findings, and recommendations held or made since the last report, this report to be made to the governor and to the executive director of the Texas Legislative Council.

[Acts 1977, 65th Leg., p. 2682, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

TITLE 9. HERITAGE

CHAPTER 191. ANTIQUITIES COMMITTEE

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SUBCHAPTER A. GENERAL PROVISIONS

§ 191.001. Title

This chapter may be cited as the Antiquities Code of Texas.

[Acts 1977, 65th Leg., p. 2683, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.002. Declaration of Public Policy

It is the public policy and in the public interest of the State of Texas to locate, protect, and preserve all sites, objects, buildings, pre-twentieth century shipwrecks, and locations of historical, archeological, educational, or scientific interest, including but not limited to prehistoric and historical American Indian or aboriginal campsites, dwellings, and habitation sites, archeological sites of every character, treasure imbedded in the earth, sunken or abandoned ships and wrecks of the sea or any part of their contents, maps, records, documents, books, artifacts, and implements of culture in any way related to the inhabitants, pre-history, history, natural history, government, or culture in, on, or under any of the land in the State of Texas, including the tidelands, submerged land, and the bed of the sea within the jurisdiction of the State of Texas.

[Acts 1977, 65th Leg., p. 2683, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.003. Definitions

In this chapter:

- (1) "Committee" means the Antiquities Committee.
- (2) "Landmark" means a state archeological landmark.

[Acts 1977, 65th Leg., p. 2683, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 191.004 to 191.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 191.011. Creation and Membership of Committee

There is created an Antiquities Committee, which is composed of seven members, including the Director of the Texas Historical Commission, the Director of the Parks and Wildlife Department, the Commissioner of the General Land Office, the State Archeologist, and the following citizen members: one professional archeologist from a recognized museum or institution of higher learning in Texas, one professional historian with expertise in Texas history and culture, and the Director of the Texas Memorial Museum of The University of Texas System.

[Acts 1977, 65th Leg., p. 2684, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

Application of Sunset Act

Acts 1977, 65th Leg., p. 1843, ch. 735, § 2.079, purports to add § 3a to Civil Statutes, art. 6145-9, without reference to repeal of said article by Acts 1977, 65th Leg., p. 2690, ch. 871, art. I, § 2(a)(4). As so added, § 3a reads:

"The Antiquities Committee is subject to the Texas Sunset Act [Civil Statutes, art. 5429k]; and unless continued in existence as provided by that Act the committee is abolished effective September 1, 1983."

§ 191.012. Qualifications for Citizen Members

Each citizen member of the committee must be a resident of the State of Texas.

[Acts 1977, 65th Leg., p. 2684, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.013. Appointment of Citizen Members

Each citizen member of the committee shall be appointed by the governor with the advice and consent of the senate.

[Acts 1977, 65th Leg., p. 2684, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.014. Term of Citizen Members

Each citizen member of the committee shall serve for a term coexistent with the governor appointing him and until his successor is appointed and qualifies.

[Acts 1977, 65th Leg., p. 2684, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.015. Per Diem and Expenses for Citizen Members

Each citizen member of the committee is entitled to receive a per diem allowance for each day spent in the performance of his duties and reimbursement for actual and necessary travel expenses incurred in the performance of his duties, as provided by the General Appropriations Act.

[Acts 1977, 65th Leg., p. 2684, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.016. Chairman of Committee

The committee shall select one of its members as chairman.

[Acts 1977, 65th Leg., p. 2684, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.017. Quorum

Four members of the committee constitute a quorum for conducting business.

[Acts 1977, 65th Leg., p. 2684, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.018. Employees of Committee

(a) The committee may employ the personnel necessary to perform its duties to the extent the employment is provided for by the General Appropriations Act.

(b) Employees of the committee are considered to be employees of the Texas Historical Commission. [Acts 1977, 65th Leg., p. 2684, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.019. Records of Committee

The committee shall keep a record of its proceedings which shall be subject to inspection by any citizen of Texas desiring to make an examination in the presence of a member of the committee or an authorized employee of the committee.

[Acts 1977, 65th Leg., p. 2684, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 191.020 to 191.050 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

§ 191.051. In General

(a) The committee is the legal custodian of all items described in this chapter that have been recovered and retained by the State of Texas.

(b) The committee shall:

(1) maintain an inventory of the items recovered and retained by the State of Texas, showing the description and depository of them;

(2) determine the site of and designate landmarks and remove from the designation certain sites, as provided in Subchapter D of this chapter;

(3) contract or otherwise provide for discovery and salvage operations under the provisions of Section 191.053 of this code;

(4) consider the requests for and issue the permits provided for in Section 191.054 of this code; and

(5) protect and preserve the archeological resources of Texas.

[Acts 1977, 65th Leg., p. 2685, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.052. Rules

The committee may promulgate rules and require contract or permit conditions to reasonably effect the purposes of this chapter.

[Acts 1977, 65th Leg., p. 2685, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.053. Contract for Discovery and Salvage

(a) The committee may contract with other state agencies or institutions and with qualified private

institutions, corporations, or individuals for the discovery and salvage of sunken or abandoned ships or wrecks of the sea, or any part or the contents of them, or treasure imbedded in the earth.

(b) At the discretion of the committee, the contract may provide for fair compensation to the salvager in terms of a percentage of the reasonable cash value of the objects recovered or a fair share of the objects recovered. The contract may provide for appraisal by qualified experts or by representatives of the contracting parties to determine the reasonable cash value. The committee shall determine the amount constituting a fair share, taking into consideration the circumstances of each operation.

(c) The contract shall:

(1) be on a form approved by the attorney general;

(2) specify the location, nature of the activity, and the time period covered by the contract; and

(3) provide for the termination of any right in the salvager or permittee under the contract on the violation of any of the terms of the contract.

(d) The executed contract shall be recorded by the person, firm, or corporation obtaining the contract in the office of the county clerk in the county or counties in which the operations are to be conducted prior to the commencement of the operation.

(e) Title to all objects recovered is retained by the State of Texas unless and until it is released to the salvager or permittee by the committee.

[Acts 1977, 65th Leg., p. 2685, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.054. Permit for Salvage, Restoration, or Study

(a) The committee may issue a permit to other state agencies or institutions or to qualified private institutions, companies, or individuals for the taking, salvage, excavation, restoration, or the conduct of scientific or educational studies at, in, or on landmarks, if it is the opinion of the committee that the permit is in the best interest of the State of Texas.

(b) The permit may provide for the permittee to retain a portion of any recovery as provided for contracting parties under the provisions of Section 191.053 of this code.

(c) The permit shall:

(1) be in compliance with forms approved by the attorney general;

(2) specify the location, nature of the activity, and the time period covered by the permit; and

(3) provide for the termination of any right in the permittee under the permit on the violation of any of the terms of the permit.

[Acts 1977, 65th Leg., p. 2685, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.055. Supervision

All salvage or recovery operations conducted under the contract provisions in Section 191.053 of this code and all operations conducted under permits or contracts set out in Section 191.054 of this code must be carried out:

(1) under the general supervision of the committee;

(2) in accordance with reasonable rules adopted by the committee; and

(3) in such manner that the maximum amount of historic, scientific, archeological, and educational information may be recovered and preserved in addition to the physical recovery of items.

[Acts 1977, 65th Leg., p. 2686, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.056. Purchase From Salvager or Permittee

(a) The committee may purchase from the salvager or permittee the salvager's or permittee's share or portion of a share of items recovered that in the opinion of the committee should remain the property of the state. The committee may spend any appropriations made for this purpose that it considers advisable.

(b) The committee may accept gifts, grants, devises, or bequests of money, securities, or property to be used in the purchase of items from the salvager or permittee.

(c) The committee may contract or agree with persons, firms, corporations, or institutions that, for the privilege of retaining temporary possession of the items, the person, firm, corporation, or institution may advance to the committee the money necessary to procure from the salvager or permittee the items the committee determines should remain the property of the State of Texas, on the condition that at any time the committee may repay the person, firm, corporation, or institution the sum so advanced, without interest or additional charge of any kind, and recover possession of the items. During the time the items are in the possession of the person, firm, corporation, or institution advancing the money for the purchase of them, the items shall be available for viewing by the general public without charge or at no more than a nominal admission fee, and the items may not be removed from the State of Texas except on the express authorization of the committee for appraisal, exhibition, or restorative purposes.

[Acts 1977, 65th Leg., p. 2686, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.057. Restoration for Private Parties

The committee may restore antiquities for private parties under rules promulgated by the committee. All real and administrative costs incurred in the restoration shall be paid by the private party.

[Acts 1977, 65th Leg., p. 2686, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.058. Display of Artifacts

(a) As far as is consistent with the public policy of this chapter, the committee, on a majority vote, may arrange or contract with other state agencies or institutions, incorporated cities, and qualified private institutions, corporations, or individuals for public display of artifacts and other items in its custody through permanent exhibits established in the locality or region in which the artifacts were discovered or recovered. The committee, on a majority vote, may also arrange or contract with these same persons and groups for portable or mobile displays.

(b) The committee is the legal custodian of the items described in this chapter and shall adopt appropriate rules, terms, and conditions to assure appropriate security, qualification of personnel, insurance, facilities for preservation, restoration, and display of the items loaned under the contracts.

[Acts 1977, 65th Leg., p. 2687, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 191.059 to 191.090 reserved for expansion]

SUBCHAPTER D. STATE ARCHEOLOGICAL LANDMARKS

§ 191.091. Ships, Wrecks of the Sea, and Treasure Imbedded in Earth

Sunken or abandoned pre-twentieth century ships and wrecks of the sea, and any part or the contents of them, and all treasure imbedded in the earth, located in, on, or under the surface of land belonging to the State of Texas, including its tidelands, submerged land, and the beds of its rivers and the sea within jurisdiction of the State of Texas, are declared to be state archeological landmarks.

[Acts 1977, 65th Leg., p. 2687, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.092. Other Sites or Articles

Other sites, objects, buildings, artifacts, implements, and locations of historical, archeological, scientific, or educational interest, including those pertaining to prehistoric and historical American Indians or aboriginal campsites, dwellings, and habitation sites, their artifacts and implements of culture, as well as archeological sites of every character that are located in, on, or under the surface of any land belonging to the State of Texas or to any county, city, or political subdivision of the state are state archeological landmarks and are the sole property of the State of Texas.

[Acts 1977, 65th Leg., p. 2687, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.093. Prerequisites to Taking, Altering, Damaging, Destroying, Salvaging, or Excavating Certain Landmarks

Landmarks under Section 191.091 of this code are the sole property of the State of Texas and may not be taken, altered, damaged, destroyed, salvaged, or excavated without a contract with or permit from the committee.

[Acts 1977, 65th Leg., p. 2687, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.094. Designating a Landmark on Private Land

(a) Any site located on private land which is determined by majority vote of the committee to be of sufficient archeological, scientific, or historical significance to scientific study, interest, or public representation of the aboriginal or historical past of Texas may be designated a state archeological landmark by the committee.

(b) No site may be designated on private land without the written consent of the landowner or landowners in recordable form sufficiently describing the site so that it may be located on the ground.

(c) On designation, the consent of the landowner shall be recorded in the deed records of the county in which the land is located.

[Acts 1977, 65th Leg., p. 2687, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.095. Permit for Landmark on Private Land

All sites or items of archeological, scientific, or historical interest located on private land in the State of Texas in areas designated as landmarks, as provided in Section 191.094 of this code, and landmarks under Section 191.092 of this code, may not be taken, altered, damaged, destroyed, salvaged, or excavated without a permit from the committee or in violation of the terms of the permit.

[Acts 1977, 65th Leg., p. 2688, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.096. Marking Landmark on Private Land

Any site on private land which is designated a landmark shall be marked by at least one marker bearing the words "State Archeological Landmark" for each five acres of area.

[Acts 1977, 65th Leg., p. 2688, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.097. Removing Designation as Landmark

(a) Any landmark on public or private land may be determined by majority vote of the committee to be of no further historical, archeological, educational, or scientific value, or not of sufficient value to warrant its further classification as a landmark, and on this determination may be removed from the designation as a landmark.

(b) On removal of the designation on private land which was designated by instrument of record, the committee may execute and record in the deed records of the county in which the site is located an instrument setting out the determination and releasing the site from the provisions of this chapter. [Acts 1977, 65th Leg., p. 2688, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 191.098 to 191.130 reserved for expansion]

SUBCHAPTER E. PROHIBITIONS

§ 191.131. Contract or Permit Requirement

(a) No person, firm, or corporation may conduct a salvage or recovery operation without first obtaining a contract.

(b) No person, firm, or corporation may conduct an operation on any landmark without first obtaining a permit and having the permit in his or its possession at the site of the operation, or conduct the operation in violation of the provisions of the permit. [Acts 1977, 65th Leg., p. 2688, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.132. Damage or Destruction

(a) No person may intentionally and knowingly deface American Indian or aboriginal paintings, hieroglyphics, or other marks or carvings on rock or elsewhere that pertain to early American Indian or aboriginal habitation of the country.

(b) A person who is not the owner shall not wilfully injure, disfigure, remove, or destroy a historical structure, monument, marker, medallion, or artifact without lawful authority. [Acts 1977, 65th Leg., p. 2688, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.133. Entry Without Consent

No person who is not the owner, and does not have the consent of the owner, proprietor, lessee, or person in charge, may enter or attempt to enter on the enclosed land of another and intentionally injure, disfigure, remove, excavate, damage, take, dig into, or destroy any historical structure, monument, marker, medallion, or artifact, or any prehistoric or historic archeological site, American Indian or aboriginal campsite, artifact, burial, ruin, or other archeological remains located in, on, or under any private land within the State of Texas. [Acts 1977, 65th Leg., p. 2688, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

[Sections 191.134 to 191.170 reserved for expansion]

SUBCHAPTER F. ENFORCEMENT

§ 191.171. Criminal Penalty

(a) A person violating any of the provisions of this chapter is guilty of a misdemeanor, and on conviction shall be punished by a fine of not less than \$50 and not more than \$1,000, by confinement in jail for not more than 30 days, or by both.

(b) Each day of continued violation of any provision of this chapter constitutes a separate offense for which the offender may be punished. [Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.172. Civil Action by Attorney General

(a) In addition to, and without limiting the other powers of the attorney general, and without altering or waiving any criminal penalty provided in this chapter, the attorney general may bring an action in the name of the State of Texas in any court of competent jurisdiction for restraining orders and injunctive relief to restrain and enjoin violations or threatened violations of this chapter, and for the return of items taken in violation of the provisions of this chapter.

(b) Venue for an action instituted by the attorney general lies either in Travis County or in the county in which the activity sought to be restrained is alleged to be taking place or from which the items were taken.

[Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.173. Civil Action by Citizen

(a) A citizen of the State of Texas may bring an action in any court of competent jurisdiction for restraining orders and injunctive relief to restrain and enjoin violations or threatened violations of this chapter, and for the return of items taken in violation of the provisions of this chapter.

(b) Venue of an action by a citizen lies in the county in which the activity sought to be restrained is alleged to be taking place or from which the items were taken.

[Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

§ 191.174. Assistance From State Agencies and Law Enforcement Officers

(a) The chief administrative officers of all state agencies are directed to cooperate and assist the committee and the attorney general in carrying out the intent of this chapter.

(b) All state and local law enforcement agencies and officers are directed to assist in enforcing the provisions and carrying out the intent of this chapter.

[Acts 1977, 65th Leg., p. 2689, ch. 871, art. I, § 1, eff. Sept. 1, 1977.]

DISPOSITION TABLE

Showing where provisions of former articles of the Civil Statutes and the unclassified laws of the General and Special Laws of Texas are covered in the Natural Resources Code.

Civ.St. Article	Natural Resources Code Section	Civ.St. Article	Natural Resources Code Section
165—9, § 1	152.001	3183a, § 7	36.061
§ 2	152.003		36.063
§ 3	152.002	§ 8	36.061
§ 4	152.061		36.101
§ 5	152.011		36.131
	152.012	§ 9	36.101
§ 6	152.013		36.131
	152.014		36.171
	152.015		36.172
	152.016	§ 10	36.062
§ 7	152.017		36.101
	152.018		36.102
§ 8	152.020		36.103
	152.062	§ 11	36.132
	152.063		36.133
	152.064		36.134
§ 9	152.019		36.135
§ 10	152.101	§ 12	36.171
	152.102		36.172
	152.103	§ 13	36.136
	152.104		36.172
	152.105		36.173
	152.106	§ 14	36.016
§ 11	152.021		36.133
	152.022	§ 17	36.013
	152.023		36.015
	152.024		36.061
§ 12	152.025	§ 17a	36.051
§ 13	152.026		—
1592a, § 1	11.013	3954—1	—
§ 2	31.063	3954—2	11.072
§ 3	11.013	3954—3	11.072
3183a, § 1	36.001(1)	3954—4	11.073
	36.011		11.074
	36.012		11.075
	36.014	5249	31.012
§ 2	36.051	5250	31.013
§ 3	36.052	5251	31.051
	36.053	5252	31.016
	36.054	5254	31.057
	36.055	5254a, § 1	31.056(a)
	36.056		to
§ 4	36.057		31.056(d)
	36.058	§ 2	31.056(e)
§ 5	36.059		to
	36.060		31.056(f)
	36.131	§ 3	31.056(g)
§ 6	36.059	5255	31.015
	36.060	5256	31.018

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Civ.St. Article	Natural Resources Code Section	Civ.St. Article	Natural Resources Code Section
5257	31.017	5285	23.014
	31.058	5286	23.015
	31.059	5287	23.051
	31.060		23.052
5258	31.061		23.053
	31.062	5288	—
5259	31.019	5289	23.059
5260	31.020	5290	23.053
5260a	—		23.054
5261	31.001	5291	23.053
	31.011		23.054
5262	31.052	5292	23.054
5263	31.053	5293	—
5264	31.054	5294	23.056
5265	31.055	5295	—
5266	31.055	5296	23.058
5267	31.014	5297	23.057
5268	22.011	5298	23.055
	22.012	5299	21.011
	22.013	5300	21.041
	22.014		21.042
5269	22.015	5300a, § 1	21.071
	22.016		21.073
	22.017		21.074
	22.018	§ 2	21.075
5270	22.053	§ 3	21.078
	22.054	§ 4	21.079
	22.055	§ 5	21.076
5271	22.055		21.077
	22.056	§ 6	21.072
	22.057	§ 7	21.072
	22.058	5301	21.043
	22.059	5302	21.001(3)
	22.060		21.012
	22.061		21.013
5272	22.101	5303	21.014
5273	22.061	5304	—
	22.064	5305	21.044
	22.065	5306	51.011
	22.151		51.052
5275	22.052	5307	51.012
	22.060		51.014
	22.061		51.015
	22.062		51.016
	22.063		51.017
5276	22.102	5308	51.018
	22.103	5309	51.011
	22.104	5310	51.013
5277	22.105		51.054
	22.109		51.056
5278	22.110	5311	51.052
5279	22.111		51.073
5280	22.106	5311a	51.052
	22.107		51.055
	22.108	5312	51.056
5281	22.019	5313	51.051
5282	22.051		51.056
	—		51.057
5283	23.011		51.059
	23.012		51.063
	23.016	5314	51.064
5284	23.013		

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Civ.St. Article	Natural Resources Code Section	Civ.St. Article	Natural Resources Code Section
5315	51.058	5342a	---
5316	51.065	5343	52.185
5317	51.066	5344	52.233
5318	51.067		52.236
5319	51.060		52.237
	51.061	5344a	---
	to	5344b	52.238
	51.062	5344c, § 1	52.021
5320	51.068		52.082
5321	51.341	§ 2	---
	51.342	§ 2-A	---
	51.343	5344d, § 1	52.133
5322	51.344	§ 2	52.133
	51.345	5345	52.239
	51.346	5346	52.240
5324	51.347	5347	52.241
	51.348	5348	52.221
	51.349		52.222
5325	51.350		52.224
5326	51.071		52.227
	51.072		52.234
	51.074		52.235
	53.075		52.242
	53.076		52.243
5327	51.077	5348a	---
5328	51.078	5349	52.244
5329	51.079	5349a	52.245
	51.080		52.248
	51.081	5349b	52.246
	51.082		52.247
	51.083	5349c	52.249
	51.084	5350	52.250
	51.085	5351	52.251
5330	---	5352	52.252
5331	51.121	5353	52.011
5332	51.122	5354	---
	51.124		---
	51.125	5355	52.015
5333	51.123		52.017
	51.126		52.018
	51.127	5356	52.019
			52.020
5334	---	5357	---
5335	---	5358	---
5336	51.128	5359	52.034
	51.129	5360	52.029
5337	51.130	5361	52.033
5337-1, § 1	51.304	5362	52.026
§ 2	51.305	5363	52.027
	51.306	5364	52.025
§ 3	51.307	5365	---
5339	52.222	5366	52.032
	52.223	5367	52.171
5340	52.224	5368	52.172
5341	52.225	5369	52.173
	52.226	5370	52.174
5341a	---	5371	52.175
5341b	52.228	5372	52.176
	52.229	5373	52.177
	52.231	5375	52.178
5342	52.230	5376	52.179
	52.232		

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Civ.St. Article	Natural Resources Code Section	Civ.St. Article	Natural Resources Code Section
5377	52.180	5382d, § 16	34.018
5378	52.181		34.019
5379	52.182	§ 17	34.019
5380	52.131	5382d—1, § 1	32.110
	52.134		34.061
	52.135		51.019
5381	52.132		52.016
5382	52.136		52.078
5382b, § 1	31.101	§ 2	—
§ 2	—	5382c, § 1	52.023
§ 3	31.102		52.024
§ 4	31.107		52.084
§ 5	31.103	§ 2	52.031
	31.104		52.090
§ 6	31.105	5382f	52.291
	31.106		52.292
§ 7	31.108		52.293
§ 7a	52.014		52.294
5282c, § 1	52.151		52.295
	52.152		52.296
§ 2	52.153	5404	51.243
5382d, § 1	34.011	5405	51.248
	34.012	5406	—
	34.013	5407	—
	34.014	5408	51.249
	34.015	5409	51.250
	34.016	5410	51.251
§ 2	34.051	5411	51.252
§ 3	34.052	5411a, § 1	51.020
	34.053	§ 2	51.020
	34.054	5412	—
§ 4	34.056	5413	51.241
	34.057		51.242
	34.060		51.244
§ 5	34.058	5414	51.245
	34.059	5415	11.011
	34.060	5415a, § 1	11.012(a)
	34.062	§ 2	11.012(b)
§ 6	34.062	§ 3	11.012(c)
	34.063		11.041
§ 7	34.101	§ 4	11.012(d)
	34.102	5415b, § 1	11.016(a)
§ 8	34.105	§ 2	11.016(b)
§ 9	34.141		to
	34.142		11.016(d)
	34.143	§ 3	11.016(e)
	34.144	§ 4	11.016(f)
	34.145	5415b—1, § 1	11.017(a)
	34.146		11.017(b)
§ 10	34.181	§ 2	11.017(c)
	34.182	5415d, § 1	61.011
	34.183		61.013
	34.184		61.015
§ 11	34.103		61.021
	34.104		61.022
§ 12	34.185		61.023
§ 13	34.055	§ 2	61.020
§ 13a	34.064	§ 3	61.001(a),
§ 14	34.020		(b), (c)
§ 15	34.002		61.012
§ 16	34.017		

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Civ.St. Article	Natural Resources Code Section	Civ.St. Article	Natural Resources Code Section
5415d, § 3	61.016	5415d—3, § 7	62.055
	61.017		62.091
§ 4	61.024		62.093
	61.131		to
§ 5	61.018		62.100
§ 6	61.019		62.131
§ 7	—		62.132
§ 8	61.122		—
	61.123		62.133
	61.124		62.134
	61.125		62.135
	61.126		62.136
	61.127		62.137
	61.128		62.138
§ 9	61.129	§ 8	62.092
§ 10	61.130	§ 9	62.092
5415d—1, § 1	61.061	§ 10	62.001
	61.062	§ 11	62.001
	61.082		62.101
§ 2	61.064	5415d—4, § 1	61.161
§ 3	61.068	§ 2	61.162
	61.069	§ 3	61.162
	61.070		61.164
§ 4	61.071	§ 4	61.165
§ 5	61.065		61.166
	61.066		61.167
	61.067		61.173
§ 6	61.078	§ 5	61.168
§ 7	61.072	§ 5A	61.175
	61.073	§ 6	61.171
	61.074		61.172
	61.075	§ 7	61.001
	61.076		61.163
	61.077	§ 8	61.174
§ 8	61.080	§ 9	61.176
§ 9	61.081	§ 10	61.169
§ 10	61.079	§ 10A	61.170
§ 11	61.001(a)	§ 11	61.177
	61.001(b)	5415c—1, § 1	33.003
	61.063	§ 2	33.001
§ 12	61.083	§ 3	33.002
5415d—2, § 1	61.014	§ 4	33.004
§ 2	61.014	§ 5	33.011
§ 3	61.014		33.012
5415d—3, § 1	62.001		33.013
§ 2	62.002	§ 6	33.051
	62.011		33.052
	62.012		33.053
	62.013		33.054
§ 3	62.041		33.055
	62.042		33.056
	62.044		33.057
	62.045		33.058
§ 4	62.043		33.059
§ 5	62.046		33.060
	62.050		33.061
	62.052		33.062
§ 6	62.051		33.063
	62.053		33.064
§ 7	62.047	§ 7	33.101
	62.048		33.104
	62.049		
	62.054		

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Civ.St. Article	Natural Resources Code Section	Civ.St. Article	Natural Resources Code Section
5415e-1, § 7	33.103	5415h, § 1	63.001
	33.104	§ 2	63.002
§ 8	33.105	§ 3	63.003
	33.106		63.011
	33.107		63.012
	33.108		63.013
	33.109		63.014
	33.110	§ 4	63.091
§ 9	33.111		63.092
	33.113		63.093
	33.114	§ 5	63.051
	33.115		63.053
	33.117		63.054
	33.118		63.055
§ 10	33.119	§ 6	63.015
	33.123		63.052
	33.124		63.057
	33.125	§ 7	63.056
	33.126		63.121
	33.127		63.122
	33.128	§ 8	63.151
	33.129		63.152
	33.130	§ 9	63.181
	33.131	5417	11.043
§ 11	33.132	5418	11.042
§ 12	33.112	5419	11.076
	33.116	5420	11.077
	33.120		11.078
	33.121	5421	11.071
	33.133	5421a, § 1	11.014
	33.172	§ 2	—
§ 13	33.171	§ 3	—
§ 14	33.014	§ 3a	—
	33.015	5421c, § 1	51.011
	33.016	§ 2	51.011
§ 15	33.173		51.053
	33.174	§ 3	51.001(10)
	33.175	§ 4	51.052
	33.176		51.054
§ 16	33.122		51.056
	33.134	§ 5	51.247
§ 18	33.005	§ 6(a)	51.172
5415g, § 1	61.211		51.174
§ 2	61.213	§ 6(b)	51.171
§ 3	61.214		51.173
§ 4	61.219		51.201
§ 5	61.220		51.204
§ 6	61.215	§ 6(c)	51.175
§ 7	61.212		to
§ 8	61.227		51.188
§ 9	61.221	§ 6(d)	51.192
	61.222	§ 6(e)	51.189
§ 10	61.216	§ 6(f)	51.191
	61.217		51.193
	61.218		to
§ 11	61.001		51.196
§ 11A	61.225		51.198
§ 12	61.226		51.199
§ 12A	61.219		51.202
§ 13	61.223	§ 6(g)	51.200
§ 14	61.224		

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Civ.St. Article	Natural Resources Code Section	Civ.St. Article	Natural Resources Code Section
5421c, § 6(h)	51.190	5421c-3, § 7	32.062
	51.197	§ 8	32.106
	51.203		32.108
§ 6(i)	—		32.109
§ 6(j)	51.205	§ 9	32.102
§ 7	51.070	§ 10	32.111
§ 8	52.011	§ 11	32.063
	52.012	§ 12	32.105
	52.022		32.107
	52.073	§ 13	32.109
	52.083	§ 14	—
	52.088	§ 15	—
§ 8-A	52.071	5421c-5, § 1	52.011
	52.074		52.073
§ 8-A(1)	52.100	§ 2	52.013
§ 8-A(2)	52.076		52.021
§ 8-A(3)	52.076		52.082
	52.077		52.087
§ 8-A(4)	52.079	5421c-7, § 1	53.011
§ 8-A(5)	52.086		53.012
§ 8-A(6)	52.080	§ 2	53.013
	52.085		53.015
§ 8-A(6a)	52.072		53.017
§ 8-A(6b)	—	§ 3	53.016
§ 8-A(6c)	—		53.018
§ 8-A(7)	52.100	§ 4	53.019
§ 8-A(8)	52.089	§ 5	53.014
§ 8-A(9)	52.075		53.020
	52.081	§ 6	53.022
§ 8-A(10)	52.088	§ 7	53.021
§ 8-A(11)	52.099	5421c-8, § 1	32.104
§ 8-A(12)	52.097	§ 2	32.104
§ 8-A(13)	52.098	§ 3	32.104
§ 8-A(14)	52.092	5421c-10, § 1	53.061
	52.093	§ 2	53.062
	52.094		53.063
	52.095		53.065
	52.096	§ 3	53.064
§ 9	—	§ 4	53.066
§ 10	52.022	§ 5	53.067
	52.088		53.068
§ 11	51.069	§ 6	53.069
§ 11a	52.030		53.070
	52.091	§ 7	53.071
§ 12	—	§ 8	53.073
5421c-1	51.246	§ 10	53.072
5421c-2	52.183	5421c-11, § 1	53.111
	52.184		53.112
5421c-3, § 1	—		53.113
§ 2	11.041		53.114
§ 3	32.011	§ 2	53.115
	to	§ 3	53.116
	32.014	§ 4	53.117
§ 4	32.061	5421i	52.028
	32.101	5421m, § 2	161.011
	32.103		161.062
§ 5	32.016	§ 2(A)	161.061
	32.017	§ 2(B)	161.012
	32.018	§ 2(C)	—
	32.019	§ 3	161.111
§ 6	32.020		to
	32.021		161.121
	32.022		161.126

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Civ.St. Article	Natural Resources Code Section	Civ.St. Article	Natural Resources Code Section
5421m, § 4	161.127	5421m, § 21	161.811
§ 5	161.122		161.821
§ 6	161.123	§ 21(A)	161.064
	161.124		to
§ 7	161.125		161.067
§ 8	161.171	§ 22	161.072
§ 9	161.016	§ 23	—
	161.128	§ 24	161.020
	161.173		161.071
	161.174	§ 25	161.013
	161.177		161.014
	161.178		161.017
	161.179		to
§ 9(a)	161.176		161.019
§ 10	161.172		161.021
	161.211		161.022
§ 10(A)	161.212	§ 26	161.015
	161.213	§ 27	—
§ 11	161.214	§ 30	161.120
	161.215	§ 31	—
§ 12	161.175	§ 32	161.401
	161.231		161.402
	161.232	5421n, § 1	161.403
	161.233		71.051
	161.234		71.052
§ 13	161.216		71.053
	161.236		71.055
§ 14	161.001	§ 2	71.051
	161.235		71.052
§ 15	161.217		71.053
	to		71.054
	161.220		71.055
	161.217	§ 3	71.056
	161.218	§ 4	71.057
	161.219	5421p, § 1	71.001
	161.220		71.002
§ 16	161.281	§ 2	71.003
	to		71.004
	161.288		71.005
§ 16(A)	161.362		71.006
§ 16(B)	161.361		71.007
	161.363	§ 2a	71.008
	to		71.009
	161.371		71.010
§ 17	161.221	§ 2b	71.010
	to		71.009
	161.227		71.008
	161.229	5421s, § 1	141.001
§ 18	161.228	§ 2	141.002
§ 19	161.312	§ 3	141.003
	to	§ 4	141.011
	161.318		141.012
	161.320	§ 5	141.071
	161.322		141.072
	to		141.073
	161.324		141.074
§ 19(A)	161.319		141.075
§ 20	161.230		141.076
§ 21	161.063		141.077
	161.068		141.078
	to	5920—1	141.079
	161.070		132.001
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TITLE 1. GENERAL PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

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SUBCHAPTER A. PURPOSE AND POLICY

§ 1.001. Purpose of Code

(a) This code is enacted as a part of the state's continuing statutory revision program, begun by the Texas Legislative Council in 1963 as directed by the legislature in Chapter 488, Acts of the 58th Legislature, 1963 (Article 5429b—1, Vernon's Texas Civil Statutes). The program contemplates a topic-by-topic revision of the state's general and permanent statute law without substantive change.

(b) Consistent with the objectives of the statutory revision program, the purpose of this code is to make the general and permanent parks and wildlife law more accessible and understandable by:

- (1) rearranging the statutes into a more logical order;
- (2) employing a format and numbering system designed to facilitate citation of the law and to accommodate future expansion of the law;
- (3) eliminating repealed, duplicative, unconstitutional, expired, executed, and other ineffective provisions; and
- (4) restating the law in modern American English to the greatest extent possible.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 1.002. Construction of Code

The Code Construction Act (Article 5429b—2, Vernon's Texas Civil Statutes) applies to the construction of each provision in this code, except as otherwise expressly provided by this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 1.003 to 1.010 reserved for expansion]

SUBCHAPTER B. PROPERTY OF THE STATE

§ 1.011. Property of the State

(a) All wild animals, fur-bearing animals, wild birds, and wild fowl inside the borders of this state are the property of the people of this state.

(b) All fish and other aquatic animal life contained in the freshwater rivers, creeks, and streams and in lakes or sloughs subject to overflow from rivers or other streams within the borders of this state are the property of the people of this state.

(c) All the beds and bottoms and the products of the beds and bottoms of the public rivers, bayous, lagoons, creeks, lakes, bays, and inlets in this state and of that part of the Gulf of Mexico within the jurisdiction of this state are the property of this state. The state may permit the use of the waters and bottoms and the taking of the products of the bottoms and waters.

(d) The Parks and Wildlife Department shall regulate the taking and conservation of fish, oysters, shrimp, crabs, turtles, terrapins, mussels, lobsters, and all other kinds and forms of marine life, or sand, gravel, marl, mud shell, and all other kinds of shell in accordance with the authority vested in it by this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 1.012. Private Fresh Water

Any freshwater lake, river, creek, or bayou in this state contained in any survey of private land may not be sold but shall remain open to the public. If the Parks and Wildlife Department stocks the water with fish, it is authorized to protect the fish under rules as it may prescribe.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 1.013 to 1.100 reserved for expansion]

SUBCHAPTER C. DEFINITIONS

§ 1.101. Hunt and Catch Defined

In this code:

(1) "Hunt" means seek or pursue with intent to take or kill and includes take, kill, and an attempt to take or kill.

(2) "Catch" means take or kill and includes an attempt to take or kill.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

TITLE 2. PARKS AND WILDLIFE DEPARTMENT

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SUBCHAPTER A. GENERAL PROVISIONS

§ 11.001. Definitions

In this code:

- (1) "Commission" means the Parks and Wildlife Commission.
- (2) "Department" means the Parks and Wildlife Department.
- (3) "Director" means the executive director of the Parks and Wildlife Department.
- (4) "Chairman" means the chairman of the Parks and Wildlife Commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 11.002 to 11.010 reserved for expansion]

SUBCHAPTER B. ORGANIZATION OF DEPARTMENT

§ 11.011. Parks and Wildlife Department

The Parks and Wildlife Department is established as an agency of the state. It is under the policy direction of the Parks and Wildlife Commission. [Acts 1975, 64th Leg., p. 1405, ch. 541, § 1, eff. Sept. 1, 1975.]

§ 11.011. Application of Sunset Act

The Parks and Wildlife Department is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the department is abolished effective September 1, 1985.

[Added by Acts 1977, 65th Leg., p. 1846, ch. 735, § 2.099a, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

§ 11.012. Commission

(a) The commission consists of six members appointed by the governor with the advice and consent of two-thirds of the members of the senate present and voting.

(b) If the senate is not in session, the governor shall appoint the members and issue commissions to them as provided by law, and their appointment shall be submitted to the next session of the senate for its advice and consent in the manner that appointments to fill vacancies under the constitution are submitted to the senate.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.013. Terms

The members of the commission hold office for staggered terms of six years, with the terms of two members expiring every two years. Each member holds office until his successor is appointed and has qualified. The terms expire on January 31 of odd-numbered years.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.014. Chairman, Vice-Chairman

(a) The governor shall designate biennially one of the six members as chairman of the commission for a term of two years expiring on January 31 of the succeeding odd-numbered year.

(b) The commission shall elect biennially a vice-chairman from among its members for a term of two years expiring on January 31 of the succeeding odd-numbered year.

(c) A vacancy in the office of chairman or vice-chairman is filled for the unexpired portion of the term in the same manner as the original appointment or election.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.015. Meetings, Quorum

The commission may meet as often as is necessary but shall meet at least once during each quarter of the year. Four members constitute a quorum. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.016. Expenses, Per Diem

Members of the commission are entitled to reimbursement for their actual expenses incurred in attending meetings and to the per diem as provided in the general appropriations act.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.017. Executive Director

The commission may appoint an executive director who is the chief executive officer of the department and performs its administrative duties. The director serves at the will of the commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.018. Employees

The director may appoint heads of divisions, game management officers, park managers, and other employees authorized by appropriations and necessary for administering the duties and services of the department. These employees serve at the will of the director.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.019. Employees as Peace Officers

(a) The director may commission as peace officers any of the employees provided for in the general appropriations act.

(b) Employees commissioned under this section have the powers, privileges, and immunities of peace officers while on state parks or on state historical sites or in fresh pursuit of those violating the law in a state park or historical site.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.020. Deputy Game Wardens

(a) The director may commission deputy game wardens to serve at the will of the director. Provided, however, that no deputy game warden commissioned under this section may be commissioned for a period of longer than four years. At the expiration of each four-year commission the deputy game warden shall be eligible for re-commission.

(b) The commission shall make regulations to govern the qualifications, conduct, and duties of commissioned deputy game wardens. The director shall implement an education course which includes training in pertinent aspects of a game warden's duties. Completion of this course shall be a prerequisite to any person obtaining a commission as deputy game warden.

(c) A commissioned deputy game warden may enforce state laws relating to hunting and fishing and to the preservation and conservation of wildlife and marine animals. The department shall prescribe the

geographical area in which a deputy game warden may operate, except that a deputy game warden may not operate on the coastal waters, bays, or estuaries of this state. At all times when any commissioned deputy game warden is on duty or is acting in an official capacity he shall carry official identification and shall wear an official badge which is clearly visible. A commissioned deputy game warden must present his official identification to any person he believes is violating this code before the deputy game warden makes an investigation or arrest. A commissioned deputy game warden shall purchase and wear at all times when on duty or acting in an official capacity a uniform prescribed by the department.

(d) A deputy game warden must file an oath and a bond in the amount of \$2,000 payable to the department at the time he receives the commission.

(e) Commissioned deputy game wardens serve without compensation from the state, but the department may expend necessary funds to support and maintain this responsibility.

[Added by Acts 1977, 65th Leg., p. 650, ch. 241, § 1, eff. May 25, 1977.]

[Sections 11.021 to 11.030 reserved for expansion]

SUBCHAPTER C. SPECIAL FUNDS**§ 11.031. Special Game and Fish Fund**

There is in the state treasury a special fund called the "special game and fish fund."

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.032. Special Game and Fish Fund: Sources

The department shall deposit to the credit of the special game and fish fund all revenue, less allowable costs, from the following sources:

- (1) all types of fishing and shrimping licenses;
- (2) all types of hunting licenses;
- (3) trapping licenses and other licenses relating to the taking, propagation, and sale of fur-bearing animals or their pelts;
- (4) sale of marl, sand, gravel, shell, and mud-shell;
- (5) oyster bed rentals and permits;
- (6) federal funds received for research and development of commercial fisheries and state funds appropriated for this purpose;
- (7) sale of property, less advertising costs, purchased from this fund or a special fund that is now part of this fund;
- (8) fines and penalties collected for violations of a law pertaining to the protection and conservation of wild birds, wild fowl, wild animals,

fish, shrimp, oysters, game birds and animals, fur-bearing animals, and any other wildlife resources of this state;

- (9) the sale of rough fish by the department;
- (10) fees for importation permits;
- (11) fish farm licenses; and
- (12) any other source provided by law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.033. Use of Special Game and Fish Fund

The special game and fish fund may be used for the following purposes only:

- (1) enforcement of fish, shrimp, and oyster laws, game laws, and laws pertaining to sand, shell, and gravel;
- (2) dissemination of information pertaining to marine life, wild animal life, wildlife values, and wildlife management;
- (3) scientific investigation and survey of marine life for the better protection and conservation of marine life;
- (4) establishment and maintenance of fish hatcheries, fish sanctuaries, tidal water fish passes, game preserves, wildlife management areas, and public hunting grounds;
- (5) propagation and distribution of marine life, game animals, and wild birds;
- (6) protection of wild birds, fish, and game;
- (7) purchase, repair, and operation of boats and dredges;
- (8) research and management of the fish and game resources of this state;
- (9) salaries of employees and other expenses necessary to carry out the duties of the department under laws relating to fish, shrimp, oysters, game, and sand, shell, and gravel;
- (10) expansion and development of additional opportunities of hunting and fishing in state-owned land and water;
- (11) removing rough fish from public water; and
- (12) any other use provided for by law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.034. Special Game and Fish Fund Expenditures

All expenditures of the department from the special game and fish fund must be approved by the director. The comptroller shall draw a warrant on the state treasury from the special game and fish fund for the amount of the expenditure in favor of the person claiming the expenditure.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.035. State Parks Fund

(a) There is in the state treasury a special fund called the "state parks fund."

(b) The department shall deposit to the credit of the state parks fund all revenue, less allowable costs, received from the following sources:

- (1) grants or operation of concessions in state parks or fishing piers;
- (2) publications on state parks, state historic sites, or state scientific areas;
- (3) fines or penalties received from violations of regulations governing parks issued pursuant to Subchapter B, Chapter 13, of this code; and
- (4) any other source provided by law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.036. Special Boat Fund

(a) There is in the state treasury a special fund called the "special boat fund."

(b) The department shall deposit to the credit of the special boat fund all revenue, less any allowable costs, received from the following sources:

- (1) motorboat registration fees;
- (2) motorboat manufacturer or dealer registration fees;
- (3) fines or penalties imposed by a court for violation of water safety laws contained in Chapter 31 of this code; and
- (4) any other source prescribed by law.

(c) The special boat fund may be used for the following purposes:

- (1) administration of the water safety laws as set out in Chapter 31 of this code;
- (2) purchasing all necessary forms and supplies, including reimbursement of the department for any material produced by its existing facilities or work performed by other divisions of the department;
- (3) purchase, construction, and maintenance of boat ramps on or near public waters as provided in Chapter 31 of this code; and
- (4) any other purpose provided by law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.037. State Land and Water Conservation Fund

(a) There is in the state treasury a special fund called the "state land and water conservation fund."

(b) The department shall deposit in the state land and water conservation fund all revenue received from the federal government or any other source for the purpose of administering programs authorized under Sections 13.301 through 13.311 of this code.

(c) The state land and water conservation fund may be used for paying the cost of planning, acquisition, operation, and development of outdoor recreation resources of the state and the administrative expenses incident to the projects or programs authorized under Sections 13.301 through 13.311 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.038. Operating Fund

(a) There is a fund in the state treasury called the "parks and wildlife operating fund."

(b) The commission may transfer any funds appropriated to the department for personal services, travel, consumable supplies and materials, current operating expenses, and capital outlay, as these terms are used in the comptroller's object classification codes of the general appropriations act. All expenditures by the department from this fund shall be made only for the purposes for which appropriations are made in the general appropriations act.

(c) The parks and wildlife operating fund shall be used for the purposes specified by law and nothing may be done by any officer or employee of the department or commission to divert or jeopardize the fund or any portion of the fund, including any federal aid the department receives or administers. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.039. Revolving Petty Cash Fund

(a) The department may establish a revolving petty cash fund out of existing funds on deposit in the state treasury. The balance of this fund may not exceed \$2,500.

(b) The purpose of this fund is to make refunds of cash receipts, subject to the approval of the state auditor. The account must be maintained at a bank in Austin.

(c) With the prior approval of the commission, the director may designate a bonded employee of the department to sign checks drawn on this fund. The fund shall be reimbursed by warrants drawn and approved by the comptroller out of those funds in the state treasury in which the refunded receipts were originally deposited.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.040. Mistaken Deposit

(a) Any funds deposited in the state treasury by the department by mistake of fact or mistake of law shall be refunded by warrant issued against the fund in the state treasury into which the money was deposited. Refunds necessary to make the proper correction shall be appropriated by the general appropriations act.

(b) The comptroller may require written evidence from the director of the department to indicate the reason for the mistake of fact or law before issuing the refund warrant authorized in Subsection (a) of this section.

(c) This section does not apply to any funds that have been deposited under a written contract or to any funds on deposit as of June 8, 1971, which are the subject of litigation in any of the courts of this state or the United States.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 11.041. Transfer of Property

(a) The commission may transfer tangible property, other than money or real estate held for limited purposes, from one division of the department to another division.

(b) If the property to be transferred was acquired with funds the use of which is limited by law or dedicated in any other manner, and the prospective use of the property is different from the use allowed by law, the department shall transfer from available funds to the fund from which the property was acquired the value of the property at the time of the transfer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 12. POWERS AND DUTIES CONCERNING WILDLIFE

SUBCHAPTER A. GENERAL POWERS AND DUTIES

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12.001.	General Duties.
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12.003.	Records.
12.004.	List of Fees and Fines.
12.005.	Funds in Lieu of Taxes.
12.006.	Publications on Wildlife Values and Management.
12.007.	Cautioning Sportsmen.
12.008.	Leasing of Grazing Rights: Sale of Products.
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SUBCHAPTER A. GENERAL POWERS AND DUTIES

§ 12.001. General Duties.

(a) The department shall administer the laws relating to game, fish, oysters, and marine life, as set out in this code.

(b) The department may:

- (1) collect and enforce the payment of all taxes, licenses, fines, and forfeitures due to the department;
- (2) inspect all products required to be taxed by the laws relating to game, fish, oysters, and marine life and verify the weights and measures of the products;
- (3) examine on request all streams, lakes, and ponds for the purpose of stocking with fish best suited to the locations;
- (4) manage the propagation and distribution of fish in state fish hatcheries; and
- (5) manage the propagation and distribution of birds and game in state reservations.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.002. Report to Governor

(a) The department shall report to the governor on August 31 of each year, or as soon after that date as practicable, but not later than October 1 of each year, showing the condition of the fish and oyster industry.

The report shall contain:

- (1) a statement of the amount of special taxes collected;
- (2) the number of licenses issued and the amount of license fees collected;
- (3) the number and class of all boats engaged in the fish and oyster trade;
- (4) the number, place, and acreage of private oyster beds and the amount of rents received for private oyster beds;
- (5) all other amounts collected and disbursed by the department;
- (6) a statement of all stock furnished, to whom the stock was furnished, the cost of the stock, the streams, lakes, or ponds stocked, the number and kind of fish used in each, and the condition of the plants; and
- (7) any other observations or pertinent data.

(b) The governor shall order a sufficient number of copies of the report to be printed and filed in the secretary of state's office for free distribution. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.003. Records

(a) The department shall keep a record containing the following information:

- (1) the amount of all special taxes collected;
- (2) a list of all licenses issued and the amount of license fees collected;
- (3) a list of all certificates issued for location of private oyster beds, the date of the certificate and application, when and how the applications were executed, and the manner in which the bottoms were examined and the amount of rent collected for the location;
- (4) all stock fish furnished, to whom the fish were furnished, and the cost of the stock fish;
- (5) all streams, lakes, or ponds stocked and the number and kinds of fish stocked in each; and
- (6) all collections and disbursements of the department.

(b) The department shall keep an account with each person, firm, or corporation holding certificates for the location of private oyster beds, showing the amounts received as rents.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.004. List of Fees and Fines

(a) The department shall maintain a complete list of all license fees and fines collected. The list shall be maintained in Austin and is a public record.

(b) The department shall file at the end of each calendar month a written report with the comptroller showing fines, licenses, and other fees collected, their disposition, and any other necessary information.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.005. Funds in Lieu of Taxes

(a) The department shall expend funds to counties and school districts for assessments in lieu of property taxes on wildlife management areas purchased from federal funds or grants authorized by the Pittman-Robertson Act or Dingell-Johnson Act.

(b) No general revenue funds may be expended in lieu of taxes for wildlife management areas; however, special funds may be expended for this purpose provided reimbursement or matching from the federal government is available at a federal ratio of two to one or better.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.006. Publications on Wildlife Values and Management

(a) The department may inform the public about wildlife values and management.

(b) Any book, bulletin, or magazine published under this section may be sold for a price not to exceed the cost of publication and mailing. Money received from the sale of these publications shall be sent to the department at its office in Austin not later than 10 days following the date of collection. The money shall be deposited in the state treasury to the credit of the special game and fish fund.

(c) Under the terms of the same bond and authority, any person authorized to issue hunting and fishing licenses may sell subscriptions to any monthly publication prepared and published by the department under this section. The seller may retain 10 percent of each subscription payment as his fee for collecting and send the balance of the subscription fee to the department.

(d) The amount of money collected for each subscription to any monthly publication shall be recorded on a prenumbered form bearing the name, complete address, and length of the subscription period. The prenumbered form shall be issued and accounted for in the same manner as hunting licenses. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.007. Cautioning Sportsmen

The department shall caution sportsmen and other persons of the danger from fire in the woods, marshes, or prairies of the state and request sportsmen and other persons to extinguish all fires left burning and to give notice, whenever possible, of fires ranging beyond control so that they may be controlled and extinguished.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.008. Leasing of Grazing Rights: Sale of Products

(a) The department may lease grazing rights on any land acquired by, and for the use of, the department as game preserves, game sanctuaries, and game management areas. The department may harvest and sell, or sell in place, any timber, hay, or other product grown on land of the department when the product is found to be in excess of wildlife management needs.

(b) The state board of control shall execute any sale or lease under this section under the general law governing the sale of state property; however, the department shall determine the quantity of products, or grazing lease, to be offered for sale or lease.

(c) All revenue derived from a sale or lease under this section shall be deposited in the state treasury to the credit of the special game and fish fund. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.009. Seafood Consumption Program

(a) The department shall develop and administer a market promotion program to foster and expand the sale and consumption of seafood by the public. The department may use its own personnel or contract for personnel and use only state funds or state funds in conjunction with federal or private funds.

(b) Forty percent of the funds collected from commercial fisherman's license fees, 20 percent of wholesale fish dealers' license fees and wholesale truck dealers' fish license fees, and 50 percent of shrimp house operators' license fees shall be used by the department in carrying out the program required by this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.010. Noxious Vegetation Program

The department may contract or use the services of department personnel for the eradication of noxious vegetation from the water of this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.011. Teaching Equipment

On request of a state-supported institution of higher education engaged in teaching and research related to marine science and oceanography, the department may transfer to the institution fish nets, seines, motors, boats, and other marine equipment confiscated under the authority of the game and fish laws to be used in the teaching and research programs of the institution.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.012. Fire Hazard

(a) If the state forester determines that the continuation of any hunting season is likely to cause a serious forest fire hazard in Red River, Titus, Camp, Harrison, Gregg, Henderson, Van Zandt, Anderson, Nacogdoches, Angelina, San Augustine, Sabine, Trinity, Walker, Montgomery, Polk, Liberty, Tyler, Hardin, Jasper, Newton, Grimes, or San Jacinto counties, he shall immediately notify the department of the local conditions and recommended that any hunting season then open be closed temporarily.

(b) The department shall report to the governor on the local conditions which contribute to the danger of a fire hazard.

(c) If the governor finds that an extreme fire hazard exists, he shall proclaim a closed season to remain in effect in the county until the danger abates. The governor may revoke the proclamation at any time revocation is in the best interests of the people.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.013. Power to Take Wildlife

The department may take, transport, release, and manage any of the wildlife and fish in this state for investigation, propagation, distribution, or scientific purposes. It is a defense in any prosecution of an employee of the department for a violation of any law for the protection of wildlife or fish that the employee was acting within the scope of this authority.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.014. Fees for Stocking Fish in Private Water

(a) The commission may, at the times and in the manner found to be necessary or appropriate, set and charge a reasonable fee for each species of fish supplied to or placed in lakes or other bodies of water located solely on private property. In setting the fee, the commission may consider the costs of propagation and transportation from the fish hatchery and the size of the fish used for stocking the lake or other body of water.

(b) Revenue received for supplying fish under this section shall be deposited to the credit of the special game and fish fund.

[Added by Acts 1977, 65th Leg., p. 39, ch. 23, § 1, eff. March 24, 1977.]

§ 12.015. Noxious Aquatic Plants

(a) In this section, "noxious aquatic plant" means a plant that thrives in water, marshes, or swamps and that:

- (1) is harmful or potentially harmful to human life;
- (2) may impede navigation; or
- (3) may diminish the quality of water-oriented recreational areas.

(b) The department shall:

- (1) identify noxious aquatic plants;
- (2) publish a list of the names of noxious aquatic plants identified by the department; and
- (3) make rules and regulations necessary to carry out this section.

(c) The department may issue permits for the importation, sale, transport, or release of noxious aquatic plants identified by the department if the department finds that the proposed use of the noxious aquatic plants by the permit applicant will not pose a danger to persons, wildlife resources, or water resources.

(d) No person may intentionally or knowingly import or intentionally or knowingly sell, transport, or release in this state a noxious aquatic plant identified by the department unless the person has an unexpired written permit issued by the department authorizing the importation, sale, transportation, or release.

(e) A person who violates Subsection (d) of this section or who violates a regulation of the department made under this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1219, ch. 456, § 17, eff. Sept. 1, 1975.]

§ 12.016. Artificial Reefs

The department may construct or contract for the construction of artificial reefs in the coastal water of this state or in international or United States water adjacent to the coastal water of this state. The department may also accept any such reefs which have previously been constructed by the Texas Coastal and Marine Council and marked with buoys and agree to maintain such buoys and other location navigation markers in the future as may be necessary. The department may acquire any acceptable materials including surplus vessels under the provisions of federal law for use in developing future new reefs or adding to existing reefs. Money for the construction and maintenance of reefs under this section may be appropriated from the special game and fish fund.

[Added by Acts 1977, 65th Leg., p. 1125, ch. 421, § 1, eff. Aug. 29, 1977.]

§ 12.017. Damaging Markers

(a) No person may damage, deface, destroy, or remove, tie up a boat to, or in any way render inoperative or ineffective a marker, buoy, light or sound signal, radar reflector, or daymark or any part of these devices, including the attachment intended to hold the device in place.

(b) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$200. On a second or subsequent conviction of a violation of Subsection (a) of this section, the person shall be punished by a fine of not less than \$200 nor more than \$500.

(c) The fact that a device or part of a device specified in Subsection (a) of this section may have been established by the state in water adjacent to but outside the territorial water of the state is not a defense against a prosecution for damaging state property.

[Added by Acts 1977, 65th Leg., p. 1126, ch. 421, § 2, eff. Aug. 29, 1977.]

[Sections 12.018 to 12.100 reserved for expansion]

SUBCHAPTER B. ENFORCEMENT POWERS

§ 12.101. Duty to Enforce Law

The department shall enforce all state laws relating to the protection and preservation of wild game, wild birds, and fish and other marine life.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.102. Power to Arrest

(a) An authorized employee of the department has the same authority as a sheriff to arrest, serve criminal process, and require aid in serving criminal process in connection with violations of the laws relating to game, fish, and birds. The department may receive the same fees as are provided by law for sheriffs in misdemeanor cases.

(b) An authorized employee of the department may arrest without a warrant any person found in the act of violating any law relating to game, birds, or fish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.103. Entering Land

To enforce the game and fish laws of the state and to conduct scientific investigations and research regarding wild game or fish, an authorized employee of the department may enter on any land or water where wild game or fish are known to range or stray. No action may be sustained against an employee of the department to prevent his entering on land or water when acting in his official capacity.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.104. Right to Search

An authorized employee of the department may search a game bag, vehicle, or other receptacle if he has reason to believe that the game bag, vehicle, or receptacle contains game unlawfully killed or taken.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.105. Suits

(a) The department may file complaints in the name of the State of Texas to recover fines and penalties for violations of the laws relating to game, birds, and fish.

(b) The department may file a complaint and commence proceedings against an individual for violation of the laws relating to game, birds, and fish without the approval of the county attorney of the county in which the proceedings are brought. The department is not required to furnish security for costs for proceedings under this subsection.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.106. Notice to Appear

(a) Any peace officer of this state or a political subdivision of this state or an authorized employee of the department who arrests a person for a violation of a game, fish, or park law of this state or of a regulation of the commission may deliver to the alleged violator a written notice to appear before the justice court having jurisdiction of the offense not

later than 15 days after the date of the alleged violation.

(b) On signing the written notice to appear and thereby promising to appear as provided in the notice, the alleged violator shall be released.

(c) Failure to appear within the time specified in the written notice is a misdemeanor punishable by a fine of not less than \$10 nor more than \$200, and a warrant for the arrest of the alleged violator may be issued.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.107. Remission of Fines

(a) A justice of the peace, clerk of any court, or any other officer of the state who receives a fine imposed by a court for a violation of any law relating to the protection and conservation of wild birds, wild fowl, wild animals, fish, oysters, and other wildlife shall send the fine to the department within 10 days after the date of collection. A statement containing the docket number of the case, the name of the person fined, and the section of the law violated must accompany the remission of the fine.

(b) The amount of the fine to be remitted to the department is 80 percent in county court cases and 85 percent in justice court cases.

(c) The fees set out in Articles 950 and 951, Code of Criminal Procedure, 1925, shall be deducted from fines imposed for violations of laws relating to wild game, birds, fish, oysters, and other wildlife.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.108. Expenses

In making an arrest, summoning a witness, and serving a process, the department is entitled to the same fee and mileage allowance as a sheriff. The fee is charged and collected in the same manner as sheriff's fees.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.109. Confiscated Marine Life

(a) When an enforcement officer of the department believes that a person has unlawful possession of any fish, oysters, shrimp, or other marine life, he shall seize and sell the marine life and dispose of the proceeds as provided in this section. If the person is in possession of a greater quantity of marine life than is authorized by law, all such marine life shall be deemed to have been taken in contravention of the law and shall be seized by the arresting officer. The officer shall give to the person a receipt for all marine life seized.

(b) The confiscated marine life shall be sold to the highest of three bidders. The proceeds of the sale shall be deposited in the state treasury to the credit

of suspense fund No. 900 pending the outcome of the action taken against the person charged with illegal possession.

(c) Unless the person is found guilty, all the proceeds shall be paid to the owner of the marine life. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1214, ch. 456, § 13(k), eff. Sept. 1, 1975.]

§ 12.110. Disposition of Confiscated Game

(a) The department shall donate, whenever same is reasonably practicable, any wild game animal, bird, fowl, or game fish which is unlawfully killed, taken, shipped, held in storage, or found in a public eating place to a charitable institution, hospital, or person or persons.

(b) The expense of any cold storage that may be necessary for an unlawfully possessed game bird, fowl, animal, or game fish shall be assessed against the violator on his conviction.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 33, ch. 16, § 1, eff. March 16, 1977.]

§ 12.1101. Seizure and Disposal of Pelts

(a) A game warden or authorized employee of the department may seize the pelt of any fur-bearing animal taken or possessed in violation of a provision of this code or a lawful regulation of the commission. If an alleged violator is charged with a violation of a provision of this code or of a regulation of the commission in connection with the pelt seized, the warden or employee shall hold the pelt as evidence. On conviction of the alleged violator or on his plea of nolo contendere, the pelts may be sold to the highest bidder after taking the minimum of three written bids by the department. If the alleged violator is not guilty of the offense or if the charge is dismissed the pelts shall be returned to their lawful owner.

(b) A game warden or authorized employee of the department acting under the authority of this section is immune from liability and from suit for the seizure of pelts.

(c) Revenues collected under this section shall be deposited into Fund No. 9.

[Added by Acts 1977, 65th Leg., p. 82, ch. 39, § 1, eff. March 30, 1977.]

§ 12.1105. Seizure and Disposition of Unlawful Nets; Inside Water

(a) When a game warden or authorized employee of the department finds in the inside water of the state a seine, net, trawl, trap, or other device that is in the water in violation of a provision of this code or in violation of a lawful regulation of the commission or is aboard a vessel in violation of a provision of this code or a lawful regulation of the commis-

sion, the warden or employee shall seize without a warrant the seine, net, trawl, trap, or device.

(b) When an alleged violator is charged with an offense in connection with the unlawful use or possession of the seine, net, trawl, trap, or device seized by the warden or employee, the warden or employee shall hold the seine, net, trawl, trap, or device as evidence. Except as provided in Subsection (f) of this section, on a final conviction for the offense of the alleged violator, including a final judgment arising from a plea of nolo contendere, the warden or employee shall destroy the seine, net, trawl, trap, or device. If the alleged violator is not guilty of the offense or if the charge is not prosecuted and dismissed, the seine, net, trawl, trap, or device shall be returned to the owner.

(c) If no person is charged with an offense in connection with the seizure of a seine, net, trawl, trap, or other device under this section, and no person is found in possession of the seine, net, trawl, trap, or device, the warden or employee shall give notice of the seizure to the county judge or a judge of a county court at law of the county where the seizure occurred. The notice must include a description of the items seized and the location of the seizure. The court shall then direct the sheriff or a constable to post a copy of the notice in the county courthouse for not less than 10 days. At the expiration of 10 days, the court shall hold a hearing to determine if the seine, net, trawl, trap, or device was used or possessed in violation of a provision of this code or of a lawful regulation of the commission. Except as provided in Subsection (f) of this section, if the use or possession was unlawful, the warden or employee shall destroy the seine, net, trawl, trap, or device.

(d) A game warden or authorized employee of the department who seizes items under this section is immune from liability and from suit for a seizure or destruction of a net as authorized by this section.

(e) This section does not apply to shrimp trawls used for catching shrimp or on board a licensed shrimp boat.

(f) The Parks and Wildlife Department, when requested by authorized representatives of units of The University of Texas System, The Texas A & M University System, the Texas A & I University System, Pan American University, the Lamar University System, and Southwest Texas State University, engaged in teaching and research related to marine science and oceanography, may transfer to such units of said universities and university systems nets, seines, and other marine equipment, which have been seized under this section, to be used in carrying out the teaching and research programs within said institutions.

[Added by Acts 1977, 65th Leg., p. 381, ch. 190, § 3, eff. May 20, 1977.]

§ 12.111. Violation by Employee

An employee of the department who violates any provision of this code relating to game, fish, and oysters which the employee is authorized to enforce is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.112. Forfeiture of Licenses

(a) The licenses issued under Chapters 42 and 46 of this code (general hunting and fishing licenses) are not subject to forfeiture for a violation of a game or fish law or a regulation of the department.

(b) No other license issued by the department is subject to forfeiture unless forfeiture is expressly provided for and then only by the jury, or the judge in the absence of a jury, in the same manner as other penalties are assessed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 12.113. Coastal Survey Charts Admissible

In any prosecution under this code, United States Coastal Survey Charts are admissible.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 13. POWERS AND DUTIES CONCERNING PARKS AND OTHER RECREATIONAL AREAS

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SUBCHAPTER A. GENERAL POWERS AND DUTIES

§ 13.001. Control by Department

Except as otherwise provided by law, all recreational and historic areas designated as state parks are under the control and custody of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.002. Comprehensive State Plan

The department may:

- (1) prepare, maintain, and revise a statewide comprehensive plan for the development of the outdoor recreation resources of this state;
- (2) develop, operate, and maintain outdoor areas and facilities of the state; and
- (3) acquire land, water, and interests in land and water for outdoor recreation areas and facilities.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.003. Gifts and Improvements of Park Sites

The department may receive gifts of state park sites and may improve and equip parks sites or contract for their improvement and equipment.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.004. Financing of Park Programs

(a) The operation, maintenance, and improvement of state parks shall be financed from the general revenue fund, the state parks fund, other funds that may be authorized by law, and donations, grants, and gifts received by the department for these purposes.

(b) No donation, grant, or gift accruing to the state or received by the department for the purpose of operating, maintaining, improving, or developing state parks may be used for any purpose other than the operation, maintenance, or developing of state parks.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.005. Acquisition of Historical Structures and Sites

(a) The department may acquire by purchase, gift, or other manner a structure or site:

(1) where events occurred that represent an important aspect of the cultural, political, economic, military, or social history of the nation or state;

(2) significantly associated with the lives of outstanding historic persons or with an important event that represents a great ideal or idea;

(3) embodying the distinguishing characteristics of an architectural type which is inherently valuable for study of a period, style, or method of construction;

(4) that contributes significantly to the understanding of aboriginal man in the nation or state; or

(5) that is of significant geologic interest relating to prehistoric animal or plant life.

(b) The department shall restore and maintain each structure or site acquired under this section for the benefit of the general public. The department may enter into interagency contracts for this purpose.

(c) The department shall use money appropriated in the general appropriations act for restoring and maintaining the structures or sites acquired under this section.

(d) The department shall prescribe and collect a nominal fee for admission to structures and sites acquired under this section. The admission fees shall be used to pay for the restoration and maintenance of structures and sites.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.006. Lease of Park Lands

(a) The department may lease for park purposes any land and improvements it holds to any city, county, special district, or other political subdivision.

The leased area may not be referred to as a state park, and no state funds may be used to operate or maintain a park leased under this section.

(b) The conditions and duration of the lease agreement are determined by the agreement of the department and the governing body of the political subdivision.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.007. Investigation Expenses

A locality may pay the expenses of a representative of the department for a trip to the locality to determine the suitability of a site for a state park. If the expenses of the representative are paid by the locality, state funds may not be used for the expenses of the trip.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.008. Solicitation, Receipt, and Transfer of Land

(a) The department may solicit and receive donations of land for state park purposes and may refuse donations of land not acceptable for park purposes.

(b) If title to a site has vested in the state for park purposes and the site is deemed unsuitable for a state park by the department, the department may transfer the title:

(1) to another state department or institution requesting the site;

(2) to the donor of the land if the donor requests the return of the site;

(3) to the United States if it has undertaken the development of the site for park purposes; or

(4) on a declaration that the site is unsuitable for park purposes, to the grantor if the deed to the department contains a reversion clause providing that title reverts to the grantor when the site is not used for park purposes.

(c) A two-thirds vote of the commission is necessary for action taken under this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.009. Sale or Exchange of Land

(a) The director with the approval of the commission may execute a deed exchanging real property or an interest in real property either as all or partial consideration for other real property or interest in real property to be used by the department for a state park, historic site, scientific area, fish hatchery, or game management area. The director with the approval of the commission may execute a deed selling real property or an interest in real property acquired as a state park, historic site, scientific area,

fish hatchery, or game management area if the real property is no longer suitable for the purpose for which it was acquired.

(b) All state land exchanged under this section shall be for other land adjoining the same park, historic site, scientific area, fish hatchery, or game management area and shall contain no improvements made by the state other than fences.

(c) The state shall receive a good and marketable title to all land exchanged under this section. The title to land received in the exchange must be approved by the attorney general.

(d) All land to be received in the exchange must be appraised and if the land to be received is of greater value, as determined by an independent and competent appraisal, than the state land exchanged, the department may use funds available for land acquisitions as a partial consideration for the exchange.

(e) All transactions for the exchange of land under this section must have the prior written approval of the governor.

(f) The receipts from the sale of land under this section shall be used for the sole purpose of acquiring other real property dedicated to the same purpose for which the land sold was dedicated.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 609, ch. 220, § 1, eff. May 24, 1977.]

§ 13.010. Historic Locations

The department may locate, designate, and suitably mark historic grounds, battlefields, and other historic spots in Texas. Fitting markers may be erected; however, no expense may be incurred in the name of the state for this project.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.011. Natural Features

(a) The commission may locate and designate outstanding natural features and formations located in this state. It may erect or contract to have erected suitable markers or monuments to call the features and formations to the public's attention.

(b) The commission may accept title to a suitable site for a marker or monument from private individuals, associations, or corporations by gift. Sites may also be acquired by purchase with appropriated funds.

(c) The commission may adopt reasonable rules for accepting or purchasing sites, for determining the suitability of sites, and for establishing the priority of accepting and marking the sites.

(d) All other agencies shall cooperate with the department to aid in the location of sites. The department may accept jurisdiction over suitable

sites located on state land by an interagency transfer of jurisdiction.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.012. Roadside Parks

An area under the control of the department which is more suitable for use as a roadside park than any other type of park may be transferred to the State Highway Department for roadside park purposes if the land meets the specifications of the State Highway Department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.013. Construction of Roads by State Highway Department

(a) The department may contract with the State Highway Commission for the construction and paving of roads in and adjacent to state parks.

(b) Agreements under this section must be made in conformity with the Interagency Cooperation Act. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.014. Roads and Trails to Certain Park Sites

(a) The department shall acquire, construct, and maintain roads and trails from public roads to park sites located on and accessible to the waters of Buchanan and Inks lakes in Burnet, Lampasas, Llano, San Saba, Travis, and Williamson counties. The park sites may be state parks or land owned by the Lower Colorado River Authority dedicated to public use for park purposes.

(b) The department may acquire the rights-of-way for the roads and trails by purchase or gift or by exercise of the power of eminent domain.

(c) The State Highway Commission shall cooperate with the department and the department shall cooperate and match funds with any state or federal governmental agency and shall sponsor any state or federal project.

(d) The department may make contracts to carry out the provisions of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.015. Concessions

(a) The department may operate or grant contracts to operate concessions in state parks or on causeways, beach drives, or other improvements in connection with state park sites. The department may make regulations governing the granting or operating of concessions.

(b) The department shall deposit any revenue received from the contracts or operations authorized by this section in the state treasury to the credit of the state parks fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.016. Prison Labor

(a) The department may use the labor of trusty state convicts on or in connection with state parks.

(b) Convicts working in connection with a state park remain under the control of the Texas Board of Corrections and are considered as serving their terms in the penitentiary.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.017. Publications on Parks

(a) The department may disseminate information to the public on state parks, state historic sites, and state scientific areas. The department may sell the publications but only at state parks, historic sites, scientific areas, the state departmental headquarters, and regional and district offices.

(b) No publication authorized by this section may be published and sold at regular periodic intervals. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.018. State Parklands Passport

(a) The following people may apply to the department for a state parklands passport:

- (1) a person who is 65 years old or over; and
- (2) A veteran of the armed services of the United States who, as a result of military service, has a service-connected disability, as defined by the Veterans' Administration, consisting of the loss of the use of a lower extremity or of a 60 percent disability rating and who is receiving compensation from the United States because of the disability.

(b) The department shall issue a passport to each qualified applicant. The passport shall be issued on a form designed and provided by the department.

(c) The holder of a state parklands passport is entitled to enter any state park without payment of an entrance or admission fee. When a fee is charged by the department for entrance of a vehicle into a state park, the vehicle of the holder of a state parklands passport is exempt from the fee when the holder is present.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 36, ch. 19, § 1, eff. Aug. 29, 1977.]

[Sections 13.019 to 13.100 reserved for expansion]

SUBCHAPTER B. REGULATIONS GOVERNING PARKS AND OTHER RECREATIONAL AREAS

§ 13.101. Authorization

The commission may promulgate regulations governing the health, safety, and protection of persons and property in state parks, historic sites, scientific

areas, or forts under the control of the department, including public water within state parks, historic sites, scientific areas, and forts.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1206, ch. 456, § 4(a), eff. Sept. 1, 1975.]

§ 13.102. Scope of Regulations

The regulations may govern:

- (1) the conservation, preservation, and use of state property whether natural features or constructed facilities;
- (2) the abusive, disruptive, or destructive conduct of persons;
- (3) the activities of park users including camping, swimming, boating, fishing, or other recreational activities;
- (4) the disposal of garbage, sewage, or refuse;
- (5) the possession of pets or animals;
- (6) the regulation of traffic and parking; and
- (7) conduct which endangers the health or safety of park users or their property.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.103. Hearing on Regulation

(a) Prior to the adoption of a regulation, the commission must hold a hearing on the regulation, at which time interested persons are entitled to express their views on the proposed regulation.

(b) The hearing may be held only within the two-week period beginning one week after the final publication of the notice.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.104. Publication of Notice

(a) Except as provided in Subsection (b) of this section, notice of the hearing to consider the proposed regulation must be published in at least three newspapers of general circulation in this state.

(b) If the proposed regulation applies to one park only, notice must be published on two consecutive weeks in the county where the park is located.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.105. Contents of Notice

The notice must contain:

- (1) the time, date, and place of the hearing on the proposed regulation;
- (2) a statement of the proposed regulation; and
- (3) a statement that interested persons may obtain additional copies of the proposed regulation from the department prior to the hearing.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.106. Posting of Regulations

All specific or general regulations applying to a state park, historic site, scientific area, or fort must be posted in a conspicuous place at the park, site, or fort. A copy of the regulations shall be made available on request to persons using the park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.107. Adoption of Penalties

The commission may adopt the following penalties for violations of regulations issued under this subchapter:

- (1) a fine not to exceed \$25 for a first conviction;
- (2) a fine not to exceed \$50 for a second conviction of a violation of the same regulation by the same person within a six-month period;
- (3) a fine not to exceed \$200 for a third or subsequent conviction of a violation of the same regulation by the same person within a one-year period.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.108. Removal From Park

(a) Any person directly or indirectly responsible for disruptive, destructive, or violent conduct which endangers property or the health, safety, or lives of persons or animals may be removed from a park, historic site, scientific area, or fort for a period not to exceed 48 hours.

(b) Prior to removal under this section, the person must be given notice of the provisions of this section and an opportunity to correct the conduct justifying removal.

(c) A court of competent jurisdiction may enjoin a person from reentry to the park, scientific area, site, or fort, on cause shown, for any period set by the court.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.109. Enforcement of Regulations

Regulations adopted under this subchapter may be enforced by any peace officer, including those employees of the department commissioned as peace officers under Section 11.019 of this code. A notice to appear may be issued by a peace officer for violation of a regulation on a form prescribed by the commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.110. Effect of Regulations

No regulation adopted under this subchapter may amend or repeal any penal law of this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.111. Portion of Fine to be Retained by County

The justice or county court imposing a fine for a violation of this subchapter may retain 15 percent of the amount of the fine collected to be deposited in the county treasury in the same manner as court costs.

[Acts 1975, 64th Leg., p. 1206, ch. 456, § 4(b), eff. Sept. 1, 1975.]

[Sections 13.112 to 13.200 reserved for expansion]

SUBCHAPTER C. REGULATIONS GOVERNING AREAS ADJACENT TO STATE PARKS**§ 13.201. Authorization**

The commission may make regulations prohibiting the use of firearms or certain types of firearms on state property adjacent to state parks and within 200 yards of the boundary of the state park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.202. Application Limited

The regulations of the commission under Section 13.201 of this code apply only to state parks located within one mile of coastal water of this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.203. Notice of Regulation; Hearing

(a) Before making a regulation under Section 13.201 of this code, the commission shall publish notice of the proposed regulation in a newspaper of general circulation in the county in which the regulation is to apply. The notice must contain the text of the proposed regulation and give the date, time, and location of the hearing on the regulation.

(b) The commission shall hold a hearing on the proposed regulation and shall hear persons who wish to speak for or against the regulation. The hearing may be held in Austin.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.204. Effective Date of Regulation

A regulation made under Section 13.201 of this code takes effect 30 days after final action by the commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.205. Penalty

A person who violates a regulation made by the commission under Section 13.201 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 13.206 to 13.300 reserved for expansion]

SUBCHAPTER D. PARTICIPATION IN
FEDERAL PROGRAMS

§ 13.301. Programs for the Development of Historic Sites and Structures

(a) The department may apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from any federal program involving the planning, acquisition, and development of historic sites and structures.

(b) The department may contract with the United States or its agencies to plan, acquire, and develop historic sites and structures in this state in conformity with any federal act concerning the development of historic sites and structures.

(c) The department shall keep financial and other records relating to programs under this section and shall furnish appropriate officials and agencies of the United States and of this state all reports and information reasonably necessary for the administration of the programs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.302. Programs for the Development of Outdoor Recreation Resources

The department is the state agency to cooperate with the federal government in the administration of federal assistance programs for the planning, acquisition, operation, and development of the outdoor recreation resources of the state, including acquisition of land and water and interests in land and water. The department shall cooperate with the federal government in the administration of the provisions of the Land and Water Conservation Fund Act of 1965 (Public Law 88-578).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.303. Cooperation With Other Agencies

The department shall cooperate with departments of the federal government and other departments of state and local government, including as a part of the state plan, water districts, river authorities, and special districts in outdoor recreation. The department shall issue rules and regulations to cooperate in the enforcement and administration of federal acts and rules and regulations.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.304. Additional Powers of Counties and Special Districts

Counties, river authorities, water districts, and other political subdivisions organized under Article III, Section 52, or Article XVI, Section 59, of the Texas Constitution, may:

- (1) acquire land for public recreation;
- (2) construct facilities for public use on land acquired for public recreation;
- (3) provide for the operation, maintenance, and supervision of the public recreation areas;
- (4) execute agreements with other local, state, or federal agencies for planning, construction, maintenance, and operation of public recreation facilities and necessary access roads; and
- (5) maintain adequate sanitary standards on the land and water areas that are part of or adjacent to public recreation areas.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.305. Condemnation Proceedings

(a) The department may institute condemnation proceedings according to the laws of this state to acquire land for programs developing outdoor recreation resources under Section 13.302 of this code.

(b) Costs incurred in the exercise of eminent domain under this section for the relocation, raising, lowering, rerouting, or change in grade, or alteration in the construction of any electric transmission, telegraph, or telephone line, railroad, conduit, pole, property, facility, or pipeline are the sole expense of the department.

(c) "Sole expense" means the actual cost of the lowering, rerouting, or change in grade or alteration of construction in providing comparable replacement without enhancement of the facility, after deducting the net salvage value derived from the old facility.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.306. Application for Participation in Federal Programs

(a) The department may apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from any federal outdoor recreation program.

(b) The department may contract with the United States or any appropriate federal agency to plan, acquire, and develop outdoor recreation resources of the state in conformity with the Land and Water Conservation Fund Act of 1965 or any other federal act to develop outdoor recreation resources of the state.

(c) The department shall keep financial and other records relating to the programs under this section and shall furnish to appropriate officials and agencies of the United States and of this state reports and information reasonably necessary for the administration of the programs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.307. Coordination of Activities

To obtain the benefits of outdoor recreation programs under this subchapter, the department shall coordinate its activities with and represent the interests of all agencies and political subdivisions of the state as a part of a state plan. The state plan shall include cities, counties, water districts, river authorities, and special districts in outdoor recreation having interests in the planning, development, acquisition, operation, and maintenance of outdoor recreation resources and facilities.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.308. Availability of State Funds

(a) The department may not make a commitment or an agreement to participate in an outdoor recreation program under this subchapter until sufficient funds are available to meet the state's share of the cost of the project.

(b) An outdoor recreation area or facility acquired or developed by the department under this subchapter shall be publicly maintained to the extent necessary to insure its proper operation and maintenance. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.309. Availability of Local Funds

The department may agree with the United States or any appropriate agency to plan, acquire, operate, and develop projects involving participating federal aid funds on behalf of any political subdivision of this state if the political subdivision certifies to the department that:

- (1) sufficient funds are available to meet its share, if any, of the cost of the project; and
- (2) the acquired or developed areas will be operated and maintained at the expense of the subdivision for public outdoor recreation use.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.310. Receipt and Expenditure of Funds

(a) The department may receive and spend federal money allocated to the state for any project established to develop outdoor recreation resources under this subchapter and for administrative and other expenses incident to the administration of these projects.

(b) The department may receive and expend funds from the state, a county, a city, or any other source for the development of outdoor recreation resources under this subchapter.

(c) The department shall deposit all funds received for the development of outdoor recreation resources in the state treasury to the credit of the state land and water conservation fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.311. Project Priority

The department may make rules and regulations governing the priority of projects submitted under an outdoor recreation plan under this subchapter and within the limitations of the appropriations made for these purposes.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.312. Administration Expense

The department may employ necessary personnel, as determined by the director, and expend amounts necessary to administer efficiently the outdoor recreation programs under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.313. Fish and Wildlife Restoration Projects

The department may conduct and establish cooperative fish and wildlife restoration projects under the provisions of Public Law No. 415, Acts of the 75th Congress, and Public Law No. 681, Acts of the 81st Congress, as amended.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 13.314. Compliance in Fishery Management

The department may cooperate and contract with the Gulf of Mexico Fishery Management Council or the National Marine Fisheries Service for conduct of such work as may be necessary in complying with requirements of the Fishery Conservation and Management Act of 1976 (16 U.S.C.A. Section 1801 et seq.).

[Added by Acts 1977, 65th Leg., p. 1280, ch. 501, § 1, eff. June 15, 1977.]

TITLE 3. PARKS**CHAPTER 21. TEXAS PARK DEVELOPMENT FUND****SUBCHAPTER A. TEXAS PARK DEVELOPMENT BONDS****Section**

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- 21.013. Execution of Bonds.
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Section

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- 21.101. Texas Park Development Fund.
- 21.102. Use of Development Fund.
- 21.103. Acquiring Park Sites.
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- 21.111. Entry Fees to Parks.

SUBCHAPTER A. TEXAS PARK DEVELOPMENT BONDS

§ 21.001. Issuance of Park Development Bonds

The department, by resolution of the commission, from time to time may provide for the issuance of negotiable bonds in an aggregate amount not to exceed \$75 million pursuant to the provisions of Article III, Section 49-e, of the Texas Constitution. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.002. Description of Bonds

The bonds are called State of Texas Park Development Bonds and shall be issued on a parity. The department may issue them in one or several installments and shall date the bonds of each issue. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.003. Sale Price

The department may not sell an installment or series of bonds for an amount less than the face value of all of the bonds comprising the installment or series with the accrued interest from their date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.004. Interest Rate

The department shall determine the rate of interest of an installment or series of bonds and shall determine whether interest is payable annually or semiannually.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.005. Form, Denomination, Place of Payment

The department shall determine:

- (1) the form of the bonds, including the form of any interest coupons to be attached;

- (2) the denominations of the bonds; and

- (3) the places for payment of principal and interest.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.006. Maturity

The bonds of each issue mature, serially or otherwise, not more than 40 years from their date.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.007. Redemption Before Maturity

In the resolution providing for the issuance of bonds, the department may determine the price, terms, and conditions for redemption of bonds before maturity.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.008. Registered and Bearer Bonds

The resolution may provide for the registration of bonds as to ownership, successive conversion and reconversion from bearer to registered bonds, and successive conversion and reconversion from registered to bearer bonds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.009. Notice of Bond Sale

(a) After determining to sell a series of bonds, the department shall publish notice of the sale at least one time not less than 10 days before the date of the sale. The notice shall be published in one or more recognized financial publications of general circulation published in the state and one or more recognized financial publications of general circulation published outside the state.

(b) The department may publish notice of the sale more than once and in more than one publication.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.010. Competitive Bids

The bonds shall be sold only after competitive bidding to the highest and best bidder. The department may reject any or all bids.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.011. Security for Bids

The department shall require every bidder, except administrators of state funds, to include with their bid an exchange or cashier's check for an amount the department considers adequate as a forfeit guaranteeing acceptance of and payment for all bonds covered by the bid.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.012. Approval of Bonds; Registration

Before delivering bonds to the purchasers, the department shall submit the bonds and the records pertaining to them for approval by the attorney general. When approval is obtained, the bonds shall be registered in the office of the comptroller of public accounts.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.013. Execution of Bonds

(a) The bonds shall be executed on behalf of the department as general obligations of the state as provided in this section.

(b) The bonds shall be signed by the chairman and the director, and the seal of the department shall be impressed on them.

(c) The bonds shall be signed by the governor and attested by the secretary of state, and the state seal shall be impressed on them.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.014. Facsimile Signatures and Seals

In the resolution authorizing the issuance of an installment or series of bonds, the commission may prescribe the extent to which facsimile signatures and facsimile seals instead of manual signatures and manually impressed seals may be used in executing the bonds and appurtenant coupons. Interest coupons may be signed by the facsimile signatures of the chairman and the director.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.015. Signature of Former Officer

If an officer whose signature or facsimile signature appears on a bond or whose facsimile signature appears on a coupon ceases to be an officer before the delivery of the bond, the signature is valid and sufficient for all purposes as if he had remained in office until the delivery had been made.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.016. Bonds Incontestable, Valid, and Binding

(a) After approval by the attorney general, registration by the comptroller, and delivery to the purchaser, the bonds are incontestable and constitute general obligations of the state.

(b) After approval by the attorney general and registration by the comptroller, the bonds shall be held to be valid and binding obligations of the state in any action, suit, or other proceeding in which their validity is questioned.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.017. Evidence of Validity

In an action to enforce collection of the bonds or rights incident to the bonds, the certificate of approval by the attorney general and a certificate of registration by the comptroller, or certified copies of these certificates, shall be received in evidence as proof of the validity of the bonds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.018. Payment by Treasurer

The state treasurer shall pay or cause to be paid the principal on bonds as they mature and the interest as it becomes payable.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.019. Duties Enforceable

The performance of the official duties of the comptroller and the treasurer may be enforced by mandamus or other appropriate proceeding.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.020. Refunding Bonds

The commission may provide by resolution for the issuance of refunding bonds. The department may sell these bonds and use the proceeds to retire the outstanding bonds issued under this chapter, including interest accrued on outstanding bonds, or the department may exchange refunding bonds for outstanding bonds, including accrued interest. The issuance of the refunding bonds, their maturity, the rights of the bondholders, and the duties of the department with respect to refunding bonds are governed by the provisions of this chapter relating to the original bonds, to the extent they are applicable and by refunding statutes of general application not in conflict with the provisions of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.021. Bonds Negotiable Instruments

The bonds issued under the provisions of this chapter are negotiable instruments under the laws of this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.022. Bonds Not Taxable

Bonds issued under this chapter, income from the bonds, and profit made on their sale are free from taxation within this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.023. Authorized Investments

Bonds issued under this chapter are legal and authorized investments for:

- (1) banks;
- (2) savings banks;

- (3) trust companies;
- (4) building and loan and savings and loan associations;
- (5) insurance companies;
- (6) fiduciaries;
- (7) trustees;
- (8) guardians; and
- (9) sinking funds of cities, towns, villages, counties, school districts, and other political subdivisions and public agencies of the state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.024. Security for Deposit of Funds

Bonds issued under this chapter, when accompanied by all appurtenant unmatured coupons, are lawful and sufficient security for all deposits of funds of the state or of a city, town, village, county, school district, or other political subdivision or agency of the state, at the par value of the bonds.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.025. Mutilated, Lost, or Destroyed Bonds

The department may provide for the replacement of a mutilated, lost, or destroyed bond.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 21.026 to 21.100 reserved for expansion]

SUBCHAPTER B. FUNDING PROVISIONS

§ 21.101. Texas Park Development Fund

(a) The Texas Park Development Fund, referred to as the "development fund," is created pursuant to the provisions of Article III, Section 49-e, of the Texas Constitution.

(b) Proceeds derived from the sale of Texas Park Development Bonds shall be deposited in the development fund.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.102. Use of Development Fund

The department may use the development fund only for:

- (1) acquiring state park sites from the United States or any of its agencies, agencies of the state, or any other person;
- (2) improving, developing, beautifying, and equipping acquired park sites; and
- (3) paying expenses incurred in issuing bonds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.103. Acquiring Park Sites

(a) Except as provided in Subsection (b) of this section, the department may acquire park sites, including property already devoted to public use, by purchase, condemnation, or other manner.

(b) No real property of the state or a political subdivision of the state may be acquired without its consent.

(c) The department shall exercise the power of eminent domain in the manner prescribed by general law, including the provisions of Section 13.305 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.104. Contracts Authorized

The department may contract with any state or federal agency or with any other person to accomplish the functions prescribed by Subdivisions (1) and (2) of Section 22.102 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.105. Interest and Sinking Fund

The Texas park development bonds interest and sinking fund, referred to as the "interest and sinking fund," is created to be used exclusively for:

- (1) paying the principal of Texas Park Development Bonds as they mature;
- (2) paying the interest on the bonds as it comes due; and
- (3) paying exchange and collection charges in connection with the bonds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.106. Credits to Interest and Sinking Fund

(a) Accrued interest received in the sale of bonds, net income received from entrance or gate fees to state park sites, and income from investments of the development fund and the interest and sinking fund shall be credited to the interest and sinking fund.

(b) In the resolution authorizing a series of bonds, the commission may appropriate from the proceeds of the sale of bonds an amount which, together with accrued interest received, is sufficient to pay interest coupons coming due during the fiscal year in which the bonds are sold and to establish appropriate reserves.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.107. Additional Transfers

(a) If the amount credited to the sinking and interest fund at the end of the fiscal year is insufficient to pay the interest coming due and the principal maturing on bonds for the next fiscal year, the

state treasurer shall transfer from the first money coming into the treasury, not otherwise appropriated by the constitution, an amount stipulated in the certification of the director as is necessary to pay the interest and principal on the bonds.

(b) The director shall certify the amount required to be stipulated by Subsection (a) of this section as of August 15 of each fiscal year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.108. Interest and Sinking Fund: Final Transfer

After all bonds have been paid, the balance of the interest and sinking fund shall be transferred to the state parks fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.109. Transfers Required

The state comptroller shall make any transfer required by this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.110. Investment of Funds

(a) The department may invest the development fund and, in making the investments, is governed by the provisions of Chapter 401, Acts of the 60th Legislature, Regular Session, 1967.

(b) The department may invest the interest and sinking fund only in direct obligations of the United States or in obligations the principal and interest of which are guaranteed by the United States.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 21.111. Entry Fees to Parks

(a) The department, wherever feasible and so long as any of the bonds are outstanding, shall charge and collect an entrance fee to state park sites.

(b) Income derived from the fees required by this section, less expenses incurred in collecting the fees, shall be deposited in a special fund with the state treasurer. The amounts deposited are net income.

(c) If any state park site includes a public beach on the seaward shore of the Gulf of Mexico, extending from the line of mean low tide to the line of vegetation, over which the public has acquired a right of use or easement to or over the area by prescription or dedication or has retained a right by virtue of continuous right in the public, no entrance or gate fee may be charged to persons desiring to enter or to leave the public beach area, so long as the persons do not enter any other portion of the park for which an entrance or gate fee is charged.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1211, ch. 456, § 11, eff. Sept. 1, 1975.]

CHAPTER 22. STATE PARKS

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SUBCHAPTER A. FANNIN STATE BATTLEGROUND

§ 22.001. Jurisdiction

Fannin State Battleground is under the jurisdiction of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.002. Fannin State Park Advisory Commission

(a) The Fannin State Park Advisory Commission is composed of three residents of the state appointed by the governor.

(b) Members serve terms of six years each, with the term of one member expiring each odd-numbered year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.003. Meetings

The Fannin State Park Advisory Commission shall meet quarterly to review the policies and operation of the battleground and to advise the department on the proper historical development of the battleground.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.004. Powers of Advisory Commission

The Fannin State Park Advisory Commission may accept, in the name of the state, all bequests, gifts, and grants of money or property made to the battleground and use the bequests for the purposes specified by the grantor, if any.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.005. Data

All data collected by the advisory commission is the property of the state and shall be used to depict the story of Texas history and independence at the battleground.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.006. Concession Account

A Fannin State concession account may be established in the state treasury according to the rules and procedures established by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.007 to 22.010 reserved for expansion]

SUBCHAPTER B. SAN JACINTO BATTLEGROUND

§ 22.011. Jurisdiction

The San Jacinto Battleground is under the jurisdiction of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.012. San Jacinto Historical Advisory Board

(a) The San Jacinto Historical Advisory Board is composed of:

- (1) the chairman of the Battleship Texas Commission;
- (2) the president of the San Jacinto Museum of History Association; and
- (3) three members of the public.

(b) The three members of the public are appointed by the governor for terms of six years each, with the term of one member expiring each odd-numbered year.

(c) One or more of the three members of the public may be selected from the San Jacinto Chapter, Daughters of the Republic of Texas.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.013. Meetings

The San Jacinto Historical Advisory Board shall meet quarterly to review the policies and operations of the San Jacinto Battleground and to advise the department on the proper historical development of the battleground.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.014. Powers of the Board

The board may accept, in the name of the state, all bequests, gifts, and grants of money or property made to the battleground and use the bequests for the purposes specified by the grantor, if any.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.015. Data

All data collected by the board is the property of the state and shall be used to depict the story of Texas history and independence at the battleground.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.016. San Jacinto Museum of History Association

The San Jacinto Museum of History Association, a nonprofit historical association organized for the purposes of operating the San Jacinto Memorial Building and Tower and establishing a museum, retains ownership of property and historical data held in the name of the association and may acquire museum accessions by gift, grant, or purchase from association funds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.017 to 22.020 reserved for expansion]

SUBCHAPTER C. PALO DURO CANYON
STATE PARK

§ 22.021. Jurisdiction

(a) The Palo Duro Canyon State Park is under the jurisdiction of the department.

(b) The original boundaries of the park include the land located in Armstrong and Randall counties and described in the deed executed by Fred A. Emery and wife to Texas State Parks Board, July 28, 1933, and recorded in Volume 69, pages 347 through 350, of the deed records of Randall County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.022. Powers of Department

(a) The department may:

- (1) fix entrance fees for admission to the park;

- (2) fix charges to be collected from patrons of the park;

- (3) execute grazing leases covering all or part of the park land;

- (4) grant concessions in the park;

- (5) make improvements in the park; and

- (6) execute any other contracts necessary to carry out the provisions of this subchapter.

(b) Improvements may include the construction of dams to impound water to form a lake or lakes for recreational and other conservation purposes within the park. Before constructing any dam or lake, the commission must obtain permits required by law from the Texas Water Rights Commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.023. Disposition of Income

The department shall use the income derived from leases, royalties, and operation of the park necessary for maintaining, improving, and operating the park. One-half of the balance of the unexpended income may be used by the department on other state parks, and the remaining one-half and any other unexpended balance shall be transferred to the general revenue fund at the end of each biennium.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.024. Issuance of Bonds

The department may issue bonds necessary for the construction of improvements in the park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.025. Interest on Bonds

Interest on the bonds may not exceed six percent per year, computed with relation to the absolute maturity of the bonds in accordance with standard bond interest tables currently in use by insurance companies and investment houses, excluding from the computation the amount of any premium to be paid on redemption of any bonds prior to maturity.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.026. Maturity of Bonds

The bonds may mature, serially or otherwise, not more than 40 years from the date of their issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.027. Redemption Before Maturity

The department may fix the price, terms, and conditions for redemption of the bonds before maturity in the authorizing proceedings.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.028. Sale of Bonds

The bonds may be sold, at public or private sale, at a price and under terms determined by the department to be the most advantageous terms reasonably obtainable.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.029. Pledge of Income

The department may irrevocably pledge the rents, revenues, and income from the improvements financed by the bonds and from any other revenue-producing facilities or properties of the park, including the fees collected for admission to the park, to the payment of the interest on and the principal of the bonds and may enter into agreements regarding the imposition of charges and the collection, pledge, and disposition of revenue.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.030. Right to Issue Additional Bonds

In pledging the rents, revenues, and income, the department may expressly reserve the right to issue additional bonds on a parity with or subordinate to the bonds then being issued.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.031. Additional Security for Bonds

(a) If, after reasonable effort, the department is unable to sell the bonds, the bonds may be additionally secured by a deed of trust lien on the land and property comprising the park, or any part of it, after the department has obtained written approval of the governor.

(b) The governor may not give his approval under this section until he has obtained the advice and consent of the Legislative Budget Board.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.032. Form of Bonds

The department may prescribe the form, conditions, and details of the bonds in accordance with the provisions of this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.033. Refunding of Bonds

(a) A bond issued by the department under a law of this state which is payable from any part of the revenues of a revenue-producing facility or property of Palo Duro Canyon State Park may be refunded or refinanced by the department under this subchapter.

(b) The provisions of this subchapter are applicable to a refunding bond.

(c) In the same authorizing proceedings, the department may refund or refinance any bond issued under this subchapter and combine all refunding bonds and any new bonds to be issued into one or more issues or series and may provide for the subsequent issuance of additional parity bonds under terms and conditions set out in the authorizing proceedings.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.034. Employment of Personnel

The department may employ engineers, attorneys, and fiscal agents or financial advisors necessary in the issuance or refunding of bonds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.035. Approval by Attorney General

(a) The bonds and all records relating to their issuance must be submitted to the attorney general for examination prior to delivery.

(b) The attorney general shall approve the bonds if he finds that they have been issued in accordance with the constitution and this subchapter and that they will be binding special obligations of the department.

(c) Bonds approved by the attorney general must be registered by the comptroller of public accounts.

(d) After approval and registration, the bonds are incontestable.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.036. Payment of Interest and Expenses

The department may set aside amounts from the proceeds of the sale of a bond issue for:

(1) the payment of interest anticipated to accrue during the construction period;

(2) a deposit into the reserve for the interest and sinking fund to the extent prescribed in the authorizing proceedings; and

(3) payment of attorney's fees, engineer's fees, and expenses of the issuance and sale of bonds, including the fees of fiscal agents or financial advisors.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.037. Legal Investments

(a) Bonds issued under this subchapter are legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, trustees, and guardians, and for the sinking funds of cities, towns, villages, counties, school districts, and other political corporations and subdivisions of the state.

(b) The bonds are eligible to secure the deposit of the public funds of the state, cities, towns, villages, counties, school districts, and other political corporations and subdivisions of the state.

(c) The bonds are lawful and sufficient security for deposits to the extent of their value when accompanied by all unmatured coupons.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.038. Negotiable Instruments

Bonds issued under this subchapter are negotiable instruments under the laws of this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.039. Debt Against the State

Nothing in this subchapter creates a debt against the state or binds the state in any way except as to the mortgage of the land and property comprising the Palo Duro Canyon State Park and as to the pledge of the rents, revenue, and income from the park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.040 to 22.050 reserved for expansion]

SUBCHAPTER D. JIM HOGG MEMORIAL PARK

§ 22.051. Jurisdiction

(a) The Jim Hogg Memorial Park is under the jurisdiction of the department.

(b) The original boundaries of the park include approximately 180 acres, formerly a part of the General Joseph L. Hogg homestead in Cherokee County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.052. Historical Improvements

To the extent possible, the department shall maintain a replica of the original Hogg home and the grounds adjacent to the residence.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.053. Improvements

The department may repair or construct facilities for recreational and park purposes at the park and may work in conjunction with other governmental agencies for this purpose.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.054. Sale and Use of Timber

(a) The department may use timber cut from the land in the park to repair or construct improvements.

(b) The department may sell timber from the land in the park to finance the construction or repair of improvements.

(c) Timber must be selectively cut for sale or use under the supervision of the Texas Forest Service. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.055. Sale of Iron Ore

(a) The department may sell iron ore in place located in the park. The department may grant all rights necessary for the development of the iron ore to the purchasers of the iron ore.

(b) The chairman of the commission, on behalf of the department, may execute and deliver the necessary instruments to convey the iron ore in place to the purchasers.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.056. Competitive Bids

(a) Timber and iron ore may be sold on competitive bids only. The contract shall be awarded to the party submitting the highest and best bid in the judgment of the Texas Forest Service for the sale of timber and of the department for the sale of iron ore. The department must approve the contract for sale of timber.

(b) The Texas Forest Service shall keep on file the bids for timber sale. The bids are public records. Copies of the bids shall be given to the department.

(c) The department shall keep on file the bids for the sale of iron ore. The bids are public records.

(d) The Texas Forest Service may reject any or all bids for timber sale and readvertise for new bids. The department may reject any or all bids for iron ore sale and readvertise for new bids.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.057. Advertising for Bids

(a) The Texas Forest Service shall advertise for the sale of timber. The department shall advertise for the sale of iron ore.

(b) The sale must be advertised for two weeks in at least one weekly newspaper published and circulated in Cherokee County.

(c) The advertisement must contain the necessary information pertaining to the sale and the time and place for receiving bids.

(d) The first advertisement must be at least 10 days before the date of receiving bids.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.058. Regulations

The department shall adopt regulations, forms, and contracts for the sale of iron ore and protection of the income produced from the sale.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.059. Disposition of Funds

Money received from the sale of timber or iron ore from the land in the park shall be placed in the state treasury to the credit of the Jim Hogg State Park building fund. The fund shall be used by the department for the improvement of the park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.060 to 22.070 reserved for expansion]

SUBCHAPTER E. HUNTSVILLE STATE PARK

§ 22.071. Improvements

(a) The department may construct and repair improvements to be used for recreational and park purposes in Huntsville State Park, including dams to impound water and form reservoirs or lakes.

(b) The department may cooperate with other governmental agencies in making the improvements.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.072. Permit for Dam

A dam may not be constructed until a permit has been obtained from the Texas Water Rights Commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.073. Sale and Use of Timber

(a) The department may use timber cut from land in the park to repair or construct improvements.

(b) The department may sell timber from land in the park to finance the construction or repair of improvements and dams.

(c) Timber must be selectively cut for sale or use under the supervision of the Texas Forest Service.

(d) The amount of timber sold may not exceed \$250,000.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.074. Competitive Bids

(a) Timber may be sold on competitive bids only. The contract shall be awarded to the party submitting the highest and best bid in the judgment of the Texas Forest Service and then approved by the department.

(b) All bids shall be kept on file by the Texas Forest Service and are public records. Copies of the bids shall be furnished to the department.

(c) The Texas Forest Service may reject any or all bids and readvertise for new bids.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.075. Advertising for Bids

(a) The Texas Forest Service shall advertise for the sale of the timber for two weeks in at least one weekly newspaper published and circulated in Walker County.

(b) The advertisement must contain the necessary information pertaining to the timber sale and the time and place for receiving bids.

(c) The first advertisement must be at least 10 days before the date of receiving bids.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.076. Disposition of Funds

Money received from the sale of timber cut from the park shall be placed in the state treasury to the credit of the Huntsville State Park building fund to be used by the department for purposes authorized by this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.077 to 22.080 reserved for expansion]

SUBCHAPTER F. GOLIAD STATE PARK

§ 22.081. Jurisdiction

Goliad State Park, including the General Ignacio Zaragoza Birthplace and the Mission of San Rosario, is under the jurisdiction of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.082. General Ignacio Zaragoza Birthplace

(a) The department may care for and protect the birthplace of General Ignacio Zaragoza and shall designate the site as the General Ignacio Zaragoza Birthplace.

(b) The site originally accepted by the state includes approximately two acres, described as lots 4, 5, 6, 11, 12, 13, 14, 15, and 16 in Block X, La Bahia Townsite, in Goliad County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.083. Mission of San Rosario

(a) The department shall care for the grounds of the Mission of San Rosario as a suitable and appropriate memorial and shall enclose the mission

grounds with an appropriate and substantial park fence.

(b) The original boundaries of the mission consist of the surface title of 4.77 acres of land in the County of Goliad, Texas, said 4.77 acres of land, more or less, being the following described parcel of land:

BEGINNING at a concrete monument in the Southeast Right-of-Way line of State Highway No. 12, same being a R/W marker for said Highway, and being 50 ft. at right angles from the center line of said Highway, and marked Sta. 914/00;

THENCE South 39 deg. 36 min. West, with right-of-way fence, 295.9 ft. to a concrete monument for corner of this present survey;

THENCE South 56 deg. 02 min. East, at 148.0 ft. an iron pipe, at 350.0 ft. a concrete monument for corner of this present survey;

THENCE South 32 deg. 08 min. East, at 69.9 ft. an iron pipe, at 193.3 ft. a tack in cedar post at 241.4 ft. a concrete monument for corner of this present survey;

THENCE North 83 deg. 35 min. East, 193.4 ft. to a concrete monument for corner of this present survey;

THENCE North 17 deg. 46 min. East, at 109.7 ft. an iron pipe, at 227.3 ft. a concrete monument for corner of this present survey;

THENCE North 43 deg. 17 min. West, at 116.8 ft. an iron pipe, at 240.5 ft. a concrete monument for corner of this present survey;

THENCE North 57 deg. 21 min. West, at 193.3 ft. an iron pipe, at 356.3 ft. a concrete monument for corner of this present survey; same being a highway R/W marker for said Highway for extra width in R/W and also marked Sta. 914/00;

THENCE North 49 deg. 55 min. West, with Highway R/W line, 34.9 ft. to the place of beginning;

Containing Four and 77/100 (4.77) acres of land and all being out of Maria de Jesus de Leon Survey, Abstract 21, Goliad County, Texas.

Said 4.77 acres of land, more or less, being the land conveyed to the County of Goliad by William J. O'Connor on July 15, 1935, as shown by deed of such date duly recorded in Volume 77, Page 565, of the Deed Records of Goliad County, Texas, on July 17, 1935, and to which reference is here made for all pertinent purposes.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.084. Improvements

The department may construct, maintain, and repair historical and recreational structures and facilities in the park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.085. Reversion of Title; Mineral Reservation

(a) If the state ceases to use the General Ignacio Zaragoza Birthplace or the Mission of San Rosario as park land, all right, title, and interest shall revert to Goliad County.

(b) All minerals under the land accepted as the Mission of San Rosario are excepted from any conveyance to the state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.086 to 22.090 reserved for expansion]

SUBCHAPTER G. MISSION SAN FRANCISCO DE LOS TEJAS STATE PARK

§ 22.091. Facilities; Park Site

(a) The department may construct and repair facilities for recreational and other appropriate purposes at Mission San Francisco de los Tejas State Park.

(b) The original boundaries of the park include portions of Hardy Ware Survey, Abstract 1240, situated on the N side of Highway No. 21, about 21 miles NE from the City of Crockett, and being the same tracts of land conveyed to the State of Texas for the use and benefit of the Agricultural and Mechanical College of Texas, more particularly described by the following deeds, to-wit:

Deed from Mrs. Kittie A. Cook, surviving widow of T. S. Cook, deceased, dated October 16, 1939, recorded in Book 200, page 533, Deed Records of Houston County, Texas;

Deed from Southern Pine Lumber Company, dated September 20, 1935, recorded in Book 170, page 367, Deed Records of Houston County, Texas;

Deed from Mrs. Kittie A. Cook, surviving widow of T. S. Cook, deceased, dated February 1, 1935, recorded in Book 166, page 141, Deed Records of Houston County, Texas;

Deed from C. H. Callaway, Trustee, dated January 3, 1935, recorded in Volume 164, page 543, Deed Records of Houston County, Texas.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.092. Timber Sale

(a) The department may sell timber from land in the park and may use timber of the park to repair or construct improvements in the park.

(b) Timber may be cut for salvage purposes only or under good forestry practices with the advice of the Texas Forest Service.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.093. Competitive Bids

(a) Timber may be sold on competitive bids only. The contract shall be awarded to the party submitting the highest and best bid in the judgment of the Texas Forest Service and then approved by the department.

(b) All bids shall be kept on file by the Texas Forest Service and are public records.

(c) The Texas Forest Service may reject any or all bids and readvertise for new bids.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.094. Advertising for Bids

(a) The Texas Forest Service shall advertise for the sale of the timber for two weeks in at least one weekly newspaper published and circulated in Houston County.

(b) The advertisement must contain the necessary information pertaining to the timber sale and the time and place for receiving bids.

(c) The first advertisement must be at least 10 days before the date of receiving bids.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.095. Disposition of Funds

Money received from the sale of timber cut from the park shall be placed in the state treasury to the credit of a special fund known as the Mission San Francisco de los Tejas State Park building fund to be used by the department for purposes authorized by this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.096 to 22.100 reserved for expansion]

SUBCHAPTER H. PORT ISABEL LIGHTHOUSE STATE HISTORICAL MONUMENT AND PARK

§ 22.101. Jurisdiction

The Port Isabel Lighthouse is a state historical monument and park and is under the jurisdiction of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.102. Powers of Department

The department may rehabilitate, maintain, and preserve the property of the park, and may collect entrance fees for admission to the park or operate it on a concession basis under the provisions of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.103 to 22.110 reserved for expansion]

SUBCHAPTER I. HUECO TANKS STATE PARK

§ 22.111. Control

The department has control of Hueco Tanks State Park and shall improve, preserve, restore, and protect the land and property in the park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.112. Acceptance of Gifts

The department may accept gifts for constructing, building, advertising, or creating the park, including gifts for public exhibition that relate to the history of the park or the state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.113. Title to Park

The title of the land known as Hueco Tanks in El Paso County is in the name of the state and is subject to limitations, conditions, and exceptions made by the former owners and approved by the department or the department's predecessor.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.114 to 22.120 reserved for expansion]

SUBCHAPTER J. STEPHEN F. AUSTIN STATE PARK

§ 22.121. Jurisdiction

Stephen F. Austin State Park is under the jurisdiction of the department. The department shall improve, preserve, and protect the land in the park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.122 to 22.150 reserved for expansion]

SUBCHAPTER K. NIMITZ STATE PARK

§ 22.151. Jurisdiction

The Nimitz State Park, located near Fredericksburg in Gillespie County, is under the jurisdiction of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.152. Powers of Department

The department may:

(1) accept gifts for the construction, building, or advertising of the park;

(2) accept gifts for exhibition dealing with the history or life of Fleet Admiral Chester W. Nimitz;

(3) advertise the affairs of the park;

(4) make rules and regulations for administration of the park;

(5) hire personnel necessary to carry out its duties;

(6) grant concessions; and

(7) operate and maintain the park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.153 to 22.160 reserved for expansion]

SUBCHAPTER L. EISENHOWER STATE PARK

§ 22.161. Jurisdiction

The Eisenhower State Park, located near Lake Texoma in Grayson County, is under the jurisdiction of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.162. Powers of Department

The department may:

(1) accept gifts for the construction, building, or advertising of the park;

(2) accept gifts for exhibition dealing with the history or life of Dwight D. Eisenhower;

(3) advertise the affairs of the park;

(4) make rules and regulations for administration of the park;

(5) hire personnel necessary to carry out its duties;

(6) grant concessions; and

(7) operate and maintain the park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.163. Definitions

As used in this subchapter:

(1) "Impacted property" means that real property located in Grayson County adjacent to or near the western end of Eisenhower State Park that is described as:

(A) Lots 54-79 in "Elm Ridge Homesite Area" as described on a survey and plat of this area by B. & B. Engineering Co. in May, 1958, recorded in Plat Book 1, Page 73, Deed Records, Grayson County, Texas; and

(B) the East one-half and the West one-half of a 60.49 acre tract being part of the survey patented to Alan Carter, Abstract No. 231, dated June 22, 1851, and also being part of the J. A. Sadler 380 acre tract except the 316.05 acres thereof described in a deed to the United States of America,

recorded in Volume 432, Page 389, Deed Records, Grayson County, Texas.

(2) "Owner" means the owner or a lessee of impacted property.

(3) "Guest" means a business or personal guest or an employee of an owner of impacted property.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.164. Right to Use Roads

(a) Owners, their family members, and their guests may use the roads of the park without charge for egress from or ingress to the impacted property when traveling between the impacted property and points east of the park.

(b) Owners, their family members, and their guests may use throughout the year whatever road is maintained by the department for travel by automobiles between the eastern and western points of the park and may enter the park at the points at which they were able to enter the park and its roads prior to November 1, 1968, or other reasonably located points the department may direct by regulation.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.165. Permits

(a) The department may require owners, their family members, and their guests to obtain permits for entrance into and use of park roads under this subchapter.

(b) Permits shall be issued automatically on presentation of proper identification.

(c) Permits are valid for at least one year and shall be automatically renewed for owners and their family members.

(d) Permits for guests of owners shall be valid for the period of time requested by the owner.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.166 to 22.170 reserved for expansion]

SUBCHAPTER M. GOVERNOR JAMES STEPHEN HOGG MEMORIAL SHRINE

§ 22.171. Governor Hogg Memorial

The Governor James Stephen Hogg Memorial Shrine, located near Quitman, Wood County, is established.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 22.172 to 22.180 reserved for expansion]

SUBCHAPTER N. ACQUISITION OF CERTAIN STATE PARKS

§ 22.181. Spanish Missions

(a) The department may acquire the following Spanish Mission sites, located in Milam County:

- (1) Nuestra Senora de la Candelaria;
- (2) San Francisco Xavier de los Dolores; and
- (3) San Ildefonso.

(b) The department may acquire the sites with available or appropriated funds or may accept gifts for acquisition, construction, or restoration of the sites.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.182. Texas State Railroad

(a) Except as provided in Subsection (b) of this section, the department may operate any part of the Texas State Railroad as a part of the state parks system for park and recreational purposes. All revenues collected from leases or concessions shall be deposited in the state treasury to the credit of the state parks fund.

(b) The board of managers of the Texas State Railroad shall exercise control and management of the right-of-way and trackage of the Texas State Railroad from Mile Post 0.0 at Palestine, extending eastwardly to Mile Post 3.69, and exercise the powers, duties, and authority over this right-of-way and trackage that are granted to them by Chapter 58, Acts of the 53rd Legislature, Regular Session, 1953 (Article 6550(a), Vernon's Texas Civil Statutes). [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.183. Hubbard Lake

(a) The department may create, develop, operate, and maintain a state park on the land donated by the West Central Texas Municipal Water District located on Hubbard Lake in Stephens County.

(b) The department may accept additional gifts of any adjoining land or interest in land donated by the West Central Texas Water Municipal District to enlarge the park created by Subsection (a) of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 22.184. Fishing Piers

(a) The department may repair and maintain the old causeway across Copano Bay on Highway 35 in Aransas County and the old causeway across Lavaca Bay on Highway 35 in Calhoun County as public fishing piers and recreation areas.

(b) The department and the state highway department may solicit and receive gifts of labor and

materials for the construction and improvement of the fishing piers.

(c) The department may grant concessions to persons allowing the concessioners to charge for use of the piers and approaches.

(d) All revenue received under this section shall be deposited in the state treasury to the credit of the state parks fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 23. NATIONAL PARKS, SEASHORES, AND FORESTS

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Section

- 23.001. Limited Jurisdiction Retained.
- 23.002. Park Residents May Vote.

SUBCHAPTER B. PADRE ISLAND NATIONAL SEASHORE

- 23.011. Limited Jurisdiction Retained.
- 23.012. Seashore Residents May Vote.
- 23.013. Regulations of Railroad Commission.
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SUBCHAPTER C. GUADALUPE MOUNTAINS NATIONAL PARK

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- 23.041. Agreements for Wildlife Management.
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SUBCHAPTER A. BIG BEND NATIONAL PARK

§ 23.001. Limited Jurisdiction Retained

The state retains jurisdiction in the Big Bend National Park, concurrently with the United States, as though cession had not occurred, for:

(1) the service of criminal and civil process, issued under the authority of the state, on any person amenable to service; and

(2) the assessment and collection of taxes on the sales of products and commodities and on franchises and property.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.002. Park Residents May Vote

A person residing in Big Bend National Park may vote in all elections in the county of his residence, subject to the same conditions as other residents of the county, as though cession had not occurred. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 23.003 to 23.010 reserved for expansion]

SUBCHAPTER B. PADRE ISLAND
NATIONAL SEASHORE

§ 23.011. Limited Jurisdiction Retained

The state retains jurisdiction in the Padre Island National Seashore, concurrently with the United States, as though cession had not occurred, for:

(1) the service of criminal and civil process, issued under the authority of the state, on any person amenable to service; and

(2) the assessment and collection of taxes on the sales and use, or the gross receipts from the sales, of products and commodities and on franchises, properties, and incomes.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.012. Seashore Residents May Vote

A person residing in the Padre Island National Seashore may vote in all elections in the county of his residence, subject to the same conditions as other residents of the county, as though cession had not occurred.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.013. Regulations of Railroad Commission

(a) The Railroad Commission shall send by certified mail to the Secretary of Interior of the United States a copy of each proposed rule or regulation affecting mineral rights reserved in deeds conveying land in the Padre Island National Seashore to the United States.

(b) The Department of Interior has 30 days from the day a copy of a proposed rule or regulation is received to send to the Railroad Commission its objections or exceptions. An objection or exception must be sent by certified mail. Thereupon, a rule or regulation, with amendments, if any, promulgated by the Railroad Commission, takes effect.

(c) The development and recovery of minerals in the Padre Island National Seashore shall be carried out in a manner that does not unreasonably interfere with the use of the land for park purposes. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.014. Reversion to State

(a) Any deed executed by the state to the United States for the creation of Padre Island National Seashore becomes null and void on the initiation by any elected or appointed agent, officer, or employee of the United States, or by any agency or department of the United States, of a suit at law or in equity in any federal court to enlarge or expand the title, right, or interest granted by the deed. When a deed becomes void under this subsection, the land immediately reverts to the state.

(b) Unless reversion is waived by the legislature during the biennium following the happening of a condition of reversion, all state-owned land conveyed to the United States for the creation of the Padre Island National Seashore reverts to the state and to the fund to which it belonged before conveyance if:

(1) the United States fails to acquire two-thirds of all privately owned land in the area described by Section 1, Chapter 38, Acts of the 58th Legislature, 1963, within 10 years after the date that the state-owned land was acquired; or

(2) the United States fails to use as a national seashore the privately owned land it has acquired.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.015. Consent for Acquisition of Navigation District Land

The Willacy County Navigation District may consent to the acquisition of surface land for inclusion in Padre Island National Seashore. Interests in surface estates, spoil banks, easements, and rights-of-way controlled by the district in the Padre Island National Seashore shall be used for public purposes only.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.016. Roads

The Secretary of Interior is requested to provide roads from the north boundary of Padre Island National Seashore and from the Port Mansfield cut to the access highways from the mainland.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 23.017 to 23.030 reserved for expansion]

SUBCHAPTER C. GUADALUPE MOUNTAINS
NATIONAL PARK

§ 23.031. Limited Jurisdiction Retained

The state retains jurisdiction in the Guadalupe Mountains National Park, concurrently with the United States, as though cession had not occurred, for:

(1) the service of criminal and civil process, issued under the authority of the state, on any person amenable to service; and

(2) the assessment and collection of taxes on sales and use, or the gross receipts from the sales, of products and commodities and on franchises, properties, and incomes.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.032. Park Residents May Vote

A person residing in the Guadalupe Mountains National Park may vote in all elections in the county of his residence, subject to the same conditions as other residents of the county, as though cession had not occurred.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.033. Reconveyance of Title

If any of the land described by the drawing entitled "Proposed Guadalupe Mountains National Park, Texas," numbered SA-GM-7100C, dated February, 1965, and on file in the offices of the National Park Service and the Secretary of State of Texas ceases to be used for the Guadalupe Mountains National Park, the state may require a reconveyance, without consideration, of the mineral rights conveyed for the creation of the park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.034. Mineral Rights in Park

(a) The state reserves a preferential right, without consideration to the United States, to lease all mineral rights and interests that were conveyed by the state for the establishment of the Guadalupe Mountains National Park if:

(1) Congress declares by an act that the national welfare or an emergency requires the development and production of minerals in the park; and

(2) Congress authorizes the Secretary of Interior of the U. S. to lease park land for drilling, mining, developing, or producing minerals.

(b) If oil, gas, or other minerals are discovered and produced in commercial quantities from land outside the park sufficient to cause drainage of minerals from in the park and the Secretary of Interior participates in a communitization agreement or takes other action to protect the rights of the United States, the state retains its right to its proper share of the proceeds of the agreement or action. The state's proper share is not less than all bonuses, rentals, and royalties attributable to mineral rights conveyed to the United States for the establishment of Guadalupe Mountains National Park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 23.035 to 23.040 reserved for expansion]

SUBCHAPTER D. DAVY CROCKETT NATIONAL FOREST

§ 23.041. Agreements for Wildlife Management

(a) The department may agree with the proper agency of the United States for the protection and management of wildlife resources and for restocking desirable species of wildlife in portions of the Davy Crockett National Forest, in Houston and Trinity counties, that can be designated by a natural boundary. A natural boundary may be a road, lake, stream, canyon, rock, bluff, island, or other natural feature.

(b) No agreement under this section may cover more than 40,000 acres at any one time during any five-year period.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.042. Wildlife Defined

In this subchapter, "wildlife" means all kinds of birds, animals, and fish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.043. Hunting and Fishing Regulations

The commission may promulgate regulations applicable to the Davy Crockett National Forest, in Houston and Trinity counties, to:

(1) prohibit hunting and fishing for periods of time as necessary to protect wildlife;

(2) provide open seasons for hunting and fishing;

(3) provide limitations on the number, size, kind, and sex of wildlife that may be taken; and

(4) prescribe the conditions under which wildlife may be taken.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.044. Penalty

A person who violates any rule or regulation of the commission adopted under this subchapter or who hunts or fishes in the Davy Crockett National Forest at any time other than the open season is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 23.045 to 23.050 reserved for expansion]

SUBCHAPTER E. SABINE NATIONAL FOREST

§ 23.051. Agreements for Wildlife Management

The department may agree with the proper agency of the United States for the protection and management of wildlife resources and for restocking desirable species of wildlife in the parts of the Sabine National Forest, in Sabine and San Augustine counties, that are fenced.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.052. Wildlife Defined

In this subchapter, "wildlife" means all kinds of animals, birds, and fish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.053. Hunting and Fishing Regulations

The commission may promulgate regulations applicable to the Sabine National Forest, in Sabine and San Augustine counties, to:

- (1) prohibit hunting and fishing for periods of time as necessary to protect wildlife;
- (2) provide open seasons for hunting and fishing;
- (3) provide limitations on the number, size, kind, and sex of wildlife that may be taken; and
- (4) prescribe the conditions under which wildlife may be taken.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 23.054. Penalty

A person who violates any regulation of the commission adopted under this subchapter or who hunts or fishes in the Sabine National Forest at any time other than during the open season is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

TITLE 4. WATER SAFETY

CHAPTER 31. WATER SAFETY

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SUBCHAPTER A. GENERAL PROVISIONS

§ 31.001. Title

This chapter may be cited as the Water Safety Act.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.002. State Policy

It is the duty of this state to promote recreational water safety for persons and property in and connected with the use of all recreational water facilities in the state, to promote safety in the operation and equipment of facilities, and to promote uniformity of laws relating to water safety.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.003. Definitions

In this chapter:

- (1) "Boat" means a vessel not more than 65 feet in length, measured from end to end over the deck, excluding sheer, and manufactured or used primarily for noncommercial use.
- (2) "Vessel" means any watercraft, other than a seaplane on water, used or capable of being used for transportation on water.
- (3) "Motorboat" means any vessel propelled or designed to be propelled by machinery, whether or not the machinery is the principal source of propulsion.
- (4) "Owner" means the person who rightfully claims lawful possession of a vessel by virtue of the legal title or an equitable interest.
- (5) "Water of this state" means any public water within the territorial limits of this state.
- (6) "Operate" means to navigate or otherwise use a motorboat or a vessel.
- (7) "Dealer" means a person customarily engaged in the business of buying, selling, or exchanging motorboats or outboard motors at an established or permanent place of business in this state and that at each place of business

there is a sign conspicuously displayed showing the name of the dealership so that it may be located by the public and sufficient space to maintain an office, service area, and display of products.

(8) "Boat livery" means a business establishment engaged in renting or hiring out motorboats for profit.

(9) "Undocumented motorboat" means a vessel that is not required to have, and does not have, a valid marine document issued by the Bureau of Customs of the United States government or its successor.

(10) "Reasonable time" means 15 days.

(11) "Manufacturer" means a person engaged in the business of manufacturing new and unused motorboats and outboard motors for the purpose of sale or trade.

(12) "New" means every motorboat or outboard motor after its manufacture and before its sale or other transfer to a person not a manufacturer or dealer.

(13) "Outboard motor" means any self-contained internal combustion propulsion system, excluding fuel supply, which is used to propel a vessel and which is detachable as a unit from the vessel.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1252, ch. 484, §§ 1(a), 1(b), eff. Sept. 1, 1977.]

Sections 7, 8, and 11 of the 1977 amendatory act, which made various conforming amendments to this code, provided:

"Sec. 7. If a provision of this Act conflicts with another Act of the 65th Legislature, Regular Session, 1977, that amends an Act repealed by this Act or that amends a provision of the Parks and Wildlife Code amended by this Act, the other Act prevails over the provisions of this Act to the extent of the conflict."

"Sec. 8. This Act is intended as a recodification only and no change in the law is intended by this Act."

"Sec. 11. This Act takes effect September 1, 1977."

§ 31.004. Application of Chapter

The provisions of this chapter apply to all public water of this state and to all watercraft navigated or moving on the public water. Privately owned water is not subject to the provisions of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.005. Contracts With Federal Government

(a) The department may apply to any appropriate agency or officer of the United States for participation in or the receipt of aid from any federal program relating to water safety, including:

- (1) the acquisition, maintenance, and operating costs of facilities;
- (2) purchase of equipment and supplies;
- (3) personnel salaries; and
- (4) other federally approved reimbursable expenses, including personnel training costs, public boat safety and education costs, and general administrative and enforcement costs.

(b) The department may contract with the United States in order to comply with all necessary requirements for the receipt of funds made available under any federal legislation.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 31.006 to 31.020 reserved for expansion]

SUBCHAPTER B. IDENTIFICATION OF MOTORBOATS; REQUIRED NUMBERING

§ 31.021. Required Numbering

(a) Each undocumented motorboat on the water of this state shall be numbered in accordance with the provisions of this chapter unless specifically exempted. The numbering system shall be in accord with the Federal Boating Act of 1958 and subsequent federal legislation.

(b) No person may operate or give permission for the operation of any motorboat on the water of this state unless the motorboat is numbered as required by this chapter, unless the certificate of number awarded to the motorboat is in full force and effect, and unless the identifying number set forth in the certificate is properly displayed on each side of the bow of the motorboat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.022. Exemptions From Required Numbering

(a) A motorboat is not required to be numbered under the provisions of this chapter if it is:

- (1) operated within this state for a period not exceeding 90 consecutive days and is covered by a number in full force and effect which has been awarded under federal law or a federally approved numbering system of another state;
- (2) from a country other than the United States temporarily using the water of this state;
- (3) owned by the United States, a state, or a subdivision of a state; or
- (4) a ship's lifeboat.

(b) The department may exempt from numbering a class of motorboats if it finds that the numbering of the motorboats of that class will not materially aid in their identification. The department may also exempt a motorboat if it finds that it belongs to a class of motorboats that would be exempt from numbering under a numbering system of an agency of the federal government if it were subject to federal law.

(c) All canoes, punts, rowboats, sailboats, and rubber rafts when paddled, poled, oared, or windblown are exempt from the numbering provisions of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.023. Boats Numbered Under Federal or Other State Law.

The owner of any vessel or motorboat for which a current certificate of number has been awarded under any federal law or a federally approved numbering system of another state shall, if the motorboat or vessel is operated on the water of this state in excess of 90 days, make application for a certificate of number in the manner prescribed in this chapter for residents of this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.024. Application for Number

(a) The owner of each motorboat requiring numbering by this state shall file an application for a number with the department on forms approved by it. The application shall be signed by the owner of the motorboat and shall be accompanied by the fee prescribed in Section 31.026 of this code.

(b) On receipt of the application in approved form, the department shall enter it on the records of its office and issue to the applicant a certificate of number stating the number awarded to the motorboat and the name and address of the owner.

(c) The application form, the form of the certificate of number, and the manner of renewal shall be prescribed by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.025. Renewal of Certificates of Number

An application for the renewal of each certificate of number shall be prepared by the department and mailed to the owner of the vessel during the period of the last 90 days before the expiration date of the certificate. The same number shall be issued on renewal. Applications not received during the 90-day period shall be treated in the same manner as original applications.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.026. Fees

(a) Each application for an original or renewal certificate of number for a motorboat shall be accompanied by a two-year fee determined by the following classification schedule:

Class	Description of Boat	Fee
Class A	less than 16 feet in length	\$ 6.00
Class 1	16 feet or over and less than 26 feet in length	\$ 9.00
Class 2	26 feet or over and less than 40 feet in length	\$12.00
Class 3	40 feet or more in length	\$15.00

(b) The fee for a boat less than 16 feet in length owned by a boat livery and used for rental purposes

is \$3.00 for each original and renewal application for a certificate of number.

(c) Owners of newly purchased motorboats or other motorboats not previously operated in this state shall pay the full registration fee.

(d) In order to establish a two-year staggered registration period, fees for currently registered motorboats may be less than the full fee specified in Subsection (a) of this section if the expiration date established by the department is prior to March 21, 1974.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.027. Applicability of Fees to Commercial Boats

The registration fees required by this chapter are inapplicable to boats licensed by the state for commercial fishing or shrimping in the salt water of the state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.028. Certificate of Number

The certificate of number shall be pocket-size. The certificate or a facsimile of it shall be carried on board the vessel at all times. It does not have to be on the person of the operator if prior to trial the operator can produce for examination a valid certificate of number.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.029. Term of Certificate of Number

Every certificate of number awarded pursuant to this chapter shall continue in full force and effect for a period of two years unless sooner terminated or discontinued in accordance with the provisions of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.030. Duplicate Certificates and Decals

(a) If a certificate of number becomes lost, mutilated, or illegible, the owner of the motorboat for which the certificate was issued may obtain a duplicate on application to the department and the payment of a fee of \$1.

(b) If a registration decal becomes lost, mutilated, or illegible, the owner of the motorboat for which the decal was issued may obtain a replacement decal on application to the department and the payment of a fee of \$1.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1275, ch. 497, § 1, eff. Aug. 29, 1977.]

§ 31.031. Numbering Pattern

(a) The numbering pattern used consists of the prefix "TX" followed by a combination of exactly four numerals and further followed by a suffix of two letters. The group of numerals appearing between the letters shall be separated from the letters by hyphens or equivalent spaces.

(b) All basic numbers of each series shall begin with 1000. TX-1000-AA through TX-9999-AA will be allotted to dealers and manufacturers. TX-1000-AB through TX-9999-ZZ will be allotted to all other boat owners and livery operators.

(c) The letters "G", "I", "O", and "Q" shall be omitted from all letter sequences.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.032. Numbering on Bow

The owner shall plan on or attach to each side of the motorboat or vessel near the bow the identification number and a validation decal in the manner prescribed by the department. The number shall read from left to right and shall be of block characters of good proportion of not less than three inches in height. The numbers shall be of a color which will contrast with the hull material of the vessel and so maintained as to be clearly visible and legible.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.033. Unauthorized Numbers Prohibited

(a) No person may paint, attach, or otherwise display on either side of the bow of a motorboat a number other than the number awarded to the motorboat or granted reciprocity under this chapter.

(b) No person may deface or alter the certificate of number or the number assigned to and appearing on the bow of a boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.034. Issuance of Numbers; Agents for Department

(a) The department may award a certificate of number directly or may authorize any person to act as its agent for awarding certificates. An authorized agent may be assigned a block or blocks of numbers and certificates that, on award in conformity with this chapter and with rules and regulations of the department, are valid as if awarded directly by the department.

(b) An authorized agent shall execute a faithful performance bond of not less than \$1,000 in favor of the State of Texas.

(c) An agent is entitled to a fee for his services not to exceed 10 percent of the fee for each certificate.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.035. Rules and Regulations; Copies

Copies of all rules and regulations formulated under this chapter shall be furnished without cost with each certificate of number issued.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.036. Proof of Ownership

(a) A certificate of title is required as proof of ownership of a motorboat for which a certificate of number is sought unless the motorboat is of the type for which no certificate of title is required under Section 31.045 of this code.

(b) A certified statement of ownership is sufficient proof of ownership for a motorboat of a type for which a certificate of title is not required. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1253, ch. 484, § 1(c), eff. Sept. 1, 1977.]

§ 31.037. Change in Ownership Interest; Notice to Department

(a) The owner of a motorboat numbered in this state shall notify the department within a reasonable time of the transfer of all or any part of his interest in the motorboat, other than the creation of a security interest, or of the destruction or abandonment of the motorboat. The notice shall be accompanied by a surrender of the certificate of number.

(b) If the boat is destroyed or abandoned, the department shall cancel the certificate and enter the cancellation in its records.

(c) The purchaser of a motorboat shall present evidence of his ownership to the department within a reasonable time along with his name, address, and the number of the motorboat and shall at the same time pay to the department a fee of \$1. On receipt of the application and fee the department shall transfer the certificate of number issued for the motorboat to the new owner. Unless the application is made and fee paid within a reasonable time the motorboat is without a certificate of number, and it is unlawful for any person to operate the motorboat until the certificate is issued.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.038. Change of Address; Notice to Department

(a) The holder of a certificate of number shall notify the department within a reasonable time if his address no longer conforms to the address appearing on the certificate and shall inform the department of his new address.

(b) The department may provide in its regulations for the surrender of the certificate bearing the former address and its replacement with a certificate bearing the new address or for the alteration of the

outstanding certificate to show the new address of the holder. Changes of address shall be noted on the records of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.039. Public Records

All ownership records of the department made or kept under this chapter are public records.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.040. Boat Liveries

(a) The owner or operator of a boat livery shall obtain a certificate of number for all vessels capable of being used as motorboats that are used to rent or let for hire.

(b) To receive certificates of number, the owner of a boat livery shall apply directly to the department on application forms provided by the department. The application must state that the applicant is a boat livery within the meaning of this chapter, and the facts stated in the application must be sworn before an officer authorized to administer oaths.

(c) The owner of a boat livery shall keep a record of the name and address of the persons hiring any vessel designed or operated as a motorboat, the vessel's certificate of number, the time and date of departure, and the expected time of return. The record shall be kept for six months.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.041. Dealer's and Manufacturer's Number

(a) A dealer or manufacturer of motorboats in this state may obtain a dealer's and manufacturer's number for motorboats he wishes to show, demonstrate, or test on the water of this state instead of securing a certificate of number for each boat. The number shall be attached to any motorboat that he sends temporarily on the water.

(b) The application for a number must state that the applicant is a dealer or manufacturer within the meaning of this chapter, and the facts stated on the application must be sworn before an officer authorized to administer oaths. The two-year fee for a dealer's and manufacturer's number is \$25. No number may be issued until the provisions of this section have been satisfied.

(c) A dealer or manufacturer holding a dealer's and manufacturer's number may issue a reasonable temporary facsimile of the number which may be used by any authorized person. A person purchasing a motorboat may use the dealer's number for a period not to exceed 15 days prior to filing an application for a certificate of number. The form of the facsimile and the manner of display shall be prescribed by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.042. Cancellation of Certificates of Number; Grounds

(a) A certificate of number may be cancelled and the identification number voided by the department even though the action occurs before the expiration date on the certificate and even though the certificate is not surrendered to the department.

(b) Causes for cancellation of certificates and voiding of numbers include:

- (1) surrender of the certificate for cancellation;
- (2) issuance of a new number for the same boat;
- (3) issuance of a marine document by the Bureau of Customs for the same vessel;
- (4) false or fraudulent certification in an application for number;
- (5) failure to pay the prescribed fee; and
- (6) dismantling, destruction, or other change in the form or character of the motorboat or outboard motor so that it is no longer correctly described in the certificate or it no longer meets the definition of a motorboat or outboard motor.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1253, ch. 484, § 1(d), eff. Sept. 1, 1977.]

§ 31.043. Manufacturer's Serial Number

(a) All boats manufactured for sale in Texas shall carry a manufacturer's serial number clearly imprinted on the structure of the boat or displayed on a plate permanently attached to the boat.

(b) The owner of a vessel not required to carry a manufacturer's serial number may file an application for a serial number with the department on forms approved by it. The application must be signed by the owner of the vessel and must be accompanied by a fee of \$1. On receipt of the application in approved form, the department shall enter the information on the records of its office and shall issue to the applicant a serial number.

(c) No person may wilfully destroy, remove, alter, cover, or deface the manufacturer's serial number or plate bearing the serial number or the serial number issued by the department. No person may possess a boat with a serial number that has been altered, defaced, mutilated, or removed. A person who has a boat with an altered or missing serial number shall file a sworn statement with the department describing the boat, proving legal ownership, and, if known, stating the reason for the destruction, removal, or defacement of the serial number.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Section 31.044 reserved for expansion]

SUBCHAPTER B-1. CERTIFICATES OF TITLE FOR MOTORBOATS AND OUTBOARD MOTORS

§ 31.045. Ownership of Motorboats and Outboard Motors; Certificates of Title

(a) The ownership of a motorboat or of an outboard motor is evidenced by a certificate of title issued by the department, unless the motorboat or the outboard motor is new.

(b) The ownership of a new motorboat or a new outboard motor is evidenced by a manufacturer's or an importer's certificate executed on a form prescribed by the department.

(c) The ownership of a vessel, other than a motorboat more than 14 feet long, or of an outboard motor, other than an outboard motor having a manufacturer's rating of 12 or more horsepower, may, but is not required to be, evidenced by a certificate of title issued by the department, unless the vessel or outboard motor is new.

(d) The ownership of a new vessel, other than a motorboat more than 14 feet long, or of a new outboard motor, other than an outboard motor having a manufacturer's rating of 12 or more horsepower, may, but is not required to be, evidenced by a manufacturer's or importer's certificate executed on a form prescribed by the department.

(e) Separate certificates are required for motorboats and for outboard motors.

[Added by Acts 1977, 65th Leg., p. 1253, ch. 484, § 1(e), eff. Sept. 1, 1977.]

§ 31.046. Application for Certificate of Title

(a) Except as provided in Subsections (b) and (c) of this section, the purchaser of a motorboat or an outboard motor shall apply to the department for a certificate of title not later than 20 days after the date of the sale of the motorboat or outboard motor.

(b) A manufacturer or a dealer who sells a motorboat or an outboard motor to a person other than a manufacturer or a dealer shall apply to the department for a certificate of title for the motorboat or outboard motor in the name of the purchaser not later than 20 days after the date of the sale.

(c) A dealer who acquires a motorboat or an outboard motor, other than a new motorboat or outboard motor, is not required to apply for a certificate of title in the name of the dealer, but on resale of the motorboat or outboard motor shall apply for the subsequent purchaser under Subsection (b) of this section and shall submit to the department the endorsed certificate of title acquired by the dealer.

[Added by Acts 1977, 65th Leg., p. 1254, ch. 484, § 1(e), eff. Sept. 1, 1977.]

§ 31.047. Application; Form and Content; Fee

(a) A person may apply for a certificate of title on a form prescribed by the department.

(b) The form must contain:

- (1) the name and address of the owner;
- (2) a description of the motorboat or outboard motor, including, as appropriate, the manufacturer, make, model, year, length, construction material, manufacturer's or builder's number, hull identification number (HIN), motor number, outdrive number, and horsepower;
- (3) name and address of purchaser;
- (4) date of purchase;
- (5) name and address of any security interest owner; and
- (6) other information required by the department to show the ownership of the motorboat or outboard motor, a security interest in the motorboat or outboard motor, or a further description of items listed in the subdivision.

(c) The application must be accompanied by other evidence reasonably required by the department to establish that the applicant or other person is entitled to a certificate of title or a noted security interest. The evidence may include:

- (1) a certificate of title issued by another state or jurisdiction;
- (2) a manufacturer's or importer's certificate;
- (3) a bill of sale, assignment, or contract;
- (4) a promissory note;
- (5) a security agreement;
- (6) an invoice;
- (7) a bill of lading;
- (8) an affidavit;
- (9) a probate or heirship proceeding or information;
- (10) a judgment of a court of competent jurisdiction; or
- (11) other documents.

(d) An application for a certificate of title must be accompanied by the fee required by Section 31.048 of this code.

[Added by Acts 1977, 65th Leg., p. 1254, ch. 484, § 1(e), eff. Sept. 1, 1977.]

§ 31.048. Fee

The fee for the issuance of a certificate of title or for the notation of a security interest, lien, or other encumbrance is \$3.50 and is treated as fees collected under Section 31.026 of this code.

[Added by Acts 1977, 65th Leg., pp. 1255, 1259, ch. 484, §§ 1(e), 9, eff. Sept. 1, 1977.]

§ 31.049. Form of Certificate of Title

(a) A certificate of title must be on a form prescribed by the department and must contain:

- (1) the name and address of the owner of the motorboat or outboard motor;
- (2) the name of the owner of a security interest in the motorboat or outboard motor; and
- (3) a description of the motorboat or outboard motor.

(b) If there is no lien on the motorboat or outboard motor, the original certificate of title shall be delivered to the owner and a copy retained by the department.

(c) If there is a lien on the motorboat or outboard motor, the original certificate of title shall be sent to the first lienholder, a duplicate original certificate shall be sent to the owner, and a copy shall be retained by the department.

(d) "Original" shall be printed on an original certificate of title and "duplicate original" shall be marked on a duplicate of the original certificate.

(e) Title may be transferred only by surrender of the original certificate of title properly endorsed to show the transfer.

[Added by Acts 1977, 65th Leg., p. 1255, ch. 484, § 1(e), eff. Sept. 1, 1977.]

§ 31.050. Form of Manufacturer's and Importer's Certificate

(a) A manufacturer's certificate or an importer's certificate must include:

- (1) a description of the motorboat or outboard motor as required by Subdivision (2) of Subsection (b) of Section 31.047 of this code;
- (2) the name and place of construction or other origin;
- (3) the signature of the manufacturer or an equivalent of the signature of the manufacturer; and
- (4) the endorsement of the original and each subsequent transferee, including the applicant for the original certificate of title.

(b) A lien, security interest, or other encumbrance may not be shown on a manufacturer's or importer's certificate.

(c) A security interest may be perfected in a new motorboat or outboard motor as provided in Chapter 9, Business & Commerce Code.

[Added by Acts 1977, 65th Leg., p. 1255, ch. 484, § 1(e), Sept. 1, 1977.]

§ 31.051. Replacement Certificates

The department shall provide by regulation for the replacement of lost, mutilated, or stolen certificates.

[Added by Acts 1977, 65th Leg., p. 1255, ch. 484, § 1(e), eff. Sept. 1, 1977.]

§ 31.052. Liens

(a) Except as provided in Subsection (c) of Section 31.050 of this code, all liens, security interests, and other encumbrances in a motorboat or outboard motor:

(1) shall be noted on the certificate of title of the motorboat or outboard motor to which the lien, interest, or encumbrance applies;

(2) take priority in the chronological order that each is noted on the certificate of title; and

(3) are valid as against other general creditors of the owner of the motorboat or outboard motor, subsequent purchasers of the motorboat or outboard motor, and a holder of unnoted or subsequent liens, security interests, or encumbrances.

(b) This section applies to liens, security interests, and encumbrances created after January 1, 1976.

[Added by Acts 1977, 65th Leg., p. 1255, ch. 484, § 1(e), eff. Sept. 1, 1977.]

§ 31.053. Transfers of Motorboats and Outboard Motors

(a) No person may sell, assign, transfer, or otherwise dispose of an interest in a motorboat or an outboard motor without:

(1) if the transferee is not a manufacturer or a dealer and the vessel or outboard motor is new, delivering to the department a manufacturer's or importer's certificate showing the endorsement of the manufacturer and all intervening owners;

(2) if the transferee is a manufacturer or a dealer and the vessel or outboard motor is new, delivering to the transferee a manufacturer's or importer's certificate showing the endorsement of the manufacturer and all intervening owners;

(3) if the motorboat or outboard motor is not covered by a certificate of title or a manufacturer's or importer's certificate and if the transferor is a manufacturer or dealer, delivering to the department sufficient evidence of title or other information to permit the issuance of a certificate of title for the motorboat or outboard motor in the name of the transferee;

(4) if the motorboat or outboard motor is not covered by a certificate of title or a manufacturer's or importer's certificate and if the transferor is not a manufacturer or dealer, delivering to the transferee sufficient evidence of title or other information to permit the transferee to apply for and receive a certificate of title for the motorboat or outboard motor in the name of the transferee; or

(5) delivering to the transferee a certificate of title for the motorboat or outboard motor in the name of the transferor and properly endorsed to show the transfer.

(b) A person does not acquire an interest in a motorboat or outboard motor until a certificate of title for the motorboat or outboard motor has been issued in the name of the person or, if the person is a manufacturer or a dealer, until the manufacturer's or importer's certificate is properly endorsed showing the signature of the manufacturer and all intervening owners.

[Added by Acts 1977, 65th Leg., p. 1256, ch. 484, § 1(e), eff. Sept. 1, 1977.]

§ 31.054. Provisions Applicable to Vessels Not Requiring a Certificate of Title

The provisions of Sections 31.046, 31.047, 31.049, and 31.050 of this code apply to vessels on which a certificate may but is not required to be issued.

[Added by Acts 1977, 65th Leg., p. 1256, ch. 484, § 1(e), eff. Sept. 1, 1977.]

§ 31.055. Exceptions

This subchapter does not apply to:

(1) vessels with a valid marine document issued by the Bureau of Customs of the United States or a federal agency that is a successor to the Bureau of Customs;

(2) an outboard motor of less than 12 horsepower as determined by the manufacturer's rating; and

(3) a motorboat 14 feet or less in length.

[Added by Acts 1977, 65th Leg., p. 1256, ch. 484, § 1(e), eff. Sept. 1, 1977.]

[Sections 31.056 to 31.060 reserved for expansion]

SUBCHAPTER C. REQUIRED EQUIPMENT

§ 31.061. Uniformity of Equipment Regulations; State Policy

It is the policy of the state that all equipment rules and regulations enacted under the authority granted in this chapter be uniform and consistent with the equipment provisions of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.062. Operation of Vessels Without Required Equipment Prohibited

No person may operate or give permission for the operation of a vessel that is not provided with the equipment required by this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.063. Classes of Motorboats

Motorboats subject to the provisions of this chapter are divided into four classes according to length as follows:

Class A. Less than 16 feet in length.

Class 1. 16 feet or over and less than 26 feet in length.

Class 2. 26 feet or over and less than 40 feet in length.

Class 3. 40 feet in length or over.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.064. Lights

(a) A vessel or motorboat when not at dock must have and exhibit at least one bright light, lantern, or flashlight from sunset to sunrise in all weather. A vessel or motorboat when underway between sunset and sunrise in all weather must have and exhibit the lights prescribed below for boats of its class. No other lights that may be mistaken for those prescribed may be exhibited.

(b) Each class A and class 1 motorboat must have the following lights:

(1) a bright white light aft to show all around the horizon; and

(2) a combined lantern in the fore part of the vessel and lower than the white light aft, showing green to starboard and red to port, so fixed as to throw the light from right ahead to two points abaft the beam on their respective sides.

(c) Each class 2 and class 3 motorboat must have the following lights and light screens:

(1) a bright white light in the fore part of the vessel as near the stem as practicable, so constructed as to show an unbroken light over an arc of the horizon of 20 points of the compass and so fixed as to throw the light 10 points on each side of the vessel, namely from right ahead to 2 points abaft the beam on either side;

(2) a bright white light aft to show all around the horizon and higher than the white light forward;

(3) a green light on the starboard side so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass and so fixed as to throw the light from right ahead to 2 points abaft the beam on the starboard side;

(4) a red light on the port side so constructed as to show an unbroken light over an arc of the horizon of 10 points of the compass and so fixed as to throw the light from right ahead to 2 points abaft the beam on the port side; and

(5) inboard screens fitted on the starboard and port side lights of sufficient length and so set as to prevent the side lights from being seen across the bow.

(d) Each class A and class 1 motorboat when propelled by sail alone must have the combined

lantern but not the white light aft prescribed in Subsection (b) of this section.

(e) Each class 2 and class 3 motorboat when propelled by sail alone must have the colored side lights, suitably screened, but not the white lights prescribed in Subsection (c) of this section.

(f) Motorboats of all classes when propelled by sail alone must have ready at hand a lantern or flashlight showing a white light which shall be exhibited in sufficient time to avert a collision.

(g) A white light required by this section must be visible at a distance of at least two miles. A colored light required by this section must be visible at a distance of at least one mile. In this section, "visible" means visible on dark nights with clear atmosphere.

(h) A motorboat propelled by sail and machinery must have the lights required by this section for motorboats propelled by machinery alone.

(i) A motorboat may have and exhibit the lights required by the Regulations for Preventing Collisions at Sea, 1948, Act of October 11, 1951 (65 Stat. 406-420), as amended, instead of the lights specified by this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.065. Whistles; Bells

(a) A motorboat of class 1, 2, or 3 must have an efficient whistle or other sound-producing mechanical appliance.

(b) A motorboat of class 2 or 3 must have an efficient bell.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.066. Life Preserving Devices

(a) A motorboat must have at least one life preserver, life belt, ring buoy, or other device of the sort prescribed by the regulations of the commandant of the Coast Guard for each person on board, so placed as to be readily accessible.

(b) A motorboat carrying passengers for hire must have a readily accessible life preserver of the sort prescribed by the regulations of the commandant of the Coast Guard for each person on board.

(c) The operator of a class A or class 1 motorboat, while underway, shall require every passenger 12 years of age or under to wear a life preserver of the sort prescribed by the regulations of the commandant of the Coast Guard. A life belt or ring buoy does not satisfy this requirement.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.067. Fire Extinguishers

(a) A motorboat must have the number, size, and type of fire extinguishers prescribed by the commandant of the Coast Guard.

(b) The fire extinguishers must be capable of promptly and effectively extinguishing burning gasoline. They must be kept in condition for immediate and effective use at all times and must be placed so as to be readily accessible.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.068. Flame Arrestors; Backfire Traps

A motorboat must have the carburetor or carburetors of every engine using gasoline as fuel, except outboard motors, equipped with an efficient flame arrestor, backfire trap, or other similar device prescribed by the regulations of the commandant of the Coast Guard.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.069. Ventilators

Each motorboat and vessel, except an open boat, using as fuel any liquid of a volatile nature must have the equipment prescribed by the commandant of the Coast Guard designed to ventilate properly and efficiently the bilges of the engine and fuel tank compartments so as to remove any explosive or inflammable gases.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.070. Exhaust Water Manifold; Muffler

A motorboat operating on the water of this state must have an exhaust water manifold or a factory-type muffler installed on the engine.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.071. Rearview Mirrors

(a) A vessel used to tow a person or persons on water skis or an aquaplane or similar device on the water of this state must have a rearview mirror of a size no less than four inches from bottom to top or across from one side to the other. The mirror must be mounted firmly so as to give the boat operator a full and complete view beyond the rear of the boat at all times.

(b) Subsection (a) of this section does not apply to motorboats or vessels used in water ski tournaments, competitions, exhibitions, or trials.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.072. Racing Boats; Equipment Exemptions

(a) A motorboat designed and intended solely for racing need not have a whistle or other sound-pro-

ducing mechanical appliance or a bell as required by Section 31.065 of this code or a fire extinguisher as required by Section 31.067 of this code while competing in a race or while engaged in navigation that is incidental to tuning up for a race conducted in accordance with the provisions of this chapter.

(b) A racing craft engaged in a race sanctioned by the governing board of any public water of this state need not have an exhaust water manifold or factory-type muffler installed on the engine as required by Section 31.070 of this code if written permission is granted by the governing board of the water body. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.073. Canoes, Punts, Rowboats, Sailboats, and Rubber Rafts; Equipment Exemptions

All canoes, punts, rowboats, sailboats, and rubber rafts when paddled, poled, oared, or windblown are exempt from all the required safety equipment except the following:

(1) one Coast Guard approved lifesaving device for each person aboard; and

(2) the lights prescribed for class A vessels in Section 31.064 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 31.074 to 31.090 reserved for expansion]

SUBCHAPTER D. BOATING REGULATIONS

§ 31.091. Uniformity of Boating Regulations

In the interest of uniformity, it is the policy of the State of Texas that the basic authority for the enactment of boating regulations is reserved to the state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.092. Local Regulations

(a) The governing body of an incorporated city or town, with respect to public water within its corporate limits and all lakes owned by it, may designate by ordinance certain areas as bathing, fishing, swimming, or otherwise restricted areas and may make rules and regulations relating to the operation and equipment of boats which it deems necessary for the public safety. The rules and regulations shall be consistent with the provisions of this chapter.

(b) The commissioners court of a county, with respect to public water within the territorial limits of the county that is outside of the limits of an incorporated city or town or a political subdivision designated in Subsection (c) of this section and that are not lakes owned by an incorporated city or town,

may enter an order on its books designating certain areas as bathing, fishing, swimming, or otherwise restricted areas and may make rules and regulations relating to the operation and equipment of boats which it deems necessary for the public safety. The rules and regulations shall be consistent with the provisions of this chapter.

(c) The governing board of a political subdivision of the state created pursuant to Article XVI, Section 59, of the Texas Constitution, for the purpose of conserving and developing the public water of the state, with respect to public water impounded within lakes and reservoirs owned or operated by the political subdivision, may designate by resolution or other appropriate order certain areas as bathing, fishing, swimming, or otherwise restricted areas and may make rules and regulations relating to the operation and equipment of boats which it deems necessary for the public safety. The rules and regulations shall be consistent with the provisions of this chapter.

(d) A copy of all rules and regulations adopted under this section shall be summarily filed with the department.

(e) No city, town, village, special district, or other political subdivision of the state may impose or collect a fee for the registration or inspection of vessels to be used on public water against the owner or operator of a vessel used on public water. This section does not apply to the Local Sales and Use Tax Act, as amended (Article 1066c, Vernon's Texas Civil Statutes), nor to any launch fees, docking fees, entry fees, or other recreational fees which may be imposed or collected by any political subdivision of the State of Texas for the use of the facilities afforded by any such district to the public.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1274, ch. 496, § 1, eff. Aug. 29, 1977.]

§ 31.093. Rules of the Road

The United States Coast Guard Inland Rules apply to all public water of this state to the extent they are applicable.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.094. Reckless or Negligent Operation

No person may operate any motorboat or vessel or manipulate any water skis, aquaplane, or similar device in a wilfully or wantonly reckless or negligent manner that endangers the life, limb, or property of any person.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.095. Excessive Speed

No person may operate any boat at a rate of speed greater than is reasonable and prudent, having due

regard for the conditions and hazards, actual and potential, then existing, including weather and density of traffic, or greater than will permit him, in the exercise of reasonable care, to bring the boat to a stop within the assured clear distance ahead. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.096. Reckless Operation and Excessive Speed

(a) No person may operate a vessel or manipulate water skis, an aquaplane, or a similar device on the water of this state in wilful or wanton disregard of the rights or safety of others or without due caution or circumspection, and at a speed or in a manner that endangers, or is likely to endanger, a person or property.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$500. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.097. Operation of Vessel While Intoxicated

(a) No person may operate a vessel or manipulate water skis, an aquaplane, or a similar device in a careless or imprudent manner while he is intoxicated or under the influence of intoxicating liquor or while he is under the influence of a narcotic drug, barbiturate, or marijuana.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$500 or by confinement in the county jail for not more than six months, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.098. Hazardous Wake or Wash

No person may operate a motorboat so as to create a hazardous wake or wash.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.099. Circular Course Around Fisherman or Swimmer

(a) No person may operate a motorboat in a circular course around any other boat any occupant of which is engaged in fishing or around any person swimming.

(b) No swimmer or diver may come within 200 yards of a sight-seeing or excursion boat except for maintenance purposes or unless within an enclosed area.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.100. Interference With Markers or Ramps

(a) No person may moor or attach a boat to a buoy, beacon, light marker, stake, flag, or other aid to safe operation placed upon the public water of this state by or under the authority of the United States or the State of Texas. No person may move, remove, displace, tamper with, damage, or destroy the markers or aids to safe operation.

(b) No person may moor or attach a vessel to a state-owned boat launching ramp except in connection with the launching or retrieving of a boat from the water.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.101. Obstructing Passage

(a) No person may anchor a boat in the traveled portion of a river or channel so as to prevent, impede, or interfere with the safe passage of any other boat through the same area.

(b) No person may anchor a vessel near a state-owned boat ramp so as to prevent, impede, or interfere with the use of the boat ramp.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.102. Operating Boats in Restricted Areas

No person may operate a boat within a water area that has been clearly marked, by buoys or some other distinguishing device, as a bathing, fishing, swimming, or otherwise restricted area by the department or by a political subdivision of the state. This section does not apply to a patrol or rescue craft or in the case of an emergency.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.103. Water Skis, Aquaplanes, etc.: Time and Manner of Operation

(a) No person may operate a vessel on any water of this state towing a person or persons on water skis, surfboards, or similar devices and no person may engage in water-skiing, surfboarding or similar activity at any time between the hours from one hour after sunset to one hour before sunrise. This subsection does not apply to motorboats or vessels used in water ski tournaments, competitions, or exhibitions or trials therefor if adequate lighting is provided.

(b) All motorboats having in tow or otherwise assisting in towing a person on water skis, aquaplanes, or similar contrivances shall be operated in a careful and prudent manner and at a reasonable distance from persons and property so as not to endanger the life or property of any person.

(c) A person being towed on water skis, aquaplanes, or similar devices by a vessel is considered an occupant of the vessel.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.104. Accidents: Duty of Operators

The operator of a vessel involved in a collision, accident, or casualty shall:

(1) render to other persons affected such assistance as may be practicable and necessary in order to save them from or minimize any danger insofar as he can do so without serious danger to his own vessel, crew, and passengers; and

(2) give his name, address, and identification of his vessel in writing to any person injured and to the owner of any property damaged in the collision, accident, or other casualty.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

Amendment by Acts 1975, 64th Leg., p. 108, ch. 48, § 1

Acts 1975, 64th Leg., p. 108, ch. 48, § 1, purports to amend Civil Statutes, Art. 9206, § 24, by adding a subsec. (g), without reference to repeal of said article by Acts 1975, 64th Leg., p. 1804, ch. 545, § 2(a)(4). As so added, subsec. (g) reads:

“(g) A person who intentionally or knowingly violates or fails to comply with the provisions of Subsection (a), Section 21 of this Act [now, this section] is guilty of a misdemeanor and on conviction is punishable by confinement in jail for a term not to exceed one year, or by a fine not to exceed \$2,000, or by both.”

§ 31.105. Accident Reports

(a) The operator of a vessel involved in a collision, accident, or other casualty that results in death or injury to a person or damage to property in excess of \$100 shall file with the department on or before the expiration of 30 days after the incident a full description of the collision, accident, or casualty in accordance with regulations established by the department.

(b) The accident reports are confidential and are inadmissible in court as evidence.

(c) On request made by an authorized official or agency of the United States, any information available to the department under Subsection (a) of this section shall be sent to the official or agency.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 835, ch. 311, § 1, eff. May 30, 1977.]

[Sections 31.106 to 31.120 reserved for expansion]

SUBCHAPTER E. ENFORCEMENT
AND PENALTIES

§ 31.121. Enforcement Officers

(a) All peace officers of this state and its political subdivisions and game management officers are enforcement officers for the purposes of this chapter.

(b) The enforcement officers may enforce the provisions of this chapter by arresting and taking into custody any person who commits any act or offense prohibited by this chapter or who violates any provision of this chapter.

(c) Game management officers may assist in the search for and rescue of victims of water-oriented accidents.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.122. Water Safety Vessels: Lights

Only the department and police water safety vessels may use rotating blue beacon lights.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.123. Required Response to Police Water Safety Vessel

The operator of a boat underway, on sighting a rotating blue beacon light, shall reduce power immediately and bring his boat to a no-wake speed and subsequent stop until the intention of the water safety vessel is understood.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.124. Inspection of Vessels

(a) In order to enforce the provisions of this chapter, an enforcement officer may stop and board any vessel subject to this chapter and may inspect the boat to determine compliance with applicable provisions.

(b) An officer boarding a vessel shall first identify himself by presenting proper credentials.

(c) The operator of a vessel required by this chapter to hold a certificate of number aboard the vessel shall show the certificate to the officer on demand, and failure to do so constitutes a violation of this chapter.

(d) No person operating a boat on the water of this state may refuse to obey the directions of an enforcement officer when the officer is acting under the provisions of this chapter.

(e) The safety of the vessel shall always be the paramount consideration of an arresting officer.

(f) If an enforcement officer determines that a vessel and its associated equipment is being used in violation of this chapter or of any regulation or standard issued thereunder so as to create an espe-

cially hazardous condition, he may direct the operator to return to mooring, and the vessel may not be used until the condition creating the violation is corrected.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.125. Violations; Notice to Appear

(a) An enforcement officer who arrests a person for a violation of this chapter may deliver to the alleged violator a written notice to appear within 15 days after the date of the violation before the justice court having jurisdiction of the offense.

(b) The person arrested shall sign the notice to appear promising to make his appearance in accordance with the requirements set forth in the notice. After signing the notice the person may be released. Failure to appear before the court in the county having jurisdiction constitutes a violation of the chapter. A warrant for the arrest of the person failing to appear may be issued.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.126. Venue

(a) Venue for an alleged violation or offense under the provisions of this chapter is in the justice court or county court having jurisdiction where the violation or offense was committed.

(b) For an offense under the provisions of this chapter, there is a presumption that the offense was committed in the justice precinct and county where the dam containing the body of water is located.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.127. General Penalty

A person who violates or fails to comply with any provision of this chapter, or who violates or fails to comply with a city ordinance or order of a commissioners court or a political subdivision of the state made or entered under this chapter, for which no other penalty is applicable is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.128. Disposition of Fines

(a) A justice of the peace, or a clerk of any court, or any other officer of this state receiving any fine imposed by a court for a violation of this chapter shall send the fine to the department within 10 days after receipt and shall note the docket number of the case, the name of the person fined, and the section or article of the law under which the conviction was secured.

(b) In justice court cases, the amount to be remitted to the fund shall be 85 percent of the fine. In county court cases the amount to be remitted to the fund shall be 80 percent of the fine. All costs of the court shall be retained by the court having jurisdiction of the offense and deposited as other fees in the proper county fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.129. Violation of Sewage Disposal Regulations

(a) A person who violates or fails to comply with a regulation of the Water Quality Board under Section 21.097, Water Code, is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. A separate offense is committed each day a violation continues.

(b) The enforcement provisions of this subchapter apply to violations punishable by this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 31.130 to 31.140 reserved for expansion]

SUBCHAPTER F. WATER FACILITIES

§ 31.141. Boat Ramps

(a) The department may construct and maintain boat ramps and access roads by the use of existing or additional services or facilities of the department.

(b) On the completion of the work, the department shall prepare and send vouchers to the comptroller of public accounts payable to the department or to any person, firm, or corporation for reimbursement for the work, and the comptroller shall issue warrants on the special boat fund to reimburse the department or any person, firm, or corporation for the work performed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 31.142. Buoys and Markers

The department may provide for a standardized buoy-marking program for the inland water of the state. The department may purchase and provide the controlling agency of the water bodies with buoys and markers from funds remaining in the special boat fund in excess of the cost of administering this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

TITLE 5. WILDLIFE CONSERVATION

SUBTITLE A. HUNTING AND FISHING LICENSES

CHAPTER 41. RECIPROCAL HUNTING AND FISHING PRIVILEGES

Section

41.001. Reciprocal Hunting and Fishing.

41.002. Reciprocal Hunting and Fishing: Louisiana.

Section

41.003. Reciprocal License Agreements: Border States.

41.004. Reciprocal Agreements Proclaimed.

41.005. Termination of Reciprocal License Agreement.

41.006. Regulations for Reciprocal License Agreements.

41.007. Violation of Rule or Regulation.

41.008. Reciprocal License Agreements: Any Other State.

§ 41.001. Reciprocal Hunting and Fishing

(a) A nonresident who is 17 years old or older and under 66 years old may hunt and fish in this state without a Texas license if he has in his immediate possession a valid hunting or fishing license issued to him by the state of his residence and if the state of his residence likewise allows hunting and fishing by Texas residents who have Texas licenses.

(b) A nonresident who may hunt and fish in this state under this section is subject to all laws relating to the taking of wildlife resources.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 41.002. Reciprocal Hunting and Fishing: Louisiana

(a) A Louisiana resident may hunt and fish for sport in Jefferson, Orange, and Shelby counties if he holds a valid Louisiana license and if the State of Louisiana allows a reciprocal privilege to Texas residents of Jefferson, Orange, and Shelby counties to hunt and fish in Louisiana parishes adjacent to those counties.

(b) A Louisiana resident may hunt and fish for sport on the water of Sabine River and Sabine Lake that form a common boundary between Texas and Louisiana if he holds a valid Louisiana license and if the State of Louisiana allows a reciprocal privilege to Texas residents who hold valid Texas licenses.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 41.003. Reciprocal License Agreements: Border States

(a) The director shall negotiate for the commission with the proper representatives of each state having a common border with Texas to allow reciprocal fishing and migratory waterfowl hunting on rivers and lakes on the common boundary between Texas and the border state.

(b) An agreement must provide that residents of the border state who have a commercial or sport fishing license or a hunting license issued by the border state may fish or hunt migratory waterfowl on rivers and lakes of the common border, and Texas residents holding Texas licenses are extended equal privileges.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 41.004. Reciprocal Agreements Proclaimed

The commission may approve any agreement under Section 41.003 of this code by proclamation. A proclamation becomes effective 30 days after the day it is issued or 30 days after the agreement has been lawfully accepted by the bordering state, whichever is later.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 41.005. Termination of Reciprocal License Agreement

An agreement under Section 41.003 of this code may be terminated by the commission at any time after 90 days from the day notice of the termination is given to each border state that is a party to the agreement.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 41.006. Regulations for Reciprocal License Agreements

(a) The commission may make regulations conforming to an agreement under Section 41.003 of this code for the conservation of fish and wildlife.

(b) A regulation may be adopted only at a meeting of the commission in Austin, and any interested person is entitled to be heard at the meeting.

(c) Regulations adopted by the commission or issued by the director, when authorized by the commission to issue regulations, take effect 30 days after their adoption or issuance.

(d) After adoption of a regulation, a copy shall be numbered and filed in the office of the commission. Other copies shall be filed with the secretary of state, sent to the county clerk and county attorney in each county affected by the regulation, sent to the appropriate agency in the border state to which the agreement applies, and sent to each employee of the department who performs duties in a county affected by the regulation.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 41.007. Violation of Rule or Regulation

(a) Any person who violates a regulation of the commission under Section 41.006 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

(b) Each freshwater fish and migratory waterfowl taken in violation of a regulation of the commission under Section 41.006 of this code is a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 41.008. Reciprocal License Agreements: Any Other State

The department may agree with any other state to license sport hunting and fishing by residents of the other state at the same fee as Texas residents are licensed if the other state licenses Texas residents at the same fee as residents of the other state are licensed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 42. GENERAL HUNTING LICENSE**Section**

- 42.001. Definitions.
- 42.002. Resident License Required.
- 42.003. Exception: Resident Hunting on Own Land.
- 42.004. Exception: Residents of Certain Age.
- 42.0041. Exception: Resident Disabled Veterans [NEW].
- 42.005. Nonresident License Required.
- 42.006. Exception: Migratory Birds.
- 42.007. Exception: Migratory Waterfowl.
- 42.008. Qualifications for Migratory Waterfowl License.
- 42.009. Exception: Certain Armed Services Members.
- 42.010. Issuance and Form of Licenses.
- 42.011. Issuance of License by Agents.
- 42.012. Resident License Fee.
- 42.013. Resident-Exempt License Fee.
- 42.014. Nonresident Small Game License Fee.
- 42.0141. General Nonresident Hunting License Fee [NEW].
- 42.015. Migratory Bird License Fee.
- 42.016. Migratory Waterfowl License Fee.
- 42.017. Duplicate License.
- 42.0175. Expiration Date [NEW].
- 42.018. Tag to be Attached to Deer.
- 42.0185. Tag to be Attached to Turkey [NEW].
- 42.019. Possession of Certain Parts of Deer.
- 42.020. Deer or Turkey Tags: Prohibited Acts.
- 42.021. Bag Limits and Season Not Affected.
- 42.022. One License for Each Year.
- 42.023. Hunting Under License of Another.
- 42.024. Exhibiting License.
- 42.025. Penalty.

§ 42.001. Definitions

In this chapter:

(1) "Resident" means an individual, other than an alien, who has been a resident of this state for more than six months immediately before applying for a hunting license.

(2) "Alien" means an individual who is not a citizen of the United States and who has not declared his intention to become a citizen.

(3) "Nonresident" means an individual who is not a resident.

(4) "Carcass" means the dead body of a deer minus the offal and inedible organs, or the trunk with the limbs and head attached, with or without the hide.

(5) "Final destination" means the permanent residence of the hunter, the permanent residence of any other person receiving a dead wild

turkey, deer carcass, or any part of a deer carcass, or a commercial processing plant after the carcass or turkey has been finally processed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 612, ch. 223, § 1, eff. Sept. 1, 1977.]

Section 2 of the 1977 Act amended § 42.010(b); § 3 amended § 42.017(b), (c); § 4 added § 42.0185; § 5 amended § 42.020; § 6 amended § 42.021; and § 7 thereof provided: "This Act takes effect September 1, 1977."

§ 42.002. Resident License Required

(a) No resident may hunt wild turkey or deer in this state without first having acquired a current resident hunting license.

(b) No resident may hunt any wild bird or animal outside the county of his residence without first having acquired a resident hunting license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.003. Exception: Resident Hunting on Own Land

(a) A resident may hunt on land on which he resides for any wild bird, except turkey, and any wild animal, except deer, without a resident hunting license.

(b) A resident may hunt on land on which he resides for turkey and deer without a resident hunting license if he has acquired a resident exemption hunting license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.004. Exception: Residents of Certain Age

(a) A resident who is under 17 years old or who is 65 years old or older may hunt any wild bird, except turkey, and any wild animal, except deer, without a resident hunting license.

(b) A resident who is under 17 years old or who is 65 years old or older may hunt wild turkey and deer without a resident hunting license if he has acquired a resident exemption hunting license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.0041. Exception: Resident Disabled Veterans

(a) A resident who is a veteran of the armed forces of the United States, who has a service-connected disability, as defined by the Veterans' Administration, consisting of the loss of the use of a lower extremity or of a disability rating of 60 percent or more, and who is receiving compensation from the United States for the disability may hunt any wild bird except turkey and any wild animal except deer without a resident hunting license.

(b) A resident veteran as described in Subsection (a) of this section may hunt wild turkey and deer without a resident hunting license if he has acquired a resident exemption hunting license.

[Added by Acts 1977, 65th Leg., p. 132, ch. 61, § 2, eff. Aug. 29, 1977.]

§ 42.005. Nonresident License Required

(a) No nonresident in this state may hunt a nonindividually owned wild axis deer in Bexar County, wild deer, wild turkey, wild elk, wild antelope, wild desert bighorn sheep, wild black bear, wild collared peccary or javelina, or wild aoudad sheep in Armstrong, Briscoe, Donley, Floyd, Hall, Motley, Randall, and Swisher counties without first having acquired a general nonresident hunting license.

(b) No nonresident may hunt any wild bird or animal in this state without first having acquired a general nonresident hunting license or a nonresident small game hunting license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 317, ch. 150, § 1, eff. Aug. 29, 1977.]

§ 42.006. Exception: Migratory Birds

(a) A nonresident may hunt migratory birds without a nonresident hunting license if he has acquired a valid migratory bird hunting license.

(b) A migratory bird hunting license is valid for a period of five consecutive days only.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.007. Exception: Migratory Waterfowl

A nonresident may hunt migratory waterfowl without a nonresident hunting license if he qualifies for and has received a migratory waterfowl hunting license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.008. Qualifications for Migratory Waterfowl License

A nonresident residing in a state or nation that allows a resident of this state to purchase a reciprocal migratory waterfowl hunting license at the same fee qualifies to acquire a migratory waterfowl hunting license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.009. Exception: Certain Armed Services Members

(a) A nonresident who is a member of the armed services may hunt any wild bird or animal in this state without a nonresident hunting license if he qualifies for and has received a resident hunting license.

(b) A member of the armed services on active duty for more than 30 days at a federal facility or installation in this state qualifies to acquire a resident hunting license.

(c) Adequate proof of length of duty assignment may be required from each license applicant, and the validity of the license is contingent on the appli-

cant's proof, either by certification on the license or by use of a separate form issued by the department. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.010. Issuance and Form of Licenses

(a) The department shall prescribe the form of and issue the licenses authorized by this chapter.

(b) Each license authorizing deer and turkey hunting must have attached the number of deer and turkey tags equal to the number of deer and turkey allowed by law to be killed during the year for which the license is issued.

(c) A resident exemption hunting license shall be printed to show clearly on its face that it is an exemption license and shall be signed by the licensee.

(d) No person may issue or receive a license authorized by this chapter except on the form provided by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 612, ch. 223, § 1, eff. Sept. 1, 1977.]

§ 42.011. Issuance of License by Agents

The department may authorize the issuance of licenses by agents.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.012. Resident License Fee

The fee for a resident hunting license is \$5.25, 25 cents of which may be retained by an authorized agent issuing the license as his collection fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.013. Resident-Exempt License Fee

The fee for a resident-exempt hunting license is \$1.25, 25 cents of which may be retained by the officer issuing the license as his collection fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 40, ch. 24, § 1, eff. March 24, 1977.]

§ 42.014. Nonresident Small Game License Fee

The fee for a nonresident small game hunting license is \$37.75, 75 cents of which may be retained by the officer issuing the licenses as his collection fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 317, ch. 150, § 2, eff. Aug. 29, 1977.]

§ 42.0141. General Nonresident Hunting License Fee

The fee for a general nonresident hunting license is \$100.75, 75 cents of which may be retained by the officer issuing the license as his collection fee. [Added by Acts 1977, 65th Leg., p. 317, ch. 150, § 3, eff. Aug. 29, 1977.]

§ 42.015. Migratory Bird License Fee

The fee for a migratory bird hunting license is \$10.25, 25 cents of which may be retained by the officer issuing the license as his collection fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.016. Migratory Waterfowl License Fee

The fee for a migratory waterfowl hunting license is \$10.25, 25 cents of which may be retained by the officer issuing the license as his collection fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.017. Duplicate License

(a) If a person licensed to hunt under the provisions of this chapter loses the license or if the license is destroyed, the person may apply to the department for and receive a duplicate license.

(b) The application for a duplicate license is in the form of an affidavit and must contain a statement of fact concerning the loss or destruction of the license and a statement of the number of deer and turkey, if any, killed under the authority of the lost or destroyed license.

(c) A duplicate license entitling the holder to hunt deer and turkey shall have attached the number of deer tags allowed on the lost or destroyed license less the number of deer killed under the authority of the lost or destroyed license and the number of turkey tags allowed on the lost or destroyed license less the number of turkey killed under the authority of the lost or destroyed license.

(d) The fee for a duplicate license is 50 cents, 25 cents of which may be retained by the officer issuing the license as his collection fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 612, ch. 223, § 3, eff. Sept. 1, 1977.]

§ 42.0175. Expiration Date

A resident hunting license, a resident exemption license, and a nonresident hunting license are valid only during the yearly period for which the licenses are issued without regard to the date on which a license is acquired. Each yearly period begins on September 1 of a year and extends through August 31 of the next year.

[Added by Acts 1977, 65th Leg., p. 1536, ch. 626, § 2, eff. Aug. 29, 1977.]

§ 42.018. Tag to be Attached to Deer

(a) No person may possess the carcass of a wild deer at any time before the carcass has been finally processed and delivered to the final destination unless there is attached to the carcass a properly executed tag provided by the department and issued to the person who killed the deer.

(b) A tag is properly executed when it is filled out to show the date and place the deer to which the tag is attached was killed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.0185. Tag to be Attached to Turkey

(a) No person may possess a dead wild turkey at any time before it has been finally processed and delivered to the final destination unless there is attached to the dead wild turkey a properly executed turkey tag provided by the department and issued to the person who killed the turkey.

(b) A turkey tag is properly executed when it is filled out to show the date and place the turkey to which the tag is attached was killed and to show other information required on the tag.

[Added by Acts 1977, 65th Leg., p. 613, ch. 223, § 4, eff. Sept. 1, 1977.]

§ 42.019. Possession of Certain Parts of Deer

(a) No person may possess the carcass of a wild deer with the head removed unless the carcass has been finally processed and delivered to the final destination.

(b) No person, other than the person who killed the deer, may receive or possess any part of a deer without a legible hunter's document attached to the carcass or part of the deer.

(c) A hunter's document is an instrument signed and executed by the person who killed the deer and must contain:

- (1) the name and address of the person who killed the deer;
- (2) the number of the hunting license of the person who killed the deer;
- (3) the date on which the deer was killed; and
- (4) the name of the ranch and the county where the deer was killed.

(d) A hunter's document shall remain with any part of the deer until it is finally processed and delivered to the final destination.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.020. Deer or Turkey Tags: Prohibited Acts

(a) No person may use more deer tags or turkey tags during a license year than are originally authorized by the hunting license for the year.

(b) No person may use the same deer tag on more than one deer.

(c) No person may use a deer tag or a turkey tag not issued to him.

(d) No person may use the same turkey tag on more than one turkey.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 613, ch. 223, § 5, eff. Sept. 1, 1977.]

§ 42.021. Bag Limits and Season Not Affected

The provisions of this chapter do not authorize any person to exceed any bag limit or to hunt deer or turkey during a closed season, and the attachment of deer or turkey tags as provided by this chapter is not prima facie evidence that the deer or turkey was lawfully killed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 613, ch. 223, § 6, eff. Sept. 1, 1977.]

§ 42.022. One License for Each Year

(a) No person may acquire or possess more than one hunting license during a license year.

(b) This section does not apply to the acquisition and possession of a duplicate hunting license acquired as provided in this chapter.

(c) This section does not apply to the acquisition and possession by a nonresident of both a general nonresident hunting license and a nonresident small game hunting license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 317, ch. 150, § 4, eff. Aug. 29, 1977.]

§ 42.023. Hunting Under License of Another

No person may hunt under a license issued to another or permit another to hunt under a license issued to him.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.024. Exhibiting License

No person required by the provisions of this chapter to have a hunting license may fail or refuse to show the license to an officer on demand.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 42.025. Penalty

A person who violates any provision of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

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SUBCHAPTER A. HUNTING BOAT LICENSE

§ 43.001. Hunting Boat License Required

No person owning or navigating a sailboat or powerboat may accommodate on board the boat for pay another person engaged in hunting unless the owner or navigator has acquired a hunting boat license from the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.002. Application for Hunting Boat License

The application for a hunting boat license must include:

- (1) the name of the vessel;
- (2) a statement describing the accommodations for passengers;
- (3) the number of crew members; and
- (4) a certification signed by the applicant on forms provided by the department and stating that the applicant will not violate any provision of this code with respect to hunting, that the applicant will attempt to prevent any person he accommodates on the vessel from violating any provision of this code with respect to hunting, and that the applicant will refuse to accommodate on the vessel any hunter who does not possess a hunting license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.003. Hunting Boat License Fee

The fee for a hunting boat license is \$25.
 [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.004. License Period

A license issued under this subchapter is valid for one year only.
 [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.005. Penalties

(a) A person who violates Section 43.001 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

(b) The hunting boat license of a person convicted of a violation of Section 43.001 of this code may be cancelled. A person whose license is cancelled under this section may not receive another hunting boat license for one year.
 [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 43.006 to 43.010 reserved for expansion]

SUBCHAPTER B. WHITE-WINGED DOVE STAMPS

§ 43.011. White-Winged Dove Stamp Required

No person may hunt white-winged dove in this state unless he has in his possession a white-winged dove stamp issued to him by the department.
 [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.012. Issuance of Stamp

(a) The department or its agent may issue a white-winged dove stamp to any person on the payment to the department of \$3.

(b) The stamp shall be issued in the form prescribed by the department and must be signed on its face by the person using the stamp.
 [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.013. Hunting License Required Also

The acquisition of a white-winged dove stamp does not authorize a person to hunt white-winged dove without having acquired a hunting license as provided in Chapter 42 of this code or authorize the hunting of white-winged dove at any time or by any means not otherwise authorized by this code.
 [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.014. Disposition of Stamp Fees

(a) Ten cents of the fee collected under this subchapter may be retained by the agent of the department, other than a department employee, as his collection fee.

(b) After deduction of the collection fee, if allowed, the receipts from stamp sales shall be sent to the department.

(c) The department shall deposit the stamp sale receipts in the state treasury in special game and fish fund no. 9. The receipts may be spent only for research and management for the protection of white-winged dove and for the acquisition, lease, or development of white-winged dove habitat in the state. Not more than one-half of the receipts may be expended for research and management.
 [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1208, ch. 456, § 7, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 734, ch. 275, § 1, eff. Aug. 29, 1977.]

§ 43.015. Refusal to Show Stamp

A person hunting white-winged dove who refuses on demand of any game management officer or peace officer to show a white-winged dove stamp is presumed to be in violation of Section 43.011 of this code.
 [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.016. Penalty

A person who violates Section 43.011 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.
 [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 43.017 to 43.020 reserved for expansion]

SUBCHAPTER C. PERMITS FOR SCIENTIFIC, ZOOLOGICAL, AND PROPAGATION PURPOSES

§ 43.021. Protected Wildlife

In this subchapter, "protected wildlife" means all animals, birds, fish, and other aquatic life the taking, possession, or propagation of which is regulated by law or by the department and includes endangered species.
 [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.022. Permit Authorized

The department may issue a permit to a qualified person to take protected wildlife for propagation purposes, zoological gardens, aquariums, and scientific purposes.
 [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.023. Permit is Defense

In any prosecution for the unlawful taking or transporting of wildlife, the possession of a permit issued under this subchapter to the accused is a complete defense if the conduct was authorized under the terms of the permit.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.024. Restrictions on Permits

(a) No permit may be issued for the taking or transportation of any endangered fish or wildlife the possession, taking, or transportation of which is prohibited by federal law.

(b) The department may refuse to grant a permit for the taking or transportation of endangered fish or wildlife from their natural habitat for propagation for commercial purposes if the fish or wildlife may be legally obtained from a source in this state other than from their natural habitat.

(c) No permit may be issued for the taking of migratory birds unless the applicant has obtained a federal permit for the taking of migratory birds.

(d) No permit may be issued for the taking of alligators or marine animals for display in an aquarium unless the aquarium is a public or commercial organization or enterprise.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.025. Application

(a) The application for a permit shall be made under oath and must state the species of protected wildlife to be taken or transported and the purpose of collection or transportation.

(b) The application must be endorsed by two recognized specialists in the biological field concerned who are residents of the United States and have known the applicant for at least five years; except that endorsement is not required for an application for a permit to take alligators or marine life for aquarium purposes.

(c) The department must find that an applicant for a permit to take alligators or marine life for aquarium purposes is qualified to carry out capture in a scientific manner without cruelty.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.026. Conditions of Permit; Expiration

(a) The department shall issue the permits under any conditions determined to be appropriate, including specifying the number and species of wildlife that may be taken.

(b) A permit expires on the last day of the year of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.027. Regulations

The department may make regulations governing the taking and possession of protected wildlife indigenous to the state for the scientific purposes, zoological gardens, and propagation purposes.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.028. Cancellation of Permit

The department may cancel a permit for any violation of the department's regulations.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.029. Reports

The holder of a permit shall file with the department before January 11 of the year after the expiration of the permit a report showing the number and species of wildlife taken under the permit and their disposition. The report shall also give the results of any research conducted under the permit.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.030. Penalty

A person who violates the conditions of a permit or a regulation of the department issued under this subchapter, or who fails to file a full and complete report as required by Section 43.029 of this code, is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 43.031 to 43.040 reserved for expansion]

SUBCHAPTER D. PRESERVE AND RESORT LICENSES

§ 43.041. Definitions

In this subchapter:

(1) "Shooting preserve" means the aggregate amount of land owned by one individual, partnership, firm, or corporation in a county and leased for hunting purposes. If an individual, partnership, firm, or corporation owns a single tract of land located partially in one county and partially in another county, the individual, partnership, firm, or corporation may not be required to have a separate shooting preserve license for that portion of the land located in the second county, unless the individual, partnership, firm, or corporation owns other land leased for hunting purposes in the second county. If an individual, partnership, firm, or corporation owns a single tract of land located partially in one county and partially in another

county and the individual, partnership, firm, or corporation is not required to have two licenses, the aggregate acreage of the tract shall be used for determining the amount of the license fee required by this subchapter.

(2) "Shooting resort" means a tract of land of not less than 600 nor more than 2,000 contiguous acres on which pen-raised fowls or imported game birds are released to provide hunting for members or guests.

(3) "Shooting club" means an association of persons or a legal entity that owns or operates a shooting preserve or shooting resort.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.042. License Required

No person who is the manager or owner of a shooting preserve or shooting resort may receive as a guest of the shooting resort or shooting preserve for pay another person engaged in hunting unless the owner or manager has acquired a license from the department or an authorized agent of the department authorized the receiving of guests.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.043. Issuance of License

The department shall issue one license for each shooting preserve or shooting resort.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.044. License Fees

(a) The fees for shooting preserve licenses are:

(1) \$10 if the area of the shooting preserve is less than 500 acres;

(2) \$25 if the area of the shooting preserve is 500 acres or more but less than 1,000 acres; and

(3) \$40 if the area of the shooting preserve is 1,000 acres or more.

(b) The fee for a shooting resort license is \$25.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.045. Duration of License

A shooting preserve license and a shooting resort license are valid for the period from September 1 of one year through August 31 of the following year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.046. Form and Execution of License

(a) The department shall furnish license forms to agents who are authorized to issue hunting and fishing licenses.

(b) The license must:

(1) be numbered serially with stubs attached;

(2) be clearly marked as a shooting preserve license or a shooting resort license;

(3) have printed across the face of the license the year for which it is issued;

(4) show the expiration date of the license; and

(5) bear the seal of the department.

(c) The license shall be executed by filling in the name and address of the licensee, the name of the shooting preserve or shooting resort, the character of game found in the area to which the license applies, and the signature of the employee of the department or issuing agent.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.047. Name of Preserve or Resort

The holder of a shooting preserve or shooting resort license shall file with the department the name of the shooting preserve or shooting resort.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.048. Affidavit Required

The holder of a shooting preserve or shooting resort license shall certify by his signature on forms provided by the department that the licensee will:

(1) not violate any of the provisions of this subchapter;

(2) endeavor to prevent any guest of the shooting preserve or shooting resort from violating any of the provisions of this subchapter; and

(3) not receive guests who do not have valid hunting licenses.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.0485. Shooting Preserve Records

(a) The holder of a shooting preserve license shall keep a suitable record book and shall require each guest to register. The registration of a guest must include:

(1) the name and residence of the guest;

(2) the hunting license number of the guest; and

(3) the number and type of game animals and game birds killed each day by the guest.

(b) Not later than March 1 of each year, the holder of a shooting preserve license shall report to the local game warden or other person as designated by the department. The report must include information required by the department on the previous year's hunting activity on the preserve.

[Added by Acts 1977, 65th Leg., p. 813, ch. 303, § 1, eff. Aug. 29, 1977.]

§ 43.049. Nonresident Hunting License for Shooting Resort

(a) A nonresident may acquire a shooting resort hunting license from the department entitling the nonresident to take wild birds from a shooting resort only.

(b) A nonresident shooting resort hunting license is valid from October 1 of one year to April 1 of the following year.

(c) The fee for a nonresident shooting resort hunting license is \$5, of which fee 25 cents may be retained as a collection fee by the agent issuing the license but not by an employee of the department. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.050. Shooting Resort Identified

(a) The owner or manager of a shooting resort shall mark the boundaries of the shooting resort with metal signs. The signs shall be placed at each entrance to the resort and around the perimeter of the resort at a distance of not more than 1,000 feet apart.

(b) The size of the sign must be at least 18 inches by 24 inches.

(c) The signs must bear the words "Shooting resort licensed by the Parks and Wildlife Department—Hunting by permit only." The lettering of the words must be large enough so that they may be read under ordinary conditions from a distance of 200 feet.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.051. Season

The open season on a shooting resort for the taking of game birds, pen-raised fowl, and imported game birds that have been stocked by the owner is from October 1 of one year through April 1 of the following year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.052. Banding Game Birds

Each game bird killed on a shooting resort shall be banded with a band showing the permit number of

the owner of the resort. The band must remain on the bird after it is killed and processed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.053. Releasing of Fowl Required

The operator of a shooting resort shall release at least 500 quail or at least 500 pheasant or chukar annually for each 600 acres of land licensed as a shooting resort.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.054. Cancellation of License

(a) If the manager of a shooting resort or shooting preserve fails or refuses to comply with any provision of this subchapter, the department or its authorized agent may cancel the license granted under this subchapter without refunding the license fee.

(b) A person whose license is cancelled under this section may not receive another license for one year after the cancellation.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975.]

§ 43.055. Penalty

A manager of a shooting resort or shooting preserve who violates any provision of this subchapter or who fails to comply with any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200 or by confinement in the county jail for not more than 90 days, or by both, except that a manager of a shooting preserve who knowingly and intentionally fails to comply with Section 43.0485 of this code is punishable only by a fine of not less than \$25 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 3, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 813, ch. 303, § 2, eff. Aug. 29, 1977.]

§ 43.056. Cancellation of License

(a) If the manager of a shooting club, shooting resort, shooting preserve, or land leased for hunting fails or refuses to comply with any provision of this subchapter, the department or its authorized agent may cancel the license granted under this subchapter without refunding the license fee.

(b) A person whose license is cancelled under this section may not receive another license for one year after the cancellation.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.057. Penalty

A manager of a shooting club, shooting resort, shooting preserve, or land leased for hunting who violates any provision of this subchapter or who fails to comply with any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200 or by confinement in the county jail for not more than 90 days, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 43.058 to 43.060 reserved for expansion]

SUBCHAPTER E. PERMIT FOR CAPTURE OF INDIGENOUS GAME

§ 43.061. Indigenous Mammals and Birds

(a) No person may capture or transport any game mammal or game bird captured from the wild that is indigenous to this state unless he has obtained a permit from the department.

(b) The department may issue permits for trapping and transporting game mammals or game birds from the wild that are indigenous to this state as a means of better wildlife management by making adjustments in the game population.

(c) This section does not apply to any game animals or game birds that are privately owned or privately raised.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 43.062 to 43.070 reserved for expansion]

SUBCHAPTER F. PRIVATE BIRD SHOOTING AREAS

§ 43.071. Definitions

In this subchapter:

(1) "Private bird shooting area" means an area on which the hunting or taking of privately owned game birds is authorized.

(2) "Licensee" means a person holding a private bird shooting area license.

(3) "Guest" means a person other than a licensee who is authorized by a license to hunt or take birds in a private bird shooting area.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.072. Application for License

(a) Any person, including the holder of a shooting resort license, may apply to the department for a private bird shooting area license.

(b) The applicant shall certify by his signature on forms provided by the department stating that he will not violate any of the provisions of this subchapter and will endeavor to prevent guests from committing violations.

(c) The private bird shooting area license fee is \$25.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.073. Size of Area; Markings

(a) A private bird shooting area may consist of not more than 300 contiguous acres.

(b) A private bird shooting area shall be distinguished from any other club, shooting resort, shooting preserve, or leased premises for hunting purposes by clearly marking its boundaries with wood or metal markers bearing the words, "Private Bird Shooting Area, Licensed by the Texas Parks and Wildlife Department." The lettering on these markers shall be large enough to permit reading under ordinary conditions at 200 feet.

(c) Markers shall be placed to identify clearly the boundaries of each area and each entrance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.074. Taking of Game Birds Authorized

(a) A licensee or a guest may take privately owned game birds or pen-reared game birds in a private bird shooting area during the private bird shooting area season.

(b) The private bird shooting area season begins January 1 and extends through December 31 of each year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.075. Game Birds in Captivity; Banding

(a) A licensee may hold game birds in captivity for use in the private bird shooting area.

(b) All privately owned game birds and pen-reared game birds released on a private bird shooting area shall be banded.

(c) The band shall remain on each bird killed until it is finally processed.

(d) Each band must show the permit number of the licensee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.076. License Form

No person may issue or accept a private bird shooting area license except on the form prescribed by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.077. Penalty

A person who violates any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.078. Hunting License Required

Nothing in this subchapter authorizes any person to hunt game birds without having a hunting license required by Chapter 42 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 43.079 to 43.100 reserved for expansion]

SUBCHAPTER G. PREDATOR CONTROL
FROM AIRCRAFT

§ 43.101. Applicability of Subchapter

This subchapter applies only to the following counties: Andrews, Archer, Armstrong, Atascosa, Bailey, Bandera, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Brazos, Brewster, Briscoe, Brown, Burnet, Caldwell, Callahan, Carson, Castro, Childress, Clay, Cochran, Coke, Coleman, Collingsworth, Comal, Comanche, Concho, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dawson, Deaf Smith, Dickens, Dimmit, Donley, Eastland, Ector, Edwards, Ellis, El Paso, Erath, Falls, Fisher, Floyd, Foard, Frio, Gaines, Garza, Gillespie, Glasscock, Gray, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Hartley, Haskell, Hays, Hemphill, Hill, Hockley, Hood, Howard, Hudspeth, Hutchinson, Irion, Jack, Jeff Davis, Johnson, Jones, Kendall, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, Lamb, Lampasas, LaSalle, Lipscomb, Live Oak, Llano, Loving, Lubbock, Lynn, McCulloch, McMullen, Martin, Mason, Maverick, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Moore, Motley, Navarro, Nolan, Ochiltree, Oldham, Palo Pinto, Parmer, Pecos, Potter, Presidio, Randall, Reagan, Real, Reeves, Roberts, Robertson, Runnels, San Saba, Schleicher, Scurry, Shackelford, Sherman, Somervell, Stephens, Sterling, Stonewall, Sutton, Swisher, Taylor, Terrell, Terry, Throckmorton, Tom Green, Upton, Uvalde, Val Verde, Ward, Webb, Wheeler, Wichita, Wilbarger, Williamson, Wilson, Winkler, Yoakum, Young, Zavala.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1222, ch. 456, § 23, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 568, ch. 202, § 1, eff. May 20, 1977.]

§ 43.102. Permit Authorized

Under Public Law 92-159, Section (b)(1) (85 Stat. 480, 16 U.S.C. 742j-1), the department may issue

permits for predator animal control by the use of aircraft in this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.103. Definition

"Predator animals" means coyotes, bobcats, red foxes, and crossbreeds between coyotes and dogs but does not include birds or fowl.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.104. Grounds to Issue Permit

The department may issue the permit to any person if the department finds that predator animal control by the use of aircraft is necessary to protect or to aid in the administration or protection of land, water, wildlife, livestock, domesticated animals, human life, or crops.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.105. Application for Permit

An applicant for a permit under this subchapter shall file with the application one or more affidavits, containing facts as well as opinion, stating the kind and number of predator animals that are requested to be taken by the use of aircraft, a list of the counties from which the animals are requested to be taken, and the reasons why the permit should be issued.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.106. Form and Period of Validity of Permit; Renewal

The department shall prescribe the form and manner of issuance of the permit. No permit issued under this subchapter is valid for more than one year, but the department may renew a permit on a showing that renewal is necessary.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.107. Reports Required

The holder of a permit under this subchapter shall file with the department within 30 days following the end of each calendar quarter a report showing:

- (1) the name and address of the permit holder;
- (2) the number and a description of the predator animals taken under the permit, and the number and description of the predator animals authorized to be taken under the permit;
- (3) a description of the area to which the permit is applicable; and
- (4) any other relevant information the department may require.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.108. Reports by Department

The department shall report annually to the Secretary of the Interior of the United States as required by federal law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.109. Regulations

The commission may make regulations governing predator animal control by aircraft under this subchapter. The commission shall give notice and hold hearings on all proposed regulations under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.110. Permit Fee

The commission shall set an annual fee for the taking of predator animals by the use of aircraft.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.111. Penalty

A person who violates any provision of this subchapter or any person in an aircraft who shoots any animals or birds other than predator animals with a gun, rifle, or any other device capable of injuring or killing a wild animal or bird is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 43.112 to 43.150 reserved for expansion]

SUBCHAPTER H. PERMITS TO CONTROL PROTECTED SPECIES

§ 43.151. Damage to Crops or Domestic Animals

(a) A person whose crops or domestic animals are being damaged or destroyed by a wild bird or animal protected by this code and who desires to kill the protected bird or animal shall give written notice of the facts to the county judge of the county in which the damage occurs.

(b) The county judge, on receiving the notice, shall immediately cause a substantial copy of the notice to be posted in the county courthouse and shall notify the department of the location of the property where the damage is occurring, the type of crops or animals being damaged, and the name of the applicant.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.152. Department Inspection

On receiving notice from a county judge, the department shall inspect the property and determine

if damage is occurring as alleged in the notice. If the damage is occurring, the department shall make recommendations to the person as are feasible and appropriate for controlling the damage.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.153. Application for Permit

(a) A person whose crops or domestic animals are being damaged may file with the department an application for a permit to kill protected wild birds or animals.

(b) The application must be in writing and be sworn to by the applicant and must contain:

(1) a statement of facts relating to the damage; and

(2) an agreement by the applicant to comply with the provisions of this subchapter relating to the disposition of game.

(c) The application must be accompanied by:

(1) a statement signed by the employee of the department who made the investigation that damage is being done and control measures have been recommended;

(2) a statement by the applicant that he has taken all measures recommended by the department for the prevention of damage; and

(3) a certification of the county judge that the application is true.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.154. Permit

(a) On receipt of an application, the department may issue a permit for the killing of wild birds and wild animals without regard to the closed season, bag limit, or prohibition against night hunting.

(b) The department shall deliver the permit, if issued, to the county judge that sent the notice of damage. The permit may not be delivered earlier than 24 hours after the notice from the county judge was received by the department.

(c) A permit must specify:

(1) the period of time during which it is valid;

(2) the area in which it applies;

(3) the kind of birds and animals authorized to be killed; and

(4) the persons permitted to kill the noxious birds or animals.

(d) No permit authorizing the killing of migratory game birds protected by the Federal Migratory Bird Treaty Act may be issued unless the applicant has received a permit from the United States Department of Interior, Fish and Wildlife Service. No permit may be issued for the taking of birds or animals protected under Chapter 68 of this code (Endangered Species).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.155. Deer

(a) The holder of a permit issued under this subchapter who kills a deer under the authority of the permit shall give the location of the deer carcass to the game management officer or other department employee assigned to the area covered by the permit.

(b) The officer or other department employee notified shall dispose of the carcass by donating it to a charitable institution or hospital or to needy persons. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.156. Cancellation of Permit

The department may cancel a permit if the holder violates a term or condition of the permit, the holder exceeds the authority granted in the permit, or the permit does not accomplish its intended purposes. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 43.157. Violations; Penalty

(a) No permittee may fail to notify a game management officer or other department employee of the killing of a deer as required by Section 43.155 of this code.

(b) No permittee may dispose of a deer carcass killed under the permit or allow the deer to be disposed of except as allowed under Section 43.155 of this code.

(c) No permittee may violate a term or condition of the permit.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$500. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

SUBCHAPTER I. ARCHERY STAMPS**§ 43.201. Archery Stamp Required**

(a) No person may hunt wild deer, bear, turkey, or javelina (collared peccary) during an open archery season provided by law or by the proclamations of the commission and during which season only longbows and arrows may be used unless the person has first acquired from the department or from an authorized agent of the department an archery hunting stamp.

(b) The stamp shall be issued in the form prescribed by the department and must be signed on its face by the person using the stamp.

[Acts 1975, 64th Leg., p. 1203, ch. 456, § 1, eff. Sept. 1, 1975.]

§ 43.202. Fee

The fee for an archery hunting stamp is \$3.25, of which 25 cents shall be retained by the agent issuing the stamp as a collection fee, except that employees of the department may not retain the collection fee. [Acts 1975, 64th Leg., p. 1203, ch. 456, § 1, eff. Sept. 1, 1975.]

§ 43.203. Hunting License Required

The purchase or possession of an archery hunting stamp does not permit a person to hunt wild deer, bear, turkey, or javelina without the license required by Chapter 42 of this code or by any means or methods not allowed by law.

[Acts 1975, 64th Leg., p. 1203, ch. 456, § 1, eff. Sept. 1, 1975.]

§ 43.204. Disposition of Revenue

The net revenue derived from the sale of archery hunting stamps and all revenue derived from penalties assessed for violations of Section 43.201 of this code shall be sent to the department and deposited to the credit of the special game and fish fund. [Acts 1975, 64th Leg., p. 1203, ch. 456, § 1, eff. Sept. 1, 1975.]

§ 43.205. Penalty

(a) A person who violates Section 43.201 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

(b) A person hunting a species covered by this chapter during an open archery season who fails or refuses on the demand of any game warden or other peace officer to exhibit an archery hunting stamp is presumed to be in violation of Section 43.201 of this code.

[Acts 1975, 64th Leg., p. 1203, ch. 456, § 1, eff. Sept. 1, 1975.]

SUBCHAPTER J. FIELD TRIAL LICENSES**§ 43.251. Definitions**

In this subchapter:

(1) "Member field trial" means a trial of retriever dogs held by a club or association that is a member of the American Kennel Club and during which championship points may be awarded.

(2) "Licensed field trial" means a trial of retriever dogs held by a club or association not a member of the American Kennel Club but which trial has been licensed by the American Kennel Club and during which championship points may be awarded.

(3) "Sanctioned field trial" means an informal retriever dog field trial held by any club or

association and which trial is sanctioned by the American Kennel Club even though championship points are not awarded.

(4) "Retriever dog training" means any training activity relating to the development of retrieving breeds of dogs under field conditions for hunting purposes or which would qualify retriever breeds of dogs to take part in member, licensed, or sanctioned field trials.

(5) "Captive-reared birds" means pen-raised pheasant, chukar, mallard duck, and feral pigeon only.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.252. Field Trial Licenses Authorized

(a) The department may issue primary field trial area licenses applying to not more than 1,000 contiguous acres of land for each license.

(b) The department may issue to the holder of a primary field trial license not more than six auxiliary field trial licenses applying to not more than 300 contiguous acres for each auxiliary field trial license.

(c) The licenses authorized by this section must be on a form designed and provided by the department.

(d) A license authorized by this section is valid until December 31 of the year for which it is issued.
[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.253. License Fees

(a) The fee for a primary field trial area license is \$25.

(b) The fee for each auxiliary field trial area license is \$5.25.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.254. Who May Receive Licenses

(a) The owner or other person holding a possessory interest in land may apply for and receive a primary field trial area license for the land.

(b) No person may hold more than one primary field trial area license. No person may hold more than six auxiliary field trial area licenses.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.255. Areas to be Marked

(a) Each area covered by a primary field trial area license shall be identified with signs marked as follows: "Retriever dog field trial area licensed by the Parks and Wildlife Department."

(b) Each area covered by an auxiliary field trial area license shall be identified with signs marked as follows: "Retriever dog auxiliary field trial area licensed by the Parks and Wildlife Department."

(c) The signs described in Subsections (a) and (b) of this section shall be placed at each entrance of an area and along the boundaries of the area at intervals not to exceed 1,000 feet in a manner that clearly identifies the boundaries of the area.

(d) The lettering on each sign must be large enough to permit a person with ordinary vision under ordinary conditions to read the sign from 200 feet away.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.256. Taking Captive-Reared Birds Permitted

(a) A person holding a valid Texas hunting license, including a license issued to a nonresident under Section 43.257 of this code, may hunt and take captive-reared birds on land covered by a primary field trial area license or an auxiliary field trial area license at any time during a member field trial, a licensed field trial, a sanctioned field trial, or during retriever dog training.

(b) Subsection (a) of this section does not apply unless the person is registered as provided in Section 43.258 of this code.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.257. Limited Nonresident Hunting License

(a) A nonresident may apply to the department or its agent for a nonresident field trial area hunting license, that permits the holder to hunt and take captive-reared birds on land covered by a primary field trial area license or an auxiliary field trial area license during a member field trial, a licensed field trial, or a sanctioned field trial only.

(b) The license fee for the nonresident field trial hunting license is \$5.25.

(c) A nonresident field trial hunting license expires on December 31 of the year for which it is issued.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.258. Record Book

The holder of a primary field trial area license or the manager of an area covered by any field trial area license shall keep a suitable record book and shall enter in the book the name and address and hunting license number of each guest participating in a member, licensed, or sanctioned field trial on the primary or an auxiliary area. The license holder or manager shall enter in the book the number and species of captive-reared birds acquired for the area or areas, the date of acquisition of the birds, the name of the seller, the number and species of captive-reared birds taken on the area or areas, and the disposition of all captive-reared birds taken on the area or areas.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.259. Birds to be Banded

(a) No person may release a captive-reared bird on a primary or auxiliary field trial area licensed under this subchapter unless the bird is banded with tag of a type approved by the department and which contains the license number of the area.

(b) No person may remove from a captive-reared bird the tag required by Subsection (a) of this section until the bird is finally processed.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.260. Prohibited Acts

(a) No person may:

(1) fail to mark the entrances and boundaries of a primary or auxiliary field trial area as required by Section 43.255 of this code;

(2) fail to keep a record book as required by Section 43.258 of this code;

(3) violate Section 43.259 of this code; or

(4) represent to others that he is the owner or manager of land covered by a primary or auxiliary field trial area when in fact he is not the owner or manager or when the land is not in fact licensed as permitted by this subchapter.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

§ 43.261. Hunting During Season Not Prohibited

This subchapter does not prohibit the hunting of game birds by any lawful method or the operation of field trials during an open season for the taking of game birds as provided by law.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 10, eff. Sept. 1, 1975.]

CHAPTER 44. GAME BREEDER'S LICENSE

Section

44.001. Definitions.

44.002. License Requirement.

44.003. Game Breeder's License.

44.004. Reissuance of License.

44.005. Serial Number.

44.006. License Privileges.

44.007. Records.

44.008. Enclosure Size.

44.009. Inspection.

44.010. Shipment of Game Animals.

44.011. Purchase and Sale of Live Game Animals.

44.012. Sale During Open Season.

44.013. Use of Purchased Game Animals.

44.014. Application of General Laws.

44.015. Right of Department.

44.016. Penalties.

§ 44.001. Definitions

In this chapter:

(1) "Game breeder" means a person holding a valid game breeder's license.

(2) "Captivity" means the keeping of game animals in an enclosure suitable for and capable of retaining the animal it is designed to retain at all times under reasonable and ordinary circumstances and to prevent entry by another animal.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.002. License Requirement

No person may place in captivity or engage in the business of propagating any game animal of this state unless he has obtained a license issued under this chapter from the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1209, ch. 456, § 9, eff. Sept. 1, 1975.]

§ 44.003. Game Breeder's License

The department shall issue a game breeder's license on payment of a license fee of \$5. The license is valid for a period of one year following the date of its issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1209, ch. 456, § 9, eff. Sept. 1, 1975.]

§ 44.004. Reissuance of License

A game breeder's license may not be issued to a previous licensee unless the licensee has filed with the department a copy of the record required by Section 44.007 of this code with an affidavit made before an officer qualified to administer oaths that the copy is true and correct.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.005. Serial Number

(a) The department shall issue a serial number to the applicant at the time of the first issuance of a game breeder's license to the applicant. The same serial number shall be assigned to the licensee whenever he holds a game breeder's license.

(b) The game breeder shall place a suitable permanent metal tag bearing his serial number on the ear of each deer or antelope held in captivity or sold by the game breeder.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.006. License Privileges

The holder of a valid game breeder's license may:

(1) engage in the business of game breeding in the immediate locality for which the license was issued; and

(2) sell or hold in captivity for the purpose of propagation or sale wild deer, wild antelope, elk, black bear, collared peccary, and wild squirrels.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.007. Records

Each game breeder shall keep a written record in a suitably bound book for the period from the date of license issuance until the following September 1 containing:

- (1) the number and source of each kind of game animal on hand at the time the license is issued;
- (2) the number, source, and date of receipt of each kind of game animal on hand at any time after the license is obtained; and
- (3) the number of each kind of game animal shipped or delivered, the date of shipment or delivery, and the name and address of persons to whom the shipment or delivery is made.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.008. Enclosure Size

A single enclosure for any game animal may not contain more than 320 acres.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.009. Inspection

An authorized employee of the department may inspect at any time and without warrant any pen, coop, or enclosure holding a game animal.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.010. Shipment of Game Animals

(a) A common carrier may not accept a live game animal unless the game animal is one listed in Section 44.006(2) of this code and the shipment is made by a game breeder.

(b) No person, except a game breeder or his authorized agent, may transport or ship a live game animal unless he obtains a permit for shipment or transportation from the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.011. Purchase and Sale of Live Game Animals

(a) Only game animals that are in a healthy condition may be sold, bartered, or exchanged, or offered for sale, barter, or exchange by a game breeder.

(b) No person may purchase or accept in this state a live game animal unless:

- (1) the game animal bears a tag required by Section 44.005 of this code and is delivered or sold by a game breeder; or
- (2) the game animal is delivered by a common carrier from outside this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.012. Sale During Open Season

No game breeder may sell or ship to another person in this state a wild deer, wild antelope, or collared peccary, and no person in this state may purchase from a game breeder in this state a wild deer, wild antelope, or collared peccary during an open season for taking the game animal or during a period of 10 days before and after an open season. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.013. Use of Purchased Game Animals

(a) Except as provided in Subsection (b) of this section, game animals may be purchased or received in this state only for the purpose of liberation for stocking purposes or holding for propagation purposes. All game animals and increase from the game animals are under the full force of the laws of this state pertaining to wild game and the game animals may be held in captivity for propagation in this state only after a license is issued by the department under this chapter.

(b) Game animals may be held, taken, or received for scientific and zoological purposes under a permit issued by the department pursuant to Section 43.022 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.014. Application of General Laws

In order that native game species may be preserved, game animals held under a game breeder's license are subject to all laws and regulations of this state pertaining to wild game animals except as specifically provided in this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.015. Right of Department

The department or an authorized employee of the department may take, possess, hold, transport, or propagate any game animal of this state for public purposes.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 44.016. Penalties

(a) A person who violates a provision of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

(b) Each animal sold, purchased, or held in violation of this chapter constitutes a separate offense.

(c) The license of a game breeder convicted of a violation of this chapter is subject to forfeiture. If the license of a game breeder is forfeited, he is not entitled to reissuance of the license for a period of one year following the date of conviction.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 45. GAME BIRD BREEDER'S LICENSE

Section	
45.001.	License Required.
45.002.	Form of License; Period of Validity.
45.003.	Types of Licenses; Fees.
45.004.	Size of Enclosures.
45.005.	Live Birds to be Banded.
45.006.	Bird Carcasses to be Stamped; Purchase Without Stamp Prohibited.
45.0061.	Source of Game Birds.
45.007.	Prohibited Acts.
45.008.	Records; Reports.
45.009.	Exceptions.
45.010.	Inspections.
45.011.	Permits Required by the United States.
45.012.	Penalty.

§ 45.001. License Required

(a) Except as provided in Subsection (b) of this section, no person may engage in the business of propagating game birds without first acquiring the proper license authorized to be issued under this chapter.

(b) A person is not required to have a license issued under this chapter if he possesses not more than 12 game birds for personal use only.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1208, ch. 456, § 8(a), eff. Sept. 1, 1975.]

§ 45.002. Form of License; Period of Validity

(a) The department shall issue the licenses authorized by this chapter on a form provided by the department and may designate agents for their issuance.

(b) Each license shall be numbered.

(c) A license is valid for one year from the date of its issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 45.003. Types of Licenses; Fees

(a) A class 1 commercial game bird breeder's license entitles the holder to engage in the business of propagating game birds for sale or holding game birds in captivity. The fee for a class 1 commercial game bird breeder's license is \$50.

(b) A class 2 commercial game bird breeder's license entitles the holder to engage in the business of propagating game birds for sale or holding game birds in captivity, except that the holder of a class 2 license may not possess more than 1,000 game birds during any calendar year. The fee for a class 2 commercial game bird breeder's license is \$5.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1208, ch. 456, § 8(b), eff. Sept. 1, 1975.]

§ 45.004. Size of Enclosures

(a) No holder of a license under this chapter may retain game birds, other than a migratory bird or waterfowl, in an enclosure larger than 40 acres.

(b) No holder of a license under this chapter may retain a migratory bird or waterfowl in an enclosure larger than 320 acres.

(c) "Captivity" means the keeping of game birds in an enclosure or pen.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 45.005. Live Birds to be Banded

(a) No holder of a commercial game bird breeder's license may fail to band all live game birds in his possession before selling the birds as required by this section.

(b) The department shall issue to each holder of a commercial game bird breeder's license a serial number which shall remain the number of the person holding the license as long as he continues to hold a license.

(c) The bands required in this section shall be of metal and shall bear the serial number of the holder of the license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1209, ch. 456, § 8(c), eff. Sept. 1, 1975.]

§ 45.006. Bird Carcasses to be Stamped; Purchase Without Stamp Prohibited

(a) No holder of a license required by this chapter may sell or offer for sale the carcass of a dead pen-raised game bird unless the carcass is clearly stamped and marked by the stamp required by Subsection (b) of this section.

(b) Each holder of a license required by this chapter who offers for sale the carcass of a pen-raised game bird shall acquire and maintain a rubber stamp which, when used, shows the serial number of the holder of the license.

(c) No person may knowingly purchase the carcass of a game bird in this state unless the bird is stamped as required by this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 45.0061. Source of Game Birds

A person who is not required to possess a commercial game bird breeder's license under Subsection (b) of Section 45.001 shall, on the request of a game warden commissioned by the department, furnish to the warden information as to the source from which game birds in the possession of the person were derived. The failure or refusal to comply with this section is a violation of this chapter.

[Acts 1975, 64th Leg., p. 1209, ch. 456, § 8(d), eff. Sept. 1, 1975.]

§ 45.007. Prohibited Acts

(a) No holder of a game bird breeder's license may sell a live game bird unless it is in a healthy condition.

(b) No person may purchase a live game bird except from a holder of a game bird breeder's license; however, this subsection does not prohibit the purchase of live game birds delivered by a common carrier from outside the state.

(c) The carcass of a pen-raised game bird offered for sale must be killed other than by shooting. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 45.008. Records; Reports

(a) Each commercial game bird breeder shall maintain records showing the numbers of game birds acquired, propagated, sold, and disposed of in any other manner. The records shall be on forms provided by the department and shall contain any other information required by the department.

(b) During August of each year, but before August 31, a commercial game bird breeder shall send to the department a report showing the total number of game birds in the possession of the breeder during the previous year and accounting for the acquisition and disposition of each game bird.

(c) The failure to keep the records required by Subsection (a) of this section or to make the report as required by Subsection (b) of this section is a violation of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 45.009. Exceptions

(a) A person may purchase live pheasant from a commercial game bird breeder for any purpose.

(b) A commercial game bird breeder may slaughter game birds for his personal consumption at any time.

(c) This chapter does not apply to a person holding a permit under Section 43.022 of this code.

(d) Any person owning or operating a restaurant, hotel, boarding house, club, or other business where food is sold for consumption may sell game birds for consumption on the premises of the business.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 45.010. Inspections

An authorized employee of the department may inspect the facilities and enclosures of a person licensed under this chapter at any time during normal business hours without a warrant.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 45.011. Permits Required by the United States

This chapter does not authorize any act prohibited by federal law without a permit issued by the United States, nor does the possession of a permit issued by the United States authorize any act prohibited by this chapter unless expressly provided by federal law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 45.012. Penalty

A person who violates this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 46. FISHING LICENSES

SUBCHAPTER A. GENERAL FISHING LICENSE

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- 46.0011. Resident, Nonresident, and Alien Defined [NEW].
- 46.002. Exemptions.
- 46.003. Exception for Blind and Disabled Veterans.
- 46.004. License Fees.
- 46.005. Temporary Saltwater Sportfishing License.
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- 46.006. Duplicate License.
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SUBCHAPTER B. LAKE TEXOMA FISHING LICENSE

- 46.101. Lake Texoma.
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SUBCHAPTER A. GENERAL FISHING LICENSE

§ 46.001. Prohibited Acts

Except as provided in this chapter, no person may fish in the water of this state unless he has obtained a fishing license issued under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.0011. Resident, Nonresident, and Alien Defined

For this chapter, resident, nonresident, and alien are defined in Section 42.001 of this code.

[Added by Acts 1977, 65th Leg., p. 1110, ch. 409, § 1, eff. Aug. 29, 1977.]

§ 46.002. Exemptions

(a) A license issued under this chapter is not required of a resident:

- (1) under 17 years old or 65 years old or older;
- (2) fishing on property that he owns or on which he resides;
- (3) fishing on property that a member of his immediate family owns or on which the family resides;
- (4) fishing in the county of his residence with a trotline, throw line, or ordinary pole and line without a reel or other winding device;
- (5) having a commercial fishing license of this state; or
- (6) who is a member of a group of 25 or more persons who are visiting as tourists and do their fishing as a group; or
- (7) who is a resident of a hospital or state school, who is engaging in recreational fishing as a part of medically approved therapy, and who is fishing under the immediate supervision of personnel approved or employed by the hospital or state school.

(b) A license issued under this chapter is not required of a resident of the Republic of Mexico who is traveling in this country on a visa granted by the United States and who is fishing in coastal water. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 115, ch. 56, § 1, eff. April 13, 1977; Acts 1977, 65th Leg., p. 1110, ch. 409, § 5, eff. Aug. 29, 1977.]

§ 46.003. Exception for Blind and Disabled Veterans

(a) The following persons are entitled to receive a special fishing license on proof of eligibility and on the payment of a fee of \$1.25, 25 cents of which may be retained as a collection fee:

- (1) a blind person as defined by Section 1, Chapter 227, Acts of the 59th Legislature, Regular Session, 1965;¹ and
- (2) a disabled veteran of the armed forces of the United States who has a service-connected disability, as defined by the Veterans' Administration, consisting of the loss of the use of a lower extremity or of a disability rating of 60 percent or more, and who is receiving compensation from the United States for the disability.

(b) The department may make regulations concerning proof of eligibility under this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 132, ch. 61, § 1, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 678d-1.

§ 46.004. License Fees

- (a) The resident fishing license fee is \$4.50.
- (b) The nonresident or alien fishing license fee is \$10.50.
- (c) The license deputy issuing the license may retain 50 cents as a fee for collecting the license fee and issuing the license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1110, ch. 409, § 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1475, ch. 599, § 1, eff. Sept. 1, 1977.]

§ 46.005. Temporary Saltwater Sportfishing License

(a) Any person is entitled to receive from the department a license allowing fishing for sporting purposes in salt water for a period of three days.

(b) The fee for the temporary saltwater sportfishing license is \$1.25 of which fee 25 cents may be retained as a collection fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.0051. Temporary Nonresident License

(a) A nonresident or alien is entitled to receive from the department a license allowing fishing for sporting purposes in public water for a period of five days.

(b) The license fee is \$4.50 of which fee 50 cents may be retained as a collection fee.

[Added by Acts 1975, 65th Leg., p. 1110, ch. 409, § 3, eff. Aug. 29, 1977.]

§ 46.006. Duplicate License

(a) If a license issued under this subchapter is lost or destroyed, a license deputy may issue a duplicate license on application of the license holder and receipt of a 50-cent duplicate license fee.

(b) The application for a duplicate license must be an affidavit containing:

- (1) the facts concerning the loss or destruction of the license; and
- (2) the serial number of the lost or destroyed license.

(c) The license deputy issuing the license may retain 25 cents as a fee for issuing the duplicate license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.007. Expiration of Licenses

(a) A license required or authorized by this subchapter is valid only during the yearly period for which it is issued without regard to the date on which the license is acquired. Each yearly period begins on September 1 of a year and extends through August 31 of the next year.

(b) A duplicate license is valid for the period of validity of the original license only.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1110, ch. 409, § 4, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1536, ch. 626, § 1, eff. Aug. 29, 1977.]

Sections 3 and 4 of ch. 626 provided:
 "Sec. 3. (a) Subsection (a) of Section 46.007, Parks and Wildlife Code, applies to annual licenses required or authorized by Subchapter A of Chapter 46, Parks and Wildlife Code, and issued after August 31, 1977. Those licenses issued before June 1, 1977, expire one year after the date on which they were issued. Those licenses issued after May 31, 1977, and before September 1, 1977, expire on August 31, 1978.

(b) This section expires on August 31, 1978."
 "Sec. 4. This Act takes effect June 1, 1977."

§ 46.008. License Form

A license issued under this subchapter must contain:

- (1) the year for which the license is issued (printed across the face of the license);
- (2) the name, address, and residence of the licensee;
- (3) an approximate weight, height, age, and color of hair and eyes of the licensee for identification in the field; and
- (4) the statement: "This license does not entitle the holder to fish on the enclosed and posted lands of another without the consent of the owner or his agent."

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1476, ch. 599, § 2, eff. Sept. 1, 1977.]

§ 46.009. License Deputies

Employees of the department, county clerks, and any person designated by the department to issue licenses are license deputies and may issue licenses under this subchapter. An employee of the department may not retain a collection or issuance fee.
 [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.010. Duties of License Deputies

The license deputy shall:

- (1) fill out correctly and preserve for the use of the department the stubs attached to the license; and
- (2) keep a complete and correct record of all licenses issued, showing the name and residence of each licensee, the serial number of the license, and the date of issuance of the license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.011. Monthly Report

(a) Within 10 days after the end of each calendar month, license deputies shall send to the department the fees due the state and a report containing:

- (1) the serial number and date of issuance of each license issued during the preceding month; and

(2) the names and addresses of the persons to whom licenses were issued during the preceding month.

(b) The department shall credit the license deputy with the amount remitted.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.012. License Books

(a) When all licenses in a license book are issued, the license deputy shall return the license book to the department by the 10th day of the month following the month in which last license in the book is issued.

(b) Unissued licenses shall be returned on the request of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.013. Issuance or Acceptance of License

No person may issue or accept a license required by this subchapter except on a form provided by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.014. Fishing Under the License of Another

No person may fish under a license issued to another or allow another person to fish under a license issued to him.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.015. Penalty

A person who violates a provision of this subchapter or who fails or refuses to show an officer his license on the request of the officer is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 46.016–46.100 reserved for expansion]

SUBCHAPTER B. LAKE TEXOMA
 FISHING LICENSE

§ 46.101. Lake Texoma

This subchapter applies only to Lake Texoma, which is the portion of this state inundated by the water impounded by a dam across the channel of the Red River, known as Denison Dam, and any other portion of that area of land acquired by the United States for the operation of the reservoir.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.102. Fishing License Required

Except as provided in this subchapter, no person may catch fish in Lake Texoma unless he has acquired and possesses on his person a valid license issued under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.103. Exemptions

Residents of this state engaged in fishing within the territorial boundaries of this state are not required to obtain a license issued under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.104. License: Period of Validity and Fee

(a) A Lake Texoma fishing license is valid until December 31 following its date of issuance.

(b) The fee for the license is \$2.50. Fifteen cents of the fee may be retained by the issuing officer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.105. Lake Texoma 10-Day Fishing License

(a) A Lake Texoma 10-day fishing license is valid for 10 consecutive days including the date of issuance.

(b) The fee for the license is \$1.25. Fifteen cents of the fee may be retained by the officer issuing the license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.106. Form of License

Licenses issued under this subchapter shall be on the form prescribed by the department and must contain:

- (1) the name and address of the licensee;
- (2) a personal description of the licensee;
- (3) date of issuance of the license; and
- (4) other information necessary for enforcement of this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.107. Disposition of Fees

The issuing officer shall send license fees less allowable deductions collected under this subchapter to the department by the 10th day of the month following the date of receipt.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.108. Division of Fees

The department shall keep separate and strict account of the revenue received from licenses issued

under this subchapter for annual division between this state and the State of Oklahoma. The division shall be on a basis of the proportionate area of Lake Texoma lying within the territorial jurisdiction of the respective states.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.109. Payment by Comptroller

On February 1 of each year the comptroller shall pay to the state of Oklahoma 70 percent of the revenue collected from licenses issued under this subchapter during the previous calendar year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.110. Penalty

A person who violates this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 46.111. Effective Date of Subchapter

This subchapter does not become effective until:

(1) the State of Oklahoma makes provision for the sale of licenses in Oklahoma that are parallel to the licenses authorized by this subchapter;

(2) the State of Oklahoma provides for payment to this state of not less than 30 percent of all revenue collected by Oklahoma for the licenses; and

(3) the department is satisfied that this subchapter and the provisions of Oklahoma law are not in conflict and directs that this subchapter is effective.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 47. COMMERCIAL FISHING LICENSES

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- 47.053. Penalty.
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SUBCHAPTER A. LICENSES

§ 47.001. Definitions

In this chapter:

(1) "Commercial fisherman" means a person who catches fish, oysters, or other edible aquatic products from the nontidal water of this state for pay or for the purpose of sale, barter, or exchange.

(2) "Tidal water commercial fisherman" means a person who catches fish, oysters, shrimp, menhaden, or other edible aquatic products from tidal water of this state for pay or for the purpose of sale, barter, or exchange.

(3) "Wholesale fish dealer" means a person engaged in the business of buying for the purpose of selling, canning, preserving, processing, or handling for shipments or sale fish, oysters, shrimp, or other commercial edible aquatic products to retail fish dealers, hotels, restaurants, cafes, or consumers.

(4) "Retail fish dealer" means a person engaged in the business of buying for the purpose of sale to a consumer fresh or frozen edible aquatic products.

(5) "Bait dealer" means a person who catches or transports for sale, or who is engaged in the business of selling minnows, fish, shrimp, or other aquatic products for fish bait.

(6) "Fish guide" means a person who operates a boat for compensation to accompany or to transport a person engaged in fishing in the water of this state.

(7) "Tidal water" means all the salt water of this state, including that portion of the state's territorial water in the Gulf of Mexico within three marine leagues from shore.

(8) "Nontidal water" means all the water of this state excluding tidal water.

(9) "Place of business" means the place where orders for aquatic products are received or where aquatic products are sold, including a vehicle if aquatic products are sold from the vehicle, but does not include a public cold-storage vault, temporary receiving station, or vehicle from which no orders are taken or no shipments or deliveries are made other than to the place of business of a licensee in this state.

(10) "Menhaden fish plant" means a fixed installation on land designed, equipped, and used to process fish and the by-products of fish by the application of pressure, heat, or chemicals or a combination of pressure, heat, and chemicals to raw fish to convert the raw fish into fish oil, fish solubles, fish scraps, or other products.

(11) "Red drum" means the species *Sciaenops ocellata*, commonly called "redfish."

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 214, ch. 105, § 2, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 720, ch. 270, § 1, Sept. 1, 1977.]

§ 47.002. General Commercial Fisherman's License

(a) No person may engage in business as a commercial fisherman unless he has obtained a general commercial fisherman's license.

(b) The license fee for a general commercial fisherman's license is \$10. Twenty-five cents of the fee may be retained by the issuing agent, except an employee of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.003. Tidal Water Commercial Fisherman's License

(a) No person may engage in business as a tidal water commercial fisherman unless he has obtained a tidal water commercial fisherman's license.

(b) No person may catch or assist in catching menhaden in tidal water unless he has obtained a tidal water commercial fisherman's license.

(c) The license fee for the tidal water commercial fisherman's license is \$5. Fifteen cents of the fee may be retained by the issuing agent, except an employee of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.004. Fish Guide License

(a) No person may engage in business as a fish guide unless he has obtained a fish guide license.

(b) The license fee for a fish guide license is \$25. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.005. Fish Boat License

(a) A boat equipped with a motor of any kind or sails may not be used in nontidal water to catch fish, oysters, or other edible aquatic products for pay or for the purpose of sale, barter, or exchange unless the owner of the boat has obtained a fish boat license.

(b) The license fee for a fish boat license is \$3. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.006. Skiff License

(a) A boat propelled by oars or poles may not be used in nontidal water to catch fish, oysters, or other edible aquatic products for pay or for the purpose of sale, barter, or exchange unless the owner of the boat has obtained a skiff license and has firmly attached the skiff license to the boat.

(b) The license fee for a skiff license is \$1. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.007. Commercial Fishing Boat License

(a) No person may use a boat required to be numbered or registered under the laws of this state or the United States for the purpose of catching or assisting in catching fish, oysters, or any other edible aquatic life, except shrimp and menhaden, from tidal water for pay or for the purpose of sale, barter, or exchange unless the owner of the boat has obtained a commercial fishing boat license.

(b) The license fee for a commercial fishing boat license is \$6. Twenty-five cents of the fee may be retained by the issuing officer, except an employee of the department.

(c) A licensee under this section whose boat is destroyed, lost, or put to another use is not required to obtain another license if another boat is used to replace the previous one.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.008. Menhaden Boat License

(a) A boat may not be used for the purpose of catching menhaden in tidal water unless the owner of the boat has acquired a menhaden boat license.

(b) The license fee for each boat is \$200 a year. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.009. Wholesale Fish Dealer's License

(a) No person may engage in business as a wholesale fish dealer unless he has obtained a wholesale fish dealer's license.

(b) The license fee for a wholesale fish dealer's license is \$250 for each place of business. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.010. Wholesale Truck Dealer's Fish License

The license fee for a wholesale truck dealer's fish license is \$125 for each truck.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.011. Retail Fish Dealer's License

(a) No person may engage in business as a retail fish dealer unless he has obtained a retail fish dealer's license.

(b) The license fee for a retail fish dealer's license is:

(1) \$6 for each place of business in a city or town of less than 7,500 population according to the last preceding federal census;

(2) \$15 for each place of business in a city or town of not less than 7,500 nor more than 40,000 population according to the last preceding federal census; and

(3) \$20 for each place of business in a city or town of more than 40,000 population according to the last preceding federal census.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.012. Retail Oyster Dealer's License

(a) A retail fish dealer may engage in the business of buying only fresh or frozen oysters for the purpose of sale to the consumer if he obtains a retail oyster dealer's license.

(b) The license fee for a retail oyster dealer's license is \$5 for each place of business in a city or town of more than 7,500 population according to the last preceding federal census.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.013. Retail Dealer's Truck License

(a) A person may engage in the business of selling edible aquatic products from a motor vehicle to consumers only if he obtains a retail dealer's truck license.

(b) The license fee for a retail dealer's truck license is \$25 for each truck.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.014. Bait Dealer's License

(a) No person may act as a bait dealer unless he has obtained a bait dealer's license.

(b) The license fee for a bait dealer's license is \$10 for each place of business.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 214, ch. 105, § 3, eff. Sept. 1, 1977.]

§ 47.015. Seine or Net License

(a) No person may use a seine or net for the purpose of catching edible aquatic life in the water of this state for pay or sale unless he has acquired a seine or net license.

(b) The license fee for a seine or net is \$1 for each 100 feet or fraction of 100 feet of the length of the seine or net.

(c) The seine or net license shall be metal and must be firmly attached to each 100 feet or fraction of 100 feet of the length of the seine or net.

(d) A seine or net license may not be issued for any seine or net that is longer than 1,800 feet or whose meshes are less than one and one-half inches from knot to knot.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.016. Menhaden Fish Plant License

(a) No person may operate a menhaden fish plant unless he has obtained a menhaden fish plant license.

(b) Applications for a menhaden fish plant license must be submitted on forms prescribed by the department and accompanied by a \$50 filing fee and a certified copy of an order of the commissioners court of the county in which the plant will be located containing:

(1) a description of the plant and its location; and

(2) approval of the court for the construction and operation of the plant.

(c) Decisions of the commissioners court in approving or disapproving the construction of a plant are final and may not be reviewed or appealed.

(d) A menhaden fish plant license shall be issued after a hearing and a finding by the department that the construction and operation of the plant is in the public interest. Regardless of the decision of the department, the \$50 filing fee is not refundable.

(e) Notice of the hearing must be given at least 20 days prior to the date set for the hearing to the county judge of the county in which the plant is to be constructed and to all known interested parties.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.017. Renewal of Fish Plant License

The department shall renew a menhaden fish plant license on the application of the licensee and on the payment of a \$50 renewal fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.018. Interstate Transportation

No person may bring into this state aquatic products for the purpose of offering them for sale unless he has obtained a license issued under this subchapter. Aquatic products caught in another state may not be sold under a general commercial fisherman's license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.019. Commercial Red Drum License

(a) No person may catch or transport for the purpose of sale or may sell red drum taken from the tidal water of this state unless he has obtained from the department and possesses a valid commercial red drum license.

(b) The commercial red drum license fee is \$50.

(c) The department may issue red drum licenses, and a person may obtain a red drum license only during September of each year.

(d) No holder of a commercial red drum license may catch red drum at any time for any purpose other than sale.

(e) A commercial red drum license is valid from October 1 of the year for which it is issued through September 30 of the next year and when catching red drum is permitted during that period.

(f) A person licensed under this chapter as a fish dealer is not required to have a commercial red drum license unless the person catches red drum from the water of this state for sale.

[Added by Acts 1977, 65th Leg., p. 720, ch. 270, § 2, eff. Sept. 1, 1977.]

Sections 15 to 17 of the 1977 Act provided:

"Sec. 15. (a) No person may purchase more than 200 pounds of whole red drum in one day from any one holder of a commercial red drum license or other holder of a commercial fishing license.

"(b) No holder of a commercial red drum license may catch and retain in one day more than 200 pounds of whole red drum. No holder of a commercial red drum license or two or more holders of commercial red drum licenses may possess in a single boat or conveyance more than 200 pounds of whole red drum at any time.

"(c) For the red drum harvest and license year beginning on October 1, 1978, and each year thereafter, the maximum number of pounds of red drum that may be set by the commission under Section 61.065, Parks and Wildlife Code, is 1.6 million pounds and the minimum number that may be set by the commission is 1.4 million pounds.

"(d) Except as provided in this subsection, a person who violates Subsection (a) or (b) of this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$200, and on a second or subsequent conviction is punishable by a fine of not less than \$200 nor more than \$500 and shall forfeit the license under which he is fishing. A person who violates Subsection (b) of this section, whether a first, second, or subsequent conviction, by catching and retaining 300 or more pounds of red drum in a day is guilty of a misdemeanor and is punishable by a fine of not less than \$200 nor more than \$1,000, by forfeiture of the license under which he is fishing, and by the confiscation of the red drum, nets, and trotlines in his possession.

"(e) Subsections (a) and (b) of this section expire on October 1, 1978.

"Sec. 16. This Act takes effect on September 1, 1977; except that Sections 8, 9, 10, 12, and 14 of this Act take effect on October 1, 1978.

"Sec. 17. Nothing in this Act shall be construed as conferring upon the Parks and Wildlife Department any additional authority not specifically set forth in this Act or not already in existence for opening or closing bay areas to the use of trawls, nets, and saltwater trotlines."

§ 47.020. Commercial Red Drum License: Issuance and Revocation

(a) No person may be issued a red drum license unless the person files with the department at the time he applies for the license an affidavit containing statements that:

(1) not less than 50 percent of the applicant's gainful employment is devoted to commercial fishing;

(2) the applicant is not employed at any full-time occupation other than commercial fishing;

(3) during the period of validity of the commercial red drum license the applicant does not intend to engage in any full-time occupation other than commercial fishing; and

(4) the applicant possesses a commercial fishing license issued by the department under this chapter.

(b) The department shall revoke a commercial red drum fishing license if:

(1) the holder engages in any full-time employment other than commercial fishing;

(2) the holder does not possess a valid commercial fishing license, other than the commercial red drum license;

(3) the affidavit required by this section contains a false statement; or

(4) the holder violates any law or regulation of the commission more than one time providing for the conservation and protection of red drum.

(c) If any person executes and files with the department an affidavit under this section that contains a false statement knowingly made by the person, the department shall revoke each commercial fishing license held by the person at the time the determination is made.

[Added by Acts 1977, 65th Leg., p. 721, ch. 270, § 3, eff. Sept. 1, 1977.]

[Sections 47.021 to 47.030 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO COMMERCIAL FISHING LICENSES

§ 47.031. Expiration of Licenses

(a) Except as provided in Subsections (b) and (c) of this section, all licenses issued under this chapter expire August 31 following the date of issuance.

(b) A menhaden boat license expires one year from the date of issuance.

(c) A menhaden fish plant license expires one year from the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.032. Refusal of License

(a) Except as provided in Subsection (b) of this section, no person owing the state any amount for a license or fee under a final judgment of a court may receive a license under this chapter until the indebtedness is satisfied by payment to the department.

(b) Subsection (a) of this section does not apply to applicants for a tidal water commercial fisherman's license, commercial fishing boat license, menhaden boat license, or menhaden fish plant license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.033. Display of License

All licenses, except a tidal water commercial fisherman's license, commercial fishing boat license, menhaden boat license, and menhaden fish plant license, must be publicly displayed at all times in the place of business of the licensee. Licenses required for vehicles transporting aquatic products for sale must be displayed in the vehicle.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.034. Fish Size

(a) No person engaged in business as a commercial fisherman or wholesale or retail fish dealer may possess in his place of business or on a boat or vehicle for the purpose of sale those species of fish of greater or lesser length than set out in Subsection (c) of this section.

(b) No person may buy, sell, or offer for sale those species of fish of greater or lesser length than set out in Subsection (c) of this section.

(c) The maximum and minimum length of fish are as follows:

Fish	Maximum Length	Minimum Length
Redfish or channel bass	35 inches	14 inches
Flounder and speckled sea trout	None	12 inches
Sheephead and pompano	None	9 inches
Mackerel	None	14 inches
Gaff-topsail	None	11 inches

(d) This section does not prohibit the processing and selling of lawful fish by cutting, filleting, wrapping, freezing, or otherwise preparing the fish for market.

(e) The possession of saltwater species of fish of greater or lesser length than set out in Subsection (c) of this section on board a licensed commercial shrimp boat engaged in the taking of shrimp or returning to port after taking shrimp is not a violation of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1214, ch. 456, § 13(1), eff. Sept. 1, 1975.]

§ 47.035. **Prima Facie Evidence**

Proof of possession of any undersized or oversized fish in the place of business of any wholesale or retail fish dealer or on board any boat engaged in commercial fishing or in any commercial vehicle is prima facie evidence of possession for the purpose of sale.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.036. **Venue**

Venue for a suit for possession of undersized or oversized fish is in the county where the illegal fish are found in possession, where the illegal fish are sold or offered for sale, or from which the illegal fish are shipped.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.037. **Inspection**

No person may refuse to allow an employee of the department to inspect aquatic products handled by or in the possession of any commercial fisherman, wholesale fish dealer, or retail fish dealer at any time or in any place.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.038. **Seines or Nets for Menhaden**

(a) Nets or purse seines used for catching menhaden may not be:

(1) less than one and one-half inch stretched mesh, excluding the bag;

(2) used in any bay, river, pass, or tributary, nor within one mile of any barrier, jetty, island, or pass, nor within one-half mile offshore in the Gulf of Mexico; or

(3) used for the purpose of taking edible aquatic products for the purpose of barter, sale, or exchange.

(b) No person lawfully catching menhaden in the tidal water of this state may sell, barter, or exchange any edible aquatic products caught in a menhaden seine or net. Possession of edible aquatic fish in excess of five percent by volume of menhaden fish in possession is a prima facie violation of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 47.039 to 47.050 reserved for expansion]

SUBCHAPTER C. PENALTIES, DISPLAY OF LICENSE, AND TRANSFER OF FUNDS

§ 47.051. **Penalty**

A person who violates a provision of Section 47.002, 47.004 through 47.006, 47.009 through 47.015, 47.017, 47.032 through 47.034, or 47.037, of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200 and is subject to the forfeiture, for one year from the date of the conviction, of a license held under the authority of the listed sections.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.052. **Penalty**

(a) A person who fails to comply with or who violates a provision of Section 47.003(a) or 47.007 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$1,000, by confinement in jail for not less than one month nor more than one year, or by both.

(b) The department may seize boats, nets, seines, trawls, or other tackle in the possession of a person violating the sections listed in Subsection (a) of this section and hold them until after the trial of the person.

(c) Violations of the above sections may also be enjoined by the attorney general by suit filed in a district court in Travis County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.053. **Penalty**

(a) A person who violates a provision of Section 47.003(b), 47.008, 47.016, or 47.038, of this code is guilty of a misdemeanor and on first conviction is punishable by a fine of not less than \$20 nor more than \$100. On second conviction, the violator is punishable by a fine of not less than \$50 nor more than \$500.

(b) A licensee under any of the above sections who violates any of the above sections is also subject to suspension of his license for not less than 7 days nor more than 30 days at the discretion of the department on first conviction for a violation. On second conviction, the licensee is subject to revocation of his license for six months after the date of conviction.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.0531. **Penalty: Red Drum License**

(a) A person who violates Section 47.019 of this code is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$200. On a second or subsequent conviction, the person is punishable by a fine of not less than \$200 nor more than \$500.

(b) Nets, trotlines, and all red drum in possession of a person violating Section 47.019 of this code shall be confiscated.

[Added by Acts 1977, 65th Leg., p. 721, ch. 270, § 4, eff. Sept. 1, 1977.]

§ 47.054. Refusal to Show License

A person catching fish for the purpose of market or sale who refuses to show his license to an authorized employee of the department upon request is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$25.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 47.055. Disposition of Funds

Money received for licenses issued under this chapter or fines paid for violations of this chapter, less allowable deductions, shall be sent to the department by the 10th day of the month following receipt.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 48. FISH FARMER'S LICENSE

Section	
48.001.	Definitions.
48.002.	Fish Farmer's License Required.
48.003.	Fish Farm Vehicle License Required.
48.004.	Bill of Lading Required for Certain Vehicles.
48.005.	License Fees.
48.006.	Form and Duration of License.
48.007.	Additional Fish Farmer's Licenses.
48.008.	Records.
48.009.	Harvesting and Sale of Fish.
48.010.	Sales of Bass and Crappie Limited.
48.011.	Federal Grants.
48.012.	Penalties.
48.013.	Fish Farms Protected.

§ 48.001. Definitions

In this chapter:

(1) "Fish farmer" means any person engaged in the business of producing, propagating, transporting, possessing, and selling fish raised in a private pond, but does not include a person engaged in the business of producing, propagating, transporting, possessing, and selling fish propagated for bait purposes.

(2) "Private pond" means a pond, reservoir, vat, or other structure capable of holding fish in confinement wholly within or on the enclosed land of an owner or lessor.

(3) "Owner" means a fish farmer licensed by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.002. Fish Farmer's License Required

No person may be a fish farmer without first having acquired from the department a fish farmer's license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.003. Fish Farm Vehicle License Required

(a) Except as provided by Subsection (b) of this section, a vehicle used to transport fish from a fish farm for sale from the vehicle is required to have a fish farm vehicle license.

(b) A fish farm vehicle license is not required for a vehicle owned and operated by the holder of a fish farmer's license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.004. Bill of Lading Required for Certain Vehicles

A vehicle, from which no fish sales are made, transporting fish from a fish farm shall carry a bill of lading that shows the number and species of fish carried, the name of the owner and the location and license number of the fish farm from which the fish were transported, and the destination of the cargo.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.005. License Fees

The department shall issue a fish farmer's license or a fish farm vehicle license on the payment of \$5 for each license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.006. Form and Duration of License

(a) A fish farmer's license and a fish farm vehicle license must be on a numbered form provided by the department.

(b) A license is valid from September 1 or the date of issue, whichever is later, through the following August 31.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.007. Additional Fish Farmer's Licenses

A fish farmer holding a fish farmer's license may acquire additional licenses for display in or on additional premises or vehicles on payment to the department of \$1 for each additional license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.008. Records

The holder of a fish farmer's license shall maintain a record of the sales and shipments of fish. The record is open for inspection by designated employees of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.009. Harvesting and Sale of Fish

Fish of any size from a fish farm may be harvested and sold at any time and in any county.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.010. Sales of Bass and Crappie Limited

(a) Except as provided in Subsection (b) of this section, no person may sell bass or crappie from a fish farm for consumption or for resale.

(b) Bass and crappie may be sold for resale to a licensed fish farmer only, and to any person for stocking purposes.

(c) Other kinds of fish from a fish farm may be sold for any purpose.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.011. Federal Grants

Federal grants for research and development of commercial fisheries may be used for individual fishery projects with the approval of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.012. Penalties

Any person who violates any provision of this chapter for which a specific penalty is not provided is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 48.013. Fish Farms Protected

(a) No person, other than the owner or operator of a fish farm or a person with the owner's or operator's consent, may fish on or take fish from a fish farm.

(b) Except as provided in Subsection (c) of this section, a person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

(c) A person who violates this section by taking fish of a value of more than \$200 is guilty of a felony and on conviction is punishable by imprisonment in the penitentiary for not more than 10 years.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 49. FALCONRY PERMIT

Section	
49.001.	Definitions.
49.002.	Prohibited Acts.
49.003.	Apprentice Falconer's Permit.
49.004.	General Falconer's Permit.

Section

49.0045.	Master Falconer's Permit [NEW].
49.0047.	Joint Federal-State Permits [NEW].
49.005.	Raptor Limit.
49.006.	Renewal.
49.007.	Renewal Fees.
49.008.	Nonresident Falconer's Permit.
49.009.	Reciprocity.
49.010.	Hunting.
49.011.	Sale of Raptors.
49.012.	Property of State.
49.013.	Transportation of Raptors.
49.014.	Powers of Department.
49.015.	Rare or Endangered Species.
49.016.	Advisory Board.
49.017.	Penalties.

§ 49.001. Definitions

In this chapter:

(1) "Nonresident" means an individual, other than an alien, who has not been a resident of this state for more than six months immediately before applying for a falconry permit.

(2) "Alien" means an individual who is not a citizen of the United States and who has not declared his intention to become a citizen.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.002. Prohibited Acts

(a) Except as provided in Subsection (b) of this section, no person may take, capture, or possess, or attempt to take or capture, any native raptors unless he has obtained a permit issued under this chapter.

(b) A person may collect and hold protected species of wildlife for scientific, zoological, and propagation purposes if he holds a permit issued by the department for that purpose.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.003. Apprentice Falconer's Permit

The department may issue an apprentice falconer's permit to any person who:

- (1) is at least 14 years of age;
- (2) is sponsored by the holder of a general falconer's or a master falconer's permit;
- (3) submits an application on forms prescribed by the department; and
- (4) submits a \$20 original permit fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 116, ch. 57, § 1, eff. Sept. 1, 1977.]

Section 11 of the 1977 Act provided:

"This Act takes effect September 1, 1977. A permit issued before the effective date of this Act under Chapter 49, Parks and Wildlife Code, remains valid as provided under the law under which it was issued until the date of its renewal."

§ 49.004. General Falconer's Permit

The department may issue a general falconer's permit to any person who:

(1) is at least 18 years of age;

(2) has at least two years of hunting experience with raptors under an apprentice falconer's permit or its equivalent;

(3) submits an application on forms prescribed by the department; and

(4) submits a \$30 original permit fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 116, ch. 57, § 2, eff. Sept. 1, 1977.]

§ 49.0045. Master Falconer's Permit

The department may issue a master falconer's permit to any person who:

(1) is at least 21 years of age;

(2) has at least five years of hunting experience with raptors under a general falconer's permit or its equivalent;

(3) submits an application on forms prescribed by the department; and

(4) submits a \$40 original permit fee.

[Added by Acts 1977, 65th Leg., p. 116, ch. 57, § 3, eff. Sept. 1, 1977.]

§ 49.0047. Joint Federal-State Permits

The department may issue joint federal-state falconer's permits as allowed by the regulations of the U. S. Fish and Wildlife Service.

[Added by Acts 1977, 65th Leg., p. 116, ch. 57, § 4, eff. Sept. 1, 1977.]

§ 49.005. Raptor Limit

(a) The holder of a falconer's permit may take, possess, and transport only the number of raptors allowed by regulation of the commission for the kind of permit held.

(b) The department shall designate species of raptor.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 117, ch. 57, § 5, eff. Sept. 1, 1977.]

§ 49.006. Renewal

(a) A falconer's permit expires on June 30 of the second calendar year following the date of issuance.

(b) Applications for renewal must be accompanied by the renewal fee and a report prescribed by the department accounting for all activities during the license period.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 117, ch. 57, § 6, eff. Sept. 1, 1977.]

§ 49.007. Renewal Fees

The renewal fee for each falconer's permit is \$10.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 117, ch. 57, § 7, eff. Sept. 1, 1977.]

§ 49.008. Nonresident Falconer's Permit

(a) A nonresident falconer's permit may be issued by the department to a nonresident or alien entitled to a nonresident hunting license.

(b) An applicant for a nonresident falconer's permit must submit an application on forms prescribed by the department and a \$5 permit fee.

(c) The permit is valid for five consecutive days.

(d) The holder of this permit may hunt with the aid of a validly held raptor.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.009. Reciprocity

A person holding raptors under a valid license issued by another state and establishing permanent residence in this state must apply to the department within 10 days for a falconer's permit from this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.010. Hunting

The holder of a valid permit issued under this chapter and a valid hunting license may hunt native species of wild birds, wild animals, and migratory game birds during the open season and may hunt unprotected species of wildlife.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.011. Sale of Raptors

(a) Except as permitted in Subsection (b) of this section, no person may buy, sell, barter, or exchange, or offer to buy, sell, barter, or exchange, a raptor in this state.

(b) The holder of a falconer's permit may, with approval of the department, exchange a raptor with another holder of a falconer's permit if there is no consideration for the exchange other than the raptors exchanged.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 117, ch. 57, § 8, eff. Sept. 1, 1977.]

§ 49.012. Property of State

All raptors captured, taken, or held in this state remain the property of the people of the state except as provided in this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.013. Transportation of Raptors

The department may issue a special permit to transport raptors out of the state on application of a permittee holding raptors who is permanently leaving the state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.014. Powers of Department

The department may:

- (1) prescribe reasonable rules and regulations for taking and possessing raptors, time and area from which raptors may be taken, and species that may be taken;
- (2) provide standards for possessing and housing raptors held under a permit;
- (3) prescribe annual reporting requirements and procedures;
- (4) prescribe eligibility requirements for any falconry permit; and
- (5) require and regulate the identification of raptors held by permit holders.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 117, ch. 57, § 9, eff. Sept. 1, 1977.]

§ 49.015. Rare or Endangered Species

The department shall insure that the taking and possessing for falconry purposes of raptors classified as rare or endangered by this state, the regulations of the department, or the United States Bureau of Sports, Fisheries, and Wildlife are restricted to competent and experienced individuals and to numbers consistent with good management practices and the current population status of the individual species or subspecies involved.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 117, ch. 57, § 10, eff. Sept. 1, 1977.]

§ 49.016. Advisory Board

(a) The department shall establish an advisory board consisting of three mature and experienced falconers.

(b) Members of the advisory board shall be selected by the department from nominees submitted by the Texas Hawking Association, the North American Falconers Association, or any unaffiliated resident falconers.

(c) The advisory board shall advise the department on the development and implementation of the rules and regulations issued under this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 49.017. Penalties

A person who violates a provision of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200 for each violation.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 50. COMBINATION HUNTING AND FISHING LICENSE

Section

- 50.001. Combination License Authorized.
- 50.002. License Fee.
- 50.003. Other Licenses Not Required.
- 50.004. Form; Duplicate License.
- 50.005. Holder Shall Comply With Other Law.

§ 50.001. Combination License Authorized

The department may issue to residents of this state a combination hunting and fishing license. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 50.002. License Fee

The fee for the combination license is \$8.75. Authorized agents of the department, other than employees of the department, may retain 25 cents of the fee as a collection fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 50.003. Other Licenses Not Required

A resident who has acquired a combination hunting and fishing license is not required to obtain the hunting license required by Chapter 42 of this code or the fishing license required by Chapter 46 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 50.004. Form; Duplicate License

(a) The department shall prescribe the form of the license and shall attach to it deer tags as provided in Chapter 42 of this code.

(b) Duplicate licenses may be issued for the same fee and in the same manner as hunting licenses under Chapter 42 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 50.005. Holder Shall Comply With Other Law

A holder of a combination hunting and fishing license shall comply with and is subject to the penalties in Chapters 42 and 46 of this code, unless those requirements or penalties conflict with this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 51. SHELLFISH CULTURE LICENSE

Section

- 51.001. Definitions.
- 51.002. License Required.
- 51.003. License for Each Premises.
- 51.004. Issuance of License; Period of Validity.

Section

- 51.005. License Fee.
 51.006. Shipments of Shellfish.
 51.007. Records.
 51.008. Harvest and Sale of Shellfish.
 51.009. Exotic Shellfish Permit Required.
 51.010. Permits for Taking Brood Stock.
 51.011. Penalty.

§ 51.001. Definitions

In this chapter:

(1) "Shellfish culture" means the business of producing, propagating, transporting, selling, or possessing for sale shellfish raised in private ponds or reservoirs in this state.

(2) "Shellfish" means aquatic species of crustaceans and mollusks, including oysters, clams, shrimp, prawns, crabs, and crayfish of all varieties.

(3) "Private pond" means a pond, reservoir, vat, or other structure capable of holding shellfish in confinement wholly within or on privately owned enclosed land.

(4) "Exotic shellfish" means shellfish imported alive into this state for shellfish culture purposes, but does not include shellfish taken from the high seas adjacent to the Texas coast.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.002. License Required

No person may engage in shellfish culture in this state unless he has first acquired a shellfish culture license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.003. License for Each Premises

A separate license is required for each tract of land on which a private pond is used for shellfish culture.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.004. Issuance of License; Period of Validity

(a) The department shall issue the shellfish culture license, and each license shall be numbered on a form provided by the department.

(b) A license is valid during the license year for which it is issued. The license year begins September 1 and extends through August 31 of the following year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.005. License Fee

The fee for a shellfish culture license is \$25.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.006. Shipments of Shellfish

Vehicles transporting shellfish to or from a licensed facility shall carry a bill of lading showing:

- (1) the name, location, and license number of the shellfish culturist;
- (2) the quantity and species of shellfish; and
- (3) the source and destination of the shellfish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.007. Records

(a) The holder of a shellfish culture license shall make and keep records showing purchases, sales, and shipments of shellfish.

(b) The records are open to inspection by authorized employees of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.008. Harvest and Sale of Shellfish

(a) Shellfish produced by a shellfish culturist may be harvested by any means and may be of any size.

(b) Subject to health regulations, shellfish produced by a shellfish culturist may be sold any time and in any county to any person.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.009. Exotic Shellfish Permit Required

(a) No person may import, possess, propagate, or transport exotic shellfish unless he has acquired a permit from the department.

(b) The department may not issue a permit to any shellfish culturist for exotic shellfish unless the applicant furnishes sufficient evidence showing that the shellfish are free of disease.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.010. Permits for Taking Brood Stock

(a) The department may issue permits to shellfish culturists or their agents authorizing the taking of a reasonable quantity of shellfish brood stock during a closed season, in closed public waters, or of any size.

(b) The permits shall show:

- (1) the name, address, and license number of the shellfish culturist;
- (2) the period of time during which brood fish may be taken;
- (3) the place where taking is allowed;
- (4) the species and number of shellfish to be taken; and
- (5) the method of taking.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 51.011. Penalty

A person who violates any provision of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

SUBTITLE B. HUNTING AND FISHING

CHAPTER 61. UNIFORM WILDLIFE REGULATORY ACT

SUBCHAPTER A. GENERAL PROVISIONS

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SUBCHAPTER B. PROHIBITED ACTS

- 61.021. Taking Wildlife Resources Prohibited.
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SUBCHAPTER C. REGULATORY DUTIES

- 61.051. Duty to Investigate and Study Wildlife Resources.
- 61.052. General Regulatory Duty.
- 61.053. Open Seasons.
- 61.054. Proclamations of the Commission.
- 61.055. Amendments and Revocations.
- 61.056. Proclamations Concerning Certain Deer, Antelope, and Elk.
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SUBCHAPTER C-1. REGULATION OF COMMERCIAL FISHING [NEW].

- 61.061. Finfish Research.
- 61.062. Reports.
- 61.063. Red Drum: Prohibitions.
- 61.064. Proclamations: Red Drum.
- 61.065. Yearly Harvest Limits.
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- 61.207. Trailing Deer With Dogs in Panola County.
- 61.208. Special Archery Season for Certain Tract.

SUBCHAPTER F. PENALTIES

- Section
- 61.901. Penalties.
- 61.902. Penalties: Red Drum Violations [NEW].

SUBCHAPTER A. GENERAL PROVISIONS

§ 61.001. Title

This chapter may be cited as the Uniform Wildlife Regulatory Act.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.002. Purpose

The purpose of this chapter is to provide a method for the conservation of an ample supply of wildlife resources in the places covered by this chapter to insure reasonable and equitable enjoyment of the privileges of ownership and pursuit of wildlife resources. This chapter provides a flexible law to enable the commission to deal effectively with changing conditions to prevent depletion and waste of wildlife resources.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.003. Applicability of Chapter

Title 7 of this code prescribes the counties, places, and wildlife resources to which this chapter applies.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.004. Applicability of Additional Counties

A law making this chapter applicable to all or a portion of the wildlife resources of a county or place repeals any provision of general or special law regulating the taking of those wildlife resources when the commission's proclamation relating to those wildlife resources in the county or place takes effect.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.005. Definitions

In this chapter:

(1) "Hunt" includes take, kill, pursue, trap, and the attempt to take, kill, or trap.

(2) "Wildlife resources" means all game animals, game birds, fur-bearing animals, alligators, marine animals, fish, and other aquatic life.

(3) "Depletion" means the reduction of a species below its immediate recuperative potential by any deleterious cause.

(4) "Waste" means a supply of a species or one sex of a species in sufficient numbers that a seasonal harvest will aid in the reestablishment of a normal number of the species.

(5) "Daily bag limit" means the quantity of a species of game that may be taken in one day.

(6) "Possession limit" means the maximum number of a species of game that may be possessed at one time.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 61.006 to 61.020 reserved for expansion]

SUBCHAPTER B. PROHIBITED ACTS

§ 61.021. Taking Wildlife Resources Prohibited

Except as permitted under a proclamation issued by the commission under this chapter, no person may hunt or possess a game bird, game animal, or fur-bearing animal, or catch a fish, marine animal, or other aquatic life at any time or in any place covered by this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.022. Taking Wildlife Resources Without Consent of Landowner Prohibited

No person may hunt or possess a game animal, game bird, or fur-bearing animal, or catch a fish, marine animal, or other aquatic life at any time and at any place covered by this chapter unless the owner of the land or water, or the owner's agent, consents.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 61.023 to 61.050 reserved for expansion]

SUBCHAPTER C. REGULATORY DUTIES

§ 61.051. Duty to Investigate and Study Wildlife Resources

(a) The department shall conduct scientific studies and investigations of all species of wildlife resources to determine:

- (1) supply;
- (2) economic value;
- (3) environments;
- (4) breeding habits;
- (5) sex ratios;
- (6) effects of hunting, trapping, fishing, disease, infestation, predation, agricultural pressure, and overpopulation; and
- (7) any other factors or conditions causing increases or decreases in supply.

(b) The studies and investigations may be made periodically or continuously.

(c) The commission shall make findings of fact based on the studies and investigations of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.052. General Regulatory Duty

(a) The commission shall regulate the periods of time when it is lawful to take wildlife resources in the places covered by this chapter.

(b) The commission shall regulate the means, methods, manners, and places in which it is lawful to take wildlife resources in the places covered by this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.053. Open Seasons

The commission shall provide open seasons for the taking of wildlife resources if its investigations and findings of fact reveal that open seasons may be safely provided or if the threat of waste requires an open season to conserve wildlife resources.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.054. Proclamations of the Commission

(a) Regulation of the taking of wildlife resources under this chapter shall be by proclamation of the commission.

(b) A proclamation of the commission authorizing the taking of wildlife resources must specify:

- (1) the species, quantity, age or size, and, to the extent possible, the sex of the wildlife resources authorized to be taken;
- (2) the means or method that may be used to take the wildlife resources; and
- (3) the region, county, area, or portion of a county where the wildlife resources may be taken.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.055. Amendments and Revocations

(a) If the commission finds that there is a danger of depletion or waste, it shall amend or revoke its proclamations to prevent the depletion or waste and to provide to the people the most equitable and reasonable privilege to pursue, take, and kill wildlife resources.

(b) The commission may amend or revoke its proclamations at any time it finds the facts warrant a change.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.056. Proclamations Concerning Certain Deer, Antelope, and Elk

A proclamation of the commission authorizing the taking of antlerless deer, antelope, and elk is not effective for a specific tract of land unless the owner or other person in charge of the land agrees in writing to the removal and to the number of antlerless deer, antelope, or elk authorized to be taken.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.057. Antlerless Deer, Antelope, and Elk Permits

(a) Except as provided in Subsection (c) of this section, no person may hunt an antlerless deer, antelope, or elk without first having acquired an antlerless deer, antelope, or elk permit issued by the department on a form provided by the department.

(b) The permit may be distributed by the department or by the owner or other person in charge of a tract of land where hunting is authorized and which is subject to an agreement under Section 61.056 of this code. An owner or other person in charge of land may distribute permits only for the land he owns or is in charge of.

(c) When conditions warrant, the commission may allow hunting of antlerless deer, antelope, or elk without a permit. The proclamation allowing hunting without a permit must be specific as to the county or portion of a county to which it applies.

(d) No person may sell or trade a permit authorized by this section for anything of value.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 61.058 to 61.060 reserved for expansion]

SUBCHAPTER C-1. REGULATION OF COMMERCIAL FISHING [NEW]

§ 61.061. Finfish Research

The department shall conduct continuous research and study of:

- (1) the supply, economic value, environment, and breeding habits of the various species of finfish, including red drum;
- (2) factors affecting the increase or decrease of finfish supply;
- (3) the use of trawls, nets, and other devices for the taking of finfish;
- (4) the effect on finfish of industrial and other types of water pollution in areas naturally frequented by finfish; and
- (5) statistical information gathered by the department on the marketing, harvesting, processing, and catching of fish landed in this state.

[Added by Acts 1977, 65th Leg., p. 723, ch. 270, § 6, eff. Sept. 1, 1977.]

§ 61.062. Reports

(a) The department shall make findings and issue reports based on the research required by Section 61.061 of this code.

(b) The findings and reports shall be filed in the permanent records of the department.

(c) The reports and findings must include recommendations for opening or closing bay areas to the

use of trawls, nets, and saltwater trotlines when the studies indicate appropriate action to prevent waste or avoid depletion of red drum and other desirable finfish.

(d) Before the convening of each regular session of the legislature, the department shall publish and present to the governor and the legislature a special report on studies, findings, recommendations, and actions taken under this subchapter.

[Added by Acts 1977, 65th Leg., p. 723, ch. 270, § 6, eff. Sept. 1, 1977.]

§ 61.063. Red Drum: Prohibitions

No person may catch red drum for sale:

- (1) in excess of the harvest limits set by the commission under this chapter;
- (2) by a method or means not permitted by the regulations of the commission issued under this chapter; or
- (3) at a time or a place prohibited by a regulation of the commission under this chapter.

[Added by Acts 1977, 65th Leg., p. 723, ch. 270, § 6, eff. Sept. 1, 1977.]

§ 61.064. Proclamations: Red Drum

The commission shall provide for the means, manner, and methods for taking red drum for sale, the times and places for taking red drum for sale, and the maximum individual and collective retention limits for the taking of red drum for sale.

[Added by Acts 1977, 65th Leg., p. 723, ch. 270, § 6, eff. Sept. 1, 1977.]

§ 61.065. Yearly Harvest Limits

The commission shall set the maximum number of pounds of red drum that may be taken for sale from each of the eight bay areas of the Texas coast and from the Gulf of Mexico within the state during each yearly period beginning on October 1 of a year and extending through September 30 of the following year.

[Added by Acts 1977, 65th Leg., p. 723, ch. 270, § 6, eff. Sept. 1, 1977.]

Section 15(c) of the 1977 Act provided:

"For the red drum harvest and license year beginning on October 1, 1978, and each year thereafter, the maximum number of pounds of red drum that may be set by the commission under Section 61.065, Parks and Wildlife Code, is 1.6 million pounds and the minimum number that may be set by the commission is 1.4 million pounds."

§ 61.066. Closing Water

(a) When the department determines through statistical data that 90 percent of the allowable red drum for the yearly period has been taken for sale from a bay system, the commission shall issue a proclamation closing the bay system to the taking of red drum during the remainder of the yearly period.

(b) The hearing required by Section 61.101 of this code is not required prior to the issuance of a proclamation under this section.

(c) In addition to the requirements of Section 61.105 of this code, the department shall provide for adequate notice of a proclamation under this section closing a bay for the taking for sale of red drum. [Added by Acts 1977, 65th Leg., p. 723, ch. 270, § 6, eff. Sept. 1, 1977.]

§ 61.067. Sale of Red Drum From Closed System

No person may purchase or sell a red drum taken from a closed bay system after the effective date of a proclamation closing the bay system under Section 61.066 of this code.

[Added by Acts 1977, 65th Leg., p. 723, ch. 270, § 6, eff. Sept. 1, 1977.]

§ 61.068. Access to Records of Red Drum Sales

(a) Not later than 72 hours after a sale of red drum, the department is entitled to examine and shall have access to cash sale tickets showing the sale of red drum.

(b) A cash sale ticket must include:

- (1) the name of the seller;
- (2) the red drum license number of the seller;
- (3) the number of pounds of red drum sold;
- (4) the date of the sale; and
- (5) the name of the bay system or the area of Gulf of Mexico water from which the red drum were taken.

[Added by Acts 1977, 65th Leg., p. 723, ch. 270, § 6, eff. Sept. 1, 1977.]

[Sections 61.069 to 61.100 reserved for expansion]

SUBCHAPTER D. ADMINISTRATIVE PROCEDURES

§ 61.101. County Hearing on Proclamation

(a) Before a proclamation of the commission may be adopted, the department shall hold a public hearing in the county to be affected by the proclamation.

(b) The hearing may be conducted by a member of the commission or by any designated employee of the department. This subsection does not require the presence of a member at any county hearing. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.102. Notice on County Hearing

Notice of the hearing must be given in a newspaper published in the county at least 10 days before the date of the hearing. If no newspaper is published in the county, the notice must be given in a newspaper published in an adjoining county and having wide circulation in the county in which the hearing is to be held.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.103. Adoption of Proclamations

(a) A proclamation under this chapter must be adopted by a quorum of the commission at a meeting of the commission held in the commission's office in Austin.

(b) A proclamation may be adopted at any special or regular meeting of the commission, for which the date and time are designated by the commission.

(c) Any person interested in a proclamation is entitled to be heard at the meeting and may introduce evidence on the imminence of depletion or waste.

(d) For the purpose of adopting a proclamation under this chapter, a quorum of the commission is four members.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.104. Effective Date and Duration of Proclamations

(a) Except as provided in Subsection (b) of this section, a proclamation takes effect at the time determined by the commission. The time designated by the commission may not be earlier than 15 days after the day the proclamation is adopted by the commission.

(b) If the commission finds that there is an immediate danger of depletion in any area as to a species, the commission may declare a state of emergency, and a proclamation issued under the state of emergency takes effect on issuance.

(c) A proclamation of the commission continues in effect until it expires by its own terms or until it is amended or repealed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.105. Copies of Proclamations

On the adoption of a proclamation, a copy shall be numbered and filed in the office of the commission in Austin. A copy shall be filed with the secretary of state. A copy shall be sent to each county clerk for filing and to each county attorney of a county affected by the proclamation. A mimeographed copy shall be furnished to each employee of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.106. Judicial Review of Proclamation

(a) The venue for any suit challenging the validity of a proclamation of the commission under this chapter is in Travis County.

(b) The party complaining of a proclamation has the burden of proof to show invalidity.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 61.107 to 61.200 reserved for expansion]

SUBCHAPTER E. PROVISIONS AFFECTING LIMITED AREAS

§ 61.201. **Lake Tawakoni**

The commission's regulations for Lake Tawakoni shall be uniform for the entire lake.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.202. **Approval of Certain County Commissioners Courts**

(a) No proclamation of the commission is effective in a county listed in Subsection (e) of this section unless it has been approved by the commissioners court of the county.

(b) The commissioners court of a county listed in Subsection (e) of this section shall approve or disapprove a proclamation, in whole or in part, at the first regular meeting occurring more than five days after it receives notification of the adoption of a proclamation affecting the county.

(c) If the commissioners court approves the proclamation, it takes effect at the time the commission has designated or immediately on its approval, whichever is later.

(d)(1) If the commissioners court of Bandera, Coke, Crockett, Dimmit, Edwards, Frio, Grayson, Hays, Kinney, Lampasas, Medina, Regan, Robertson, Sutton, Val Verde, or Zavala county disapproves a proclamation, the taking of wildlife resources in the county is governed by the previous year's proclamation. After disapproval of a proclamation, no public hearing on a similar proposed proclamation may be held within six months of the disapproval, unless the commissioners court certifies to the commission that there has occurred a material change in the surrounding circumstances which requires a public hearing before the end of the six-month period.

(2) If the commissioners court of Gillespie, Kerr, Kimble, Llano, Mason, Menard, Real, San Saba, Schleicher, or Uvalde county disapproves a proclamation, or part of a proclamation, the taking of wildlife resources in the county is governed either by the general law of this state or by the proclamations of the prior year, to be determined by order of the commissioners court, until such time as the commissioners court approves of subsequent proclamations of the commission. If the commissioners court fails to designate either the general law or the proclamations for the prior year, the law or proclamation in effect for the prior year continues in effect. After disapproval of a proclamation, no public hearing on a similar proposed proclamation may be held within six months of the disapproval, unless the commissioners court certifies to the commission that there has occurred a material change in the surrounding circumstances which requires a public hearing before the end of the six-month period.

(e) This section applies only to Bandera, Coke, Crockett, Dimmit, Edwards, Grayson, Frio, Gillespie, Hays, Kerr, Kimble, Kinney, Lampasas, Llano, Mason, Medina, Menard, Reagan, Real, Robertson, San Saba, Schleicher, Sutton, Uvalde, Val Verde, and Zavala counties.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1222, ch. 456, § 21, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1256, ch. 484, § 2, eff. Sept. 1, 1977.]

§ 61.203. **Trotlines and Crab Traps in Aransas County**

(a) The commission shall regulate the use of trotlines and crab traps outside the net-free zone in Aransas County to protect persons engaged in fishing, boating, and other water sports.

(b) The regulations may require spacing and marking of trotlines and crab traps and may authorize the seizure of abandoned trotlines and traps.

(c) The regulations under this section shall be adopted in the same manner as other regulations under this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.204. **Repealed by Acts 1977, 65th Leg., p. 802, ch. 279, § 1, eff. Aug. 29, 1977**

§ 61.205. **Deer in Dimmit, Uvalde, and Zavala Counties**

(a) The commission shall maintain in Dimmit, Uvalde, and Zavala counties a deer herd and breeding stock of productive excellence that will assure harvest of buck deer of the size and quality for which these counties are noted.

(b) When investigations and findings of fact disclose that there is a danger of losing quality deer because of waste, depletion, or other controllable factors, the commission shall regulate the season, harvest limits, and the type, size, and sex of deer to maintain and recover the standard of excellence. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.206. **Storage and Processing of Deer in Lampasas County**

(a) The commission may regulate the making and maintenance of records by a bailee for hire accepting deer for storage or for processing. This section applies to Lampasas County only.

(b) A bailee for hire shall record the name and address of each bailor of deer, the date of the bailment, the name and address of every person who removes deer from storage (if processing is not done by the bailee), and the date of removal of the unprocessed deer. If the bailee processes the deer, he shall remove the deer tag, if any, at the time of processing. The records required by this section may be entered in the usual and customary books of

account, or in a simple journal if no other records are maintained by the bailee.

(c) The records required by this section and the tags removed from processed deer shall be kept for at least four months after the record is made or the tag removed. After the four-month period, the bailee may destroy the records and tags.

(d) An authorized representative of the commission may inspect deer held for storage and deer tags held by the bailee during normal business hours and without causing undue interference of the bailee's business. A bailee for hire shall give to an authorized representative of the commission any deer tag held by the bailee, the name and address of any person removing deer from storage, and the date of any removal if the authorized representative makes a request for the tag or information during the four-month period after a bailment and the delivery of a proper receipt for the bailment. A bailee who complies with a proper request by giving a deer tag or information to an authorized representative is not liable to any person damaged as a result of compliance.

(e) Regulations of the commission under this section may not require a more onerous standard of conduct or duty than the minimum requirements of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.207. Trailing Deer With Dogs in Panola County

The commission may regulate or prohibit the hunting and trailing of buck deer on any tract of 10,000 or more contiguous acres of land in Panola County which is designated as a preserve for restocking deer under the regulations of the commission and the Department of Interior of the United States and by state and federal law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 61.208. Special Archery Season for Certain Tract

(a) This section applies only to the tract of land described by Section 1, Chapter 646, Acts of the 59th Legislature, Regular Session, 1965.

(b) The commission shall:

(1) provide an archery season for the taking of buck and doe deer from October 1 through October 31; and

(2) require a special nonresident hunting license for the taking of deer and javelina by bow and arrow during the archery season required by this section.

(c) The nonresident hunting license fee is \$5 and the license is valid for five days only.

(d) It is lawful to:

(1) hunt javelina with bow and arrow of legal specifications at any time;

(2) hunt javelina with firearms during the archery season for deer; and

(3) hunt deer of either sex during the archery season.

(e) No person may use a crossbow at any time.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 61.209 to 61.900 reserved for expansion]

SUBCHAPTER F. PENALTIES

§ 61.901. Penalties

(a) Except as provided in this section, a person who violates any provision of this chapter or any proclamation or regulation of the commission issued under the authority of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each game animal, game bird, fur-bearing animal, or fish taken in violation of this chapter or of a proclamation or regulation of the commission constitutes a separate offense.

(b) A person who violates a proclamation or regulation of the commission by the use of artificial lights in Hardin, Jasper, Newton, Orange, or Tyler counties is guilty of a misdemeanor and on conviction is punishable by confinement in jail for not less than 3 nor more than 90 days, or by a fine of not less than \$50 nor more than \$200, or by both.

(c) A person who violates a proclamation or regulation of the commission regulating the use and possession of nets, seines, trawls, traps, or other devices used for catching aquatic life, except shrimp, in the inside water of this state is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$200 and on a second or subsequent conviction is punishable by a fine of not less than \$50 nor more than \$500.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 381, ch. 190, §§ 1, 2, eff. May 20, 1977.]

§ 61.902. Penalties: Red Drum Violations

A person who violates a proclamation issued under Subchapter C-1 of this chapter or Sections 61.067 or 61.068 of this code shall on a first offense be punished as provided in Section 61.901 of this code. On a second or subsequent conviction of a violation of a proclamation issued under Subchapter C-1 of this chapter or of a violation of Sections 61.067 or 61.068 of this chapter, the person is guilty of a misdemeanor and is punishable by a fine of not less than \$200

nor more than \$500 and each commercial fishing license held by the person shall be forfeited. [Added by Acts 1977, 65th Leg., p. 723, ch. 270, § 7, eff. Sept. 1, 1977.]

CHAPTER 62. PROVISIONS GENERALLY APPLICABLE TO HUNTING

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- 62.025. Importation of Game.
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- 62.081. Weapons Prohibited.
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SUBCHAPTER A. GENERAL PROVISIONS

§ 62.001. Definitions

For the purpose of enforcement of the game laws of this state:

(1) "Closed season" means the period of time during which it is unlawful to hunt a game animal, wild fowl, or bird.

(2) "Open season" means the period of time during which it is lawful to hunt a specified animal, game animal, wild fowl, or bird.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.002. Hunting With Certain Weapons

(a) No person may use a .22 caliber jetgun, rocketgun, or firearm that uses rimfire ammunition in hunting wild deer, wild elk, wild antelope, wild Aoudad sheep, or wild desert bighorn sheep.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each animal hunted in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.003. Hunting From Vehicles

(a) Except as provided in Subsection (b) of this section, no person may hunt from any type of aircraft or airborne device, motor vehicle, powerboat, or sailboat, or from any floating device towed by powerboat or sailboat any wild game bird, wild game fowl, or wild game animal protected by this code.

(b) Game animals and game birds not classified as migratory may be hunted from a motor vehicle within the boundaries of private property by a person who is legally on the property for the purpose of hunting if no attempt is made to hunt any wild game bird, wild game fowl, or wild game animal on any part of the road system of this state.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.004. Hunting at Night

(a) No person may hunt any wild bird, wild game bird, wild fowl, or wild game animal protected by this code at any season of the year between one-half hour after sunset and one-half hour before sunrise.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100. Each bird or animal killed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.005. Hunting With Light

(a) No person may hunt an animal or bird protected by this code with the aid of a headlight, hunting lamp, or other artificial light, including an artificial light attached to a motor vehicle.

(b) The possession of a headlight or hunting lamp used on or about the head when hunting at night between sunset and one-half hour before sunrise by a person hunting in an area where deer are known to range constitutes prima facie evidence that the person was violating this section.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$50, by confinement in the county jail for not less than 30 days nor more than 90 days, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.006. Hunting for Hire

(a) No person may employ another person or be employed by another person for compensation or promise of compensation to hunt any bird, wild fowl, or game animal protected by this code.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

(c) If a person testifies against another person who employed him in violation of this section, all prosecutions against him in the case in which he testifies shall be dismissed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.007. Stopping for Search

(a) An authorized employee of the department may search the game bag, receptacle, automobile, or other vehicle if he has reason to believe that the bag, receptacle, automobile, or vehicle contains game unlawfully killed or taken.

(b) A person who refuses to allow a search or refuses to stop a vehicle when requested to do so by an authorized employee is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.008. Prima Facie Evidence

Except as provided in Subchapter B of this chapter, possession of a wild game bird, wild game animal, or other species of protected wildlife, whether dead or alive, during a time when the hunting of the animal, bird, or species is prohibited is prima facie evidence of the guilt of the person in possession.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.009. Purchase for Evidence

A person who, for the purpose of establishing testimony, purchases a game bird or animal whose sale is prohibited by this code, is immune from prosecution for the purchase. A conviction for the unlawful sale of game may be sustained on the uncorroborated testimony of the purchaser.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.010. Exceeding Bag Limits, Hunting During Closed Season, etc.; Penalty

(a) No person may kill or take more than the daily, weekly, or seasonal bag limits for game birds or animals as set out in this code.

(b) No person may hunt any game bird or animal at any time of the year other than during the open season provided by this code.

(c) No person may kill, take, capture, wound, or shoot at any game bird or animal for which no open season is set out by this code.

(d) No person may possess an illegally killed game bird or animal.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each game bird or animal taken or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.011. Retrieval and Waste of Game

(a) It is an offense if a person while lawfully hunting kills or wounds a game bird or game animal and intentionally or knowingly fails to make a reasonable effort to retrieve the animal or bird and include it in the person's daily or seasonal bag limit.

(b) It is an offense if a person intentionally takes a game bird, game animal, or a fish, other than a rough fish, and intentionally, knowingly, or recklessly, or with criminal negligence, fails to keep the edible portions of the bird, animal, or fish in an edible condition.

(c) An offense under this section is a misdemeanor the punishment for which is a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1214, ch. 456, § 15, eff. Sept. 1, 1975.]

[Sections 62.012 to 62.020 reserved for expansion]

SUBCHAPTER B. SALE, TRANSPORTATION, AND STORAGE OF GAME**§ 62.021. Sale or Purchase of Game.**

(a) No person may sell, offer for sale, purchase, offer to purchase, or possess after purchase a wild bird, wild game bird, or wild game animal, dead or

alive, or part of the bird or animal except deer hides and antlers.

(b) This section applies only to a bird or animal protected by this code without regard to whether the bird or animal is taken or killed in this state.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.022. Sale or Purchase of Certain Game

(a) No person may sell, offer for sale, or possess after purchase a wild deer, wild antelope, or Rocky Mountain sheep killed in this state; or the carcass, hide, or antlers of wild antelope or Rocky Mountain sheep; or the carcass of wild deer, excluding wild deer hides and antlers.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.023. Sale by Taxidermist

(a) If the owner of heads or hides that have been mounted or tanned has not claimed them within 90 days after notification by a taxidermist or tanner, the taxidermist or tanner may sell the head or hides for the amount due for labor performed.

(b) Heads or hides sold under this section must have attached the original transportation affidavit required under this subchapter.

(c) A taxidermist or tanner selling heads or hides under this section shall report immediately the sale to the department. The report must include the name of the person purchasing the head or hides and a copy of the transportation affidavit regarding the manner in which the head or hides were obtained. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.024. Importation of Game

(a) No person may bring into this state any bird or animal protected by this code during the closed season for that bird or animal except as provided by this code.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each bird or animal imported in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.025. Importation of Game

(a) No person may bring into this state a bird or animal protected by this code for sale, barter, ex-

change, or shipment for sale during the open season for that bird or animal except as provided in Section 62.026 of this code.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each bird or animal imported in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.026. Importation of Protected Wildlife From Mexico

(a) It is lawful to ship or bring any wild game birds, wild game animals, or other protected species of wildlife from the Republic of Mexico into this state at any season if the person importing the wildlife has obtained:

(1) an importation permit from the department or an authorized agent; and

(2) a statement from the United States Customs Officer at the port of entry showing that the wildlife was brought from the Republic of Mexico.

(b) An importation permit must be on a form provided by the department and shall be issued for a period not to exceed 30 days.

(c) The fee for an importation permit is \$1. The officer issuing the importation permit, except employees of the department, may retain 25 cents as his collection fee.

(d) Within 10 days after the expiration date of the importation permit, the holder of the permit shall return one copy of the permit to the department showing the species of wildlife imported, the number of each, the date of importation, and the port of entry.

(e) The department may prescribe reasonable rules and regulations for the importation of wild game birds, wild game animals, and other protected species of wildlife, and the number of each species that may be imported during a calendar week under this section.

(f) A person who violates a provision of this section or a rule or regulation issued under this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.0265. Transportation of Wild Animals and Birds

(a) A person may transport or ship to and from a taxidermist or tannery for mounting or preserving purposes or to his home, a specimen or part of a

specimen of a wild bird or wild animal of this state, if the bird or animal was lawfully taken by the person, and if the specimen is not for sale.

(b) This section does not prohibit the transportation of a specimen and parts of a specimen as permitted under Section 62.021 and 62.022 of this code.

[Added by Acts 1977, 65th Leg., p. 610, ch. 221, § 1, eff. May 24, 1977.]

§ 62.027. Affidavit for Transporting Specimens

(a) A person may not ship by common carrier a specimen or part of a specimen as permitted by Section 62.0265 of this code unless he has executed the transportation affidavit set out in this section.

(b) The transportation affidavit must be made before an officer authorized to administer oaths and must be in the following form:

State of Texas }
 County of _____ }

Before me, the undersigned authority, on this day personally appeared _____, who after being duly sworn, upon oath says: I live at _____ in the County of _____, State of _____; I have personally killed _____, which I desire to ship from _____ to _____ County, to _____, State of _____, which I lawfully killed for lawful use; that I have not killed during the present hunting season more than the bag limit of any of the wild game birds, wild fowl, or wild animals.

Signature _____

Sworn to and subscribed before me this _____ day of _____ A.D. 19____

Office held _____

(c) The affidavit must be attached to the shipment and delivered to the common carrier transporting the shipment, and may not be removed during the period of transportation. If the specimen is carried by the person who killed it, the affidavit does not have to be attached to the shipment.

(d) Express agents, conductors, auditors of trains, captains of boats, and employees of the department may administer oaths for the affidavit required under this section. The person administering the oath may collect 25 cents for this service.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 611, ch. 221, § 2, eff. May 24, 1977.]

§ 62.028. Failure to Obtain Affidavit

A person is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100 if he:

- (1) ships game from any place in this state without making the transportation affidavit;

- (2) is an agent of an express company or common carrier and receives shipment of game without an attached transportation affidavit; or

- (3) is an auditor, conductor, or person in charge of a railroad train and knowingly permits a person to carry game without having made a transportation affidavit.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.029. Records of Game in Storage

(a) As used in this section, a "public cold storage plant" is any plant in which game is stored for a person other than the owner of the plant.

(b) The owner or operator of a public cold storage plant shall maintain a book containing a record of:

- (1) the name of each person placing a game bird or game animal in storage;
- (2) the number and kind of game birds or game animals placed in storage; and
- (3) the date on which each game bird or game animal is placed in storage.

(c) The record book kept by the owner or operator of a public cold storage plant may be inspected by an authorized employee of the department at any time.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.
 [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.030. Possession of Game in Storage

A person may place and maintain, or possess, in a public or private storage plant, refrigerator, or locker lawfully taken or killed game birds, game animals, waterfowl, or migratory waterfowl not in excess of the number permitted to be possessed by law.
 [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.031. Inspections of Storage Facilities

(a) Authorized employees of the department may enter and inspect a public cold storage plant or other place, including taxidermist shops and tanneries, where protected wildlife are stored.

(b) In this section "protected wildlife" means game animals and game birds and nongame animals and birds that are the subject of any protective law or regulation of this state or the United States.

(c) Inspections under this section may be made during normal business hours when the facilities are open to the public generally but may include areas within a facility not generally open to the public.
 [Added by Acts 1977, 65th Leg., p. 611, ch. 221, § 3, eff. May 24, 1977.]

[Sections 62.032 to 62.050 reserved for expansion]

SUBCHAPTER C. ARCHERY SEASON

§ 62.051. Application of Subchapter

The provisions of this subchapter do not apply to the following counties: Angelina, Armstrong, Atascosa, Austin, Bailey, Bandera, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Bowie, Brazoria, Brewster, Briscoe, Burnet, Caldwell, Calhoun, Callahan, Camp, Carson, Cass, Castro, Childress, Collingsworth, Colorado, Comanche, Comal, Coryell, Cottle, Crockett, Crosby, Dallam, Dallas, Deaf Smith, Delta, DeWitt, Dickens, Dimmit, Donley, Eastland, Ector, Edwards, Ellis, Erath, Fannin, Fayette, Fisher, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Galveston, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gregg, Grimes, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Hardin, Harrison, Hartley, Haskell, Hays, Hemphill, Hill, Hood, Hopkins, Houston, Howard, Hutchinson, Irion, Jackson, Jasper, Johnson, Jones, Karnes, Kendall, Kenedy, Kerr, Kleberg, Kimble, King, Kinney, Knox, Lamar, Lamb, Lampasas, LaSalle, Lavaca, Lipscomb, Live Oak, Llano, McCulloch, McMullen, Marion, Martin, Mason, Matagorda, Maverick, Medina, Menard, Mitchell, Montgomery, Moore, Morris, Motley, Nacogdoches, Newton, Nolan, Nueces, Ochiltree, Oldham, Panola, Parmer, Polk, Rains, Reagan, Real, Red River, Roberts, Rockwall, Rusk, Sabine, San Augustine, San Jacinto, San Saba, Schleicher, Scurry, Shackelford, Shelby, Sherman, Smith, Somervell, Sterling, Stonewall, Sutton, Swisher, Taylor, Terrell, Throckmorton, Titus, Tom Green, Trinity, Tyler, Upshur, Val Verde, Victoria, Walker, Waller, Washington, Wharton, Wilbarger, Wilson, Wood, and Zavala.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1257, ch. 484, § 3(a), eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 1793, ch. 721, § 1, eff. Aug. 29, 1977.]

§ 62.052. Definition

As used in this subchapter, "buck deer" means a wild buck deer with three points or more.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.053. Archery Season

The open archery season for hunting buck deer, wild bear, wild turkey gobblers, and collared peccary or javelina with bow and arrow is October 1 through October 31 of each year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.054. Possession of Firearms or Crossbow

(a) While hunting buck deer, wild bear, wild turkey gobblers, or collared peccary or javelina during the open archery season, no person possessing a bow and arrow may have any type of firearm or crossbow on his person, in an automobile, or in a hunting

camp, except as permitted in Subsection (b) of this section.

(b) Subsection (a) of this section does not prohibit the possession of a shotgun on the person of the hunter, in a hunting camp, or in an automobile if:

- (1) the shotgun is not used for the taking or in assisting in the taking of deer, bear, turkey, or javelina; and
- (2) the person possesses on his person or in the camp or automobile no shotgun shells having shot larger than Number 4 shot.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 107, ch. 51, § 1, eff. Aug. 29, 1977.]

§ 62.055. Equipment

(a) No person may hunt buck deer, wild bear, wild turkey gobblers, or collared peccary or javelina during the open archery season with:

- (1) a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards;
- (2) arrows that are not equipped with broadhead hunting points at least seven-eighths inch in width and not over one and one-half inches in width;
- (3) arrows that do not have on them in a nonwater-soluble medium the name and address of the user; or
- (4) arrows that are poisoned, drugged, or explosive.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.056. Archery Season in Certain Counties

In counties covered by this subchapter where the hunting season on buck deer, wild bear, wild turkey gobblers, and collared peccary or javelina is less than 31 days, the department shall determine the length of the season to hunt these animals with bows and arrows. This archery season may not be longer than the open season for taking these game with firearms.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 62.057 to 62.060 reserved for expansion]

SUBCHAPTER D. HUNTING IN STATE PARKS

§ 62.061. Prohibited Acts

Except as authorized by the commission under this subchapter, no person may hunt a wild animal, wild bird, or wild fowl in a state park, fort, or historic site under the jurisdiction of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.062. Season

As sound biological management practices warrant, the commission may prescribe an open season for hunting in state parks, forts, or sites where size, location, and other physical conditions permit hunting. The open season may be only during the period beginning on the first day of November in one year and extending through the last day of February of the following year. However, no open season is authorized for the hunting of deer in any state park, the purposes and uses for which are primarily recreational.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.063. Regulatory Authority

The commission may prescribe the number, size, kind, and sex and the means and methods of taking any wildlife during an open season in a state park, fort, or historic site.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.064. Fee for Hunting

The commission may set a reasonable fee to be collected for hunting in state parks, forts, and sites.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.065. Disposition of Funds

Revenue received under this subchapter shall be deposited in the state treasury to the credit of the state parks fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.066. Management of Resources

The commission may direct the service or division of the department charged with the management of wildlife resources to manage the aquatic and wildlife resources found in state parks, forts, or historic sites.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.067. General Hunting License

The provisions of this subchapter do not waive the requirement of a hunting license under this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.068. Arrest

A peace officer, game management officer, or commissioned state park employee may arrest without warrant a person found committing a violation of this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.069. Penalty

A person who violates a provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 62.070 to 62.080 reserved for expansion]

SUBCHAPTER E. WEAPONS ON LOWER COLORADO RIVER AUTHORITY LAND

§ 62.081. Weapons Prohibited

Except as provided in Section 62.082 of this code, no person may hunt with, possess, or shoot a firearm, bow, crossbow, slingshot, or any other weapon on or across the land of the Lower Colorado River Authority.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.082. Target Ranges

(a) The Board of Directors of the Lower Colorado River Authority may lease river authority land to be used on a nonprofit basis for a target rifle or archery range only and not for hunting.

(b) A member of the boy scouts or the girl scouts or other nonprofit public service group or organization may possess and shoot a firearm, bow, and crossbow for target or instructional purposes under the supervision of a qualified instructor registered with and approved by the Lower Colorado River Authority on ranges designated by the Lower Colorado River Authority. This subsection does not permit hunting by any person.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.083. Approved Instructor and Range Records

The Lower Colorado River Authority shall maintain in its Austin office a current listing of approved and registered instructors and a map indicating the location of the designated ranges. The records shall be made available on request to enforcement officers and county attorneys.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 62.084. Penalty

A person who violates Section 62.081 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 63. GAME AND NONGAME ANIMALS

SUBCHAPTER A. GAME ANIMALS

Section

- 63.001. Game Animals.
- 63.002. Bag Limit for Certain Game.
- 63.003. Collared Peccary (Javelina).
- 63.004. Squirrel Season.
- 63.005. Squirrel Limit.
- 63.006. Deer and Bear Season.
- 63.007. White-Tailed Deer Permits.
- 63.008. Female Deer, Fawn, Young Buck.
- 63.009. Deer Call.
- 63.010. Hunting Deer With Dogs.

SUBCHAPTER B. NONGAME ANIMALS

- 63.101. Coypu (Nutria).
- 63.102. Wolves.

SUBCHAPTER A. GAME ANIMALS

§ 63.001. Game Animals

(a) The following animals are game animals: wild deer, wild elk, wild antelope, wild desert bighorn sheep, wild black bear, wild gray or cat squirrels, wild fox squirrels or red squirrels, and collared peccary or javelina.

(b) No species of any animal set out in Subsection (a) of this section or any other animal is a game animal if it is not indigenous to this state.

(c) Aoudad sheep are game animals in Armstrong, Briscoe, Donley, Floyd, Hall, Motley, Randall, and Swisher counties.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.002. Bag Limit for Certain Game

No person may hunt or possess game animals in greater number than the daily, weekly, or seasonal bag limit as follows:

- (1) two wild buck deer during the open season of any one year;
- (2) one wild bear during the open season of any one year; and
- (3) ten wild squirrels in any one day.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.003. Collared Peccary (Javelina)

(a) No person may hunt collared peccary (javelina) at any time except during the open season which is the period beginning November 16 and extending through January 1.

(b) No person may take more than two collared peccary (javelina) in one open season.

(c) No person may take, sell, offer to sell, or have in possession for the purpose of sale or barter any collared peccary (javelina).

(d) This section does not apply to collared peccary (javelina) or their hides imported from another state or foreign country.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each collared peccary (javelina) taken, possessed, sold, offered for sale, or possessed for sale in violation of this section is a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.004. Squirrel Season

(a) Except as provided in Subsection (b) of this section, the open season for the hunting of wild gray squirrels and wild red or fox squirrels is the months of May, June, July, October, November, and December.

(b) Squirrels may be kept in cages as domestic pets at any time.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.005. Squirrel Limit

(a) Except as provided in Subsection (b) of this section, no person may take or kill more than 10 squirrels in one day or have in possession more than 20 squirrels at one time.

(b) This section does not apply to the following counties: Aransas, Atascosa, Austin, Bandera, Bastrop, Bee, Blanco, Brown, Bosque, Brazoria, Burnet, Caldwell, Calhoun, Callahan, Chambers, Colorado, Cooke, Coryell, Comanche, Comal, Concho, Delta, DeWitt, Dimmit, Eastland, Edwards, Erath, Fayette, Fort Bend, Franklin, Galveston, Gillespie, Goliad, Gonzales, Guadalupe, Hays, Hamilton, Hill, Hopkins, Jackson, Karnes, Kerr, Kendall, Kimble, Lamar, Lampasas, Lavaca, Live Oak, Llano, Mason, Matagorda, McCulloch, Menard, Medina, Mills, Montague, Real, Red River, Refugio, San Patricio, San Saba, Schleicher, Stephens, Tarrant, Throckmorton, Travis, Uvalde, Victoria, Waller, Washington, Wharton, Wilson, Wise, and Zavala.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.006. Deer and Bear Season

The open season for the hunting of wild buck deer and wild bear is the period beginning November 16 and extending through December 31.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.007. White-Tailed Deer Permits

(a) The department shall issue permits for the trapping, transporting, and transplanting of wild white-tailed deer to persons presenting a satisfactory showing that there is an overpopulation of the deer in an area where harvest provisions are inadequate for maintaining a balanced supply of the deer and that the deer will be removed and transplanted to an area of adaptable habitat for appropriate harvest.

(b) The trapping, transporting, and transplanting of wild white-tailed deer under a permit issued by the department shall be done at no expense to the state.

(c) No person may hunt wild white-tailed deer transplanted under this section except as allowed by law for the hunting of native wild white-tailed deer in the county to which the deer are transplanted.

(d) Permits issued under this section do not entitle a person to take, trap, or possess wild white-tailed deer on any privately owned land without the landowner's written permission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.008. Female Deer, Fawn, Young Buck

(a) No person may hunt a wild female deer, wild fawn deer, or wild buck deer without a pronged horn.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.009. Deer Call

(a) No person may use a deer call, whistle, decoy, call pipe, reed, or other mechanical or natural device to call or attract deer, except the rattling of deer horns.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$500 or by confinement in the county jail for not less than 20 days nor more than 90 days, or both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.010. Hunting Deer With Dogs

(a) Except as provided in Subsection (b) of this section, no person may use or permit the use of a dog in the hunting of deer.

(b) This section does not apply to Brazoria, San Augustine, and Fort Bend counties.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

(d) Nothing in this section affects Chapter 61 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 63.011 to 63.100 reserved for expansion]

SUBCHAPTER B. NONGAME ANIMALS**§ 63.101. Coypu (Nutria)**

(a) No person may possess, transport, or sell live coypu (nutria) unless he has obtained a written permit from the department.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 63.102. Wolves

(a) No person may possess, transport, receive, or release a live wolf in this state.

(b) Subsection (a) does not apply to the transportation of a wolf by a state or county official while performing an official duty or to the possession or transportation of a wolf by the owner or agent of a licensed circus, zoo, or menagerie for exhibition or scientific purposes.

(c) A person who violates this section is guilty of a felony and on conviction is punishable by imprisonment in the penitentiary for not less than six months nor more than five years.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 64. BIRDS**SUBCHAPTER A. GENERAL PROVISIONS**

Section	
64.001.	Game Birds.
64.002.	Protection of Nongame Birds.
64.003.	Destroying Nests or Eggs.
64.004.	Trapping Game Birds.

SUBCHAPTER B. SEASONS AND LIMITS

64.011.	Eagle.
64.012.	Hunting Turkey Hens.
64.013.	Turkey Gobblers.
64.014.	Quail and Chachalaca.
64.015.	Prairie Chicken.

SUBCHAPTER C. MIGRATORY GAME BIRDS

64.021.	Definitions.
64.022.	Authority of Department.
64.023.	Open Season.
64.024.	Regulations.
64.025.	Suit.
64.026.	Prohibited Acts.

SUBCHAPTER A. GENERAL PROVISIONS**§ 64.001. Game Birds**

Wild turkey, wild ducks of all varieties, wild geese of all varieties, wild brant, wild grouse, wild prairie chickens, wild pheasants of all varieties, wild par-

tridge, wild bobwhite quail, wild scaled quail, wild Mearn's quail, wild Gambel's quail, wild red-billed pigeons, wild band-tailed pigeons, wild mourning doves, wild white-winged doves, wild snipe of all varieties, wild shore birds of all varieties, chachalacas, wild plover of all varieties, and wild sandhill cranes are game birds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.002. Protection of Nongame Birds

(a) Except as provided in this section, Chapter 67, or Section 12.013 of this code, no person may:

(1) catch, kill, injure, pursue, or possess, dead or alive, or purchase, sell, expose for sale, transport, ship, or receive or deliver for transportation, a bird that is not a game bird;

(2) possess any part of the plumage, skin, or body of a bird that is not a game bird; or

(3) disturb or destroy the eggs, nest, or young of a bird that is not a game bird.

(b) European starlings, English sparrows, grackles, ravens, red-winged blackbirds, cowbirds, and crows may be killed at any time and their nests or eggs may be destroyed.

(c) Canaries, parrots, and other exotic nongame birds may be sold, purchased, and kept as domestic pets.

(d) A person may defend and protect his domestic animals from predators.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each bird or part of a bird taken or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.003. Destroying Nests or Eggs

(a) No person may destroy or take the nest, eggs, or young of any wild game bird, wild bird, or wild fowl protected by this code except as provided in this code.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.004. Trapping Game Birds

(a) No person may set a trap, net, or other device for taking game birds or take or snare a game bird by a device without obtaining a permit from the department.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 64.005 to 64.010 reserved for expansion]

SUBCHAPTER B. SEASONS AND LIMITS

§ 64.011. Eagle

Golden eagle or Mexican brown eagle may be hunted or trapped in this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.012. Hunting Turkey Hens

(a) No person may hunt or possess, dead or alive, a wild turkey hen at any time except as provided in this code.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.013. Turkey Gobblers

(a) No person may hunt wild turkey gobblers except during the open season, which is the period beginning November 16 and extending through December 31.

(b) No person may take, kill, or possess more than two turkey gobblers in one open season.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 611, ch. 222, § 1, eff. Aug. 29, 1977.]

§ 64.014. Quail and Chachalaca

(a) No person may hunt quail or chachalaca except during the open season, which is the period beginning December 1 and extending through January 16.

(b) No person may kill more than 12 quail in one day, kill more than 36 quail in a seven-day period, or possess more than 36 quail at one time.

(c) No person may kill more than 5 chachalacas in one day, kill more than 10 chachalacas in a seven-day period, or possess more than 10 chachalacas at one time.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each bird killed or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.015. Prairie Chicken

(a) No person may hunt or possess prairie chicken in this state.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100. Each prairie chicken taken, killed, or possessed in violation of this section constitutes a separate offense and

shall be seized and disposed of as provided in Section 12.110 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 64.016 to 64.020 reserved for expansion]

SUBCHAPTER C. MIGRATORY GAME BIRDS

§ 64.021. Definitions

In this subchapter:

(1) "Migratory game bird" means wild ducks of all species, wild geese and wild brant of all species, wild coot, wild rail, wild gallinules, wild plovers, Wilson's snipe or jack snipe, woodcock, mourning doves, white-winged doves, and sand-hill cranes.

(2) "Open season" means the period of time when it is lawful to take, kill, or pursue, or attempt to take or kill migratory game birds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.022. Authority of Department

The department shall provide the open season, and means, methods, and devices for the taking and possessing of migratory game birds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.023. Open Season

An open season may be provided only for the length of time justified by the supply of the species of migratory game bird affected in this state or in the zone or section of this state where the open season applies.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.024. Regulations

(a) The department shall conduct investigations prior to the issuance of regulations on an open season for a migratory game bird. The regulation may be issued if the supply of the migratory game bird is sufficient.

(b) The effective date of a regulation shall be stated in the regulation but may not be less than 10 days after the regulation is issued.

(c) A regulation is valid until the time specified in the regulation unless it is suspended or amended by the department in the same manner as in issuing the original regulation.

(d) A regulation issued by the department must be incorporated in the minutes of the meeting at which it was adopted, and a copy of the regulation must be filed with the secretary of state and each county clerk and county attorney.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.025. Suit

A party affected by and dissatisfied with a regulation issued under this subchapter may file suit against the department to test the validity of the regulation in a court of competent jurisdiction in Travis County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 64.026. Prohibited Acts

(a) No person may hunt or possess a migratory game bird by any method or device except as provided by regulation issued under this subchapter.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100. Each migratory game bird killed or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 65. REPTILES

SUBCHAPTER A. TURTLES AND TERRAPIN

Section	
65.001.	Season for Saltwater Terrapin.
65.002.	Underweight Turtle or Terrapin.
65.003.	Unlawful Taking of Sea Turtles and Sea Turtle Eggs.
65.004.	Texas Tortoise.
65.005.	Injunction.
65.006.	Penalties.

SUBCHAPTER B. HORNED TOADS

65.101.	Definition.
65.102.	Killing, Capturing, Selling, or Transporting Horned Toads.
65.103.	Injunction.
65.104.	Penalties.

SUBCHAPTER A. TURTLES AND TERRAPIN

§ 65.001. Season for Saltwater Terrapin

(a) No person may take or have in his possession any saltwater terrapin except during November, December, January, and February.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 65.002. Underweight Turtle or Terrapin

(a) No person may sell or ship any green turtle weighing less than 12 pounds or any terrapin of less than six inches in length of under shell.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 65.003. Unlawful Taking of Sea Turtles and Sea Turtle Eggs

(a) No person may knowingly take, kill, or disturb any sea turtle or sea turtle eggs in or from the waters of the state.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 65.004. Texas Tortoise

No person may wilfully kill, injure, take, or have in his possession for the purpose of sale, barter, or commercial exploitation, any Texas Tortoise (*Gopherus berlandieri*) in the state except for propagation and scientific purposes. Possession includes the transportation, shipping, or storing of Texas Tortoises, dead or alive, within or into the state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 65.005. Injunction

Any district attorney, county attorney, sheriff, or proper authorities in any county of the state, or the director, may institute appropriate proceedings, including a petition for injunction, to prevent a violation of Section 65.004 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 65.006. Penalties

A person who violates Section 65.004 of this code commits a misdemeanor punishable by a fine of not less than \$10 nor more than \$200 or by confinement in the county jail for not less than 10 days nor more than 60 days or by both. Each Texas Tortoise (*Gopherus berlandieri*) unlawfully taken, killed, injured, or possessed constitutes a separate offense subject to the penalty provided in this section. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 65.007 to 65.100 reserved for expansion]

SUBCHAPTER B. HORNED TOADS

§ 65.101. Definition

In this subchapter, "horned toad" means a horned toad or horned lizard of the genus *Phrynosoma*. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 65.102. Killing, Capturing, Selling, or Transporting Horned Toads

No person may wilfully capture, trap, attempt to capture or trap, kill, injure, take, or have in his possession for the purpose of sale, barter, or com-

mercial exploitation horned toads in the state except for propagation or scientific purposes. Possession includes transportation, shipping, or storing of horned toads, dead or alive, within the state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 65.103. Injunction

Any district attorney, county attorney, sheriff, or the director or his authorized representative, or proper authorities in any county of the state may institute any appropriate proceedings, including a petition for injunction, to prevent the violation of this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 65.104. Penalties

A person who violates any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each horned toad unlawfully taken, captured, killed, injured, or possessed constitutes a separate offense and is subject to the penalty provided by this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 66. FISH

SUBCHAPTER A. PROVISIONS APPLICABLE TO FRESHWATER AND SALTWATER FISHING

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| Section | |
| 66.001. | Salt and Fresh Water Defined. |
| 66.002. | Consent to Take Fish From Private Water. |
| 66.003. | Placing Explosives or Harmful Substances in Water. |
| 66.004. | Taking of Fish by Electric Shock Prohibited; Exception. |
| 66.005. | Wilful Destruction of Boat, Seine, or Net. |
| 66.006. | Returning Small Fish Taken by Net or Seine. |
| 66.007. | Harmful Tropical Fish. |
| 66.008. | Fishing From Bridge. |
| 66.009. | Navigation Districts. |
| 66.010. | Bait Fish [NEW]. |

SUBCHAPTER B. FRESH WATER FISHING

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| 66.101. | Methods of Fishing. |
| 66.102. | Placing Prohibited Devices in Public Water. |
| 66.103. | Water Closed to Nets and Seines. |
| 66.104. | Seasons for Taking Fish. |
| 66.105. | Taking of Fish: Minimum Size. |
| 66.106. | Catch Limits. |
| 66.107. | Possession of Certain Fish While Using Spear Gun or Bow and Arrow. |
| 66.108. | Injuring Small Fish Prohibited. |
| 66.109. | Fish Ladders. |
| 66.110. | Screens to Protect Fish. |
| 66.111. | Sale of Fish. |
| 66.112. | Brood Fish. |
| 66.113. | Removal of Rough Fish and Turtles From Fresh Water. |
| 66.114. | Rough and Game Fish Defined. |
| 66.115. | Rough Fish: Regulations. |
| 66.116. | Rough Fish: Fees, Bonds. |
| 66.117. | Revocation of Rough Fish Permit; Commercial License Required. |
| 66.118. | Rough Fish: Disposition. |

SUBCHAPTER C. SALTWATER FISHING

Section

- 66.201. Redfish.
- 66.2011. Red Drum: Daily Catch and Retention Limits [NEW].
- 66.202. Nets and Seines in Inside Water: Noncommercial Fishing.
- 66.203. Nets and Seines in Outside Water: Noncommercial Fishing.
- 66.204. Vessels and Obstructions in Fish Passes.
- 66.205. Drum Seining Permits.
- 66.206. Trotline Tags.
- 66.207. Fish Pound Net Prohibited.
- 66.208. Commercial Joint Fishing Ventures.
- 66.209. Statistical Reports.
- 66.210. Rough Fish.
- 66.211. Permits for Taking Rough Fish.
- 66.212. Holders of Rough Fish Permits: Offenses.
- 66.213. Possession of Illegal Nets and Seines.

SUBCHAPTER D. TEXAS TERRITORIAL WATER

- 66.301. Definition.
- 66.302. Licenses.
- 66.303. Prohibited Acts.
- 66.304. Port Authorities and Navigation Districts.
- 66.305. Harbor Pilots.
- 66.306. Enforcement.
- 66.307. Political Asylum.

SUBCHAPTER A. PROVISIONS APPLICABLE TO FRESHWATER AND SALTWATER FISHING

§ 66.001. Salt and Fresh Water Defined

In this chapter:

- (1) "Fresh water" means all lakes, lagoons, rivers, and streams to their mouths, but does not include coastal or tidal water.
- (2) "Salt water" means all coastal or tidal water.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.002. Consent to Take Fish From Private Water

(a) No person may catch fish by the use of a net or seine or explosive or by poisoning, polluting, muddying, ditching, or draining in any privately owned lake, pool, or pond without the consent of the owner.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

(c) In a prosecution under this section, the burden of proof to show consent is on the person charged. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.003. Placing Explosives or Harmful Substances in Water

(a) No person may place in the water of this state an explosive, poison, or other substance or thing deleterious to fish.

(b) Subsection (a) of this section does not apply to the use of explosives necessary for construction pur-

poses when the use is authorized in writing by the county judge of the county where the work is to be done.

(c) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$100 and by confinement in the county jail for not less than 60 nor more than 90 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.004. Taking of Fish by Electric Shock Prohibited; Exception

(a) Except as provided by Subsection (d) of this section, no person may catch fish by using an electricity-producing device designed to shock fish.

(b) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

(c) The possession of an electricity-producing device designed to shock fish, in a boat or along the shore or bank of any water of this state, is prima facie evidence of a violation of this section by the person in possession of the device.

(d) This section does not prohibit the use of an electricity-producing device of not more than three volts connected to a shrimp trawl used by an operator of a licensed commercial gulf shrimp boat in the outside water of this state at depths of more than seven fathoms. To qualify under this exemption, the commercial gulf shrimp boat and the trawl must be operating in compliance with the provisions of Chapter 77 of this code relating to the taking of shrimp.

(e) An electricity-producing device used in violation of this section is a nuisance, and an officer or employee of the department who has probable cause to believe that a device is used in violation of this section shall seize the device and hold it as evidence for the trial of the person in possession of the device. If the person is found guilty of a violation of this section, the department shall be responsible for the destruction of the device unless it can be utilized by the department for research purposes, or upon request the device may be released to a state-supported college or university for use in marine or aquatic research. An officer or employee of the department who seizes or destroys a device is immune from liability for any damages resulting from seizure or destruction, and the department is likewise immune from liability for any damages resulting from seizure, destruction, or disposition thereof.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1662, ch. 656, § 1, eff. Aug. 29, 1977.]

§ 66.005. Wilful Destruction of Boat, Seine, or Net

(a) No person may wilfully, with the intent to injure the owner, take a boat, seine, net, or other device for fishing into prohibited water, or use a boat, seine, net, or other device for fishing to take fish unlawfully, so as to cause the destruction of the boat, seine, net, or device.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200 and confinement in the county jail for not less than 30 nor more than 90 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.006. Returning Small Fish Taken by Net or Seine

(a) No person who catches fish by the use of a seine or set net may fail to return to the water all fish under or over the size or weight limitations established in this chapter and all other fish for which no limitation is provided.

(b) Subsection (a) of this section does not apply to shark, gar, ray, turtle, sawfish, or catfish, except that it does apply to the gaff-topsail catfish.

(c) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.007. Harmful Tropical Fish

(a) No person may import, possess, sell, or release into water of this state harmful or potentially harmful tropical fish or fish eggs unless he has acquired from the department a written permit.

(b) The department shall determine and publish a list of tropical fish that are harmful or potentially harmful to human or other animal life.

(c) The department shall make rules to carry out the provisions of this section.

(d) A person who violates Subsection (a) of this section or a rule of the department made under Subsection (c) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.008. Fishing From Bridge

(a) No person may fish from the deck or road surface of any bridge or causeway on a road maintained by the State Highway Department.

(b) No person may deposit or leave any dead fish, crab, or bait on the deck or road surface of any

bridge or causeway on a road maintained by the State Highway Department.

(c) The State Highway Department shall post appropriate signs on all bridges and causeways affected by this section.

(d) A person who violates Subsection (a) or (b) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$1 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.009. Navigation Districts

(a) No person may use a seine or net of any type, trotline, or other mechanical or physical device, except hook and line, to catch fish in a channel, turning basin, or other water of a navigation district operating under Chapter 63, Water Code.

(b) The possession of a mechanical device referred to in Subsection (a) of this section within a navigation district operating under Chapter 63, Water Code, is prima facie evidence of a violation of Subsection (a) of this section.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100, by confinement in the county jail for not less than 5 days nor more than 30 days, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.010. Bait Fish

(a) No person may possess more than 250 bait fish taken from the public water for personal use.

(b) No person may catch, possess, or transport, as bait fish any of the following species or their hybrids:

- (1) black bass of any type;
- (2) crappie;
- (3) catfish, except bullheads;
- (4) walleye;
- (5) striped bass;
- (6) trout;
- (7) white bass; or
- (8) northern pike.

(c) No person may catch bait fish except by the use of dip nets, lift nets, cast nets, and umbrella nets of nonmetallic material, minnow seines of nonmetallic material not exceeding 20 feet long, and common fruit jar traps or similar devices not longer than 24 inches and with a throat not more than one inch in diameter.

(d) A person who violates a provision of this section is guilty of a misdemeanor and on conviction is

punishable by a fine of not less than \$50 nor more than \$200.

[Added by Acts 1977, 65th Leg., p. 213, ch. 105, § 1, eff. Sept. 1, 1977.]

Acts 1977, 65th Leg., ch. 105, which by §§ 1 to 42 added this section and amended and repealed various other sections of the Parks and Wildlife Code, provided in § 43: "This Act takes effect September 1, 1977."

[Sections 66.011 to 66.100 reserved for expansion]

SUBCHAPTER B. FRESH WATER FISHING

§ 66.101. Methods of Fishing

(a) No person may catch fish in public fresh water by any method or by the use of any device except as authorized by this section.

(b) The following methods and uses are authorized:

(1) the use of the ordinary hook and line or trotline;

(2) the use of a minnow seine not longer than 20 feet for the taking of bait only;

(3) the use of a minnow seine not longer than 20 feet, dip net, cast net, and umbrella net of meshes of any size for the purpose of catching bream, shad, carp, suckers, gar, and buffalo fish only;

(4) the use of a trammel net, a drag or set net, or seine having meshes the sides of which are at least three inches long;

(5) the use of a spear gun and spear or bow and arrow for the purpose of catching carp, buffalo fish, gaspergou, garfish, and Rio Grande perch only; and

(6) the use of a common funnel fruit jar type trap and its metallic counterpart for the taking of minnows only for bait, but only if the trap is no longer than two feet and has a throat no larger than one inch in diameter.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.102. Placing Prohibited Devices in Public Water

(a) No person may place in the public fresh water of this state for the purpose of catching fish any device prohibited by Section 66.101 of this code or any net or seine made of wire or other metallic substance, except the metallic counterpart of a common funnel fruit jar type trap conforming to the requirements of Section 66.101(b)(6) of this code.

(b) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100.

(c) A device in the public fresh water of this state in violation of this section is a nuisance, and officers and employees of the department shall destroy the device. An officer or employee of the department is immune from liability for the destruction of devices found in violation of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.103. Water Closed to Nets and Seines

(a) The commission may close any public fresh water to the use of nets and seines or to any type of net or seine if the commission finds that the closing is necessary to protect or conserve fish.

(b) Notice of the closing must be posted for two weeks in at least three stores or other locations near the water to be closed prior to the effective date of the closing.

(c) No person may use a net or seine or any type of net or seine prohibited by the commission in public fresh water closed by the commission under this section.

(d) A person who violates Subsection (c) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100. The failure to post notice is a defense against a charge of violating Subsection (c) of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.104. Seasons for Taking Fish

There is no period of time when the taking of fish from public fresh water is prohibited.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.105. Taking of Fish: Minimum Size

(a) No person may take from public fresh water and retain, or place in a boat, creel, live-box, or other container or on a fish stringer, a largemouth black bass, a smallmouth black bass, a spotted bass, or any subspecies of these bass that is less than 10 inches long.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1207, ch. 456, § 6(a), eff. Sept. 1, 1975.]

§ 66.106. Catch Limits

(a) Except as provided in Subsections (b) and (c) of this section, no person may catch and retain in

any one day, or place in or on any container or device used for holding fish while in the process of fishing, fish taken from public fresh water in excess of the following limitations:

Species	Limit
(1) large-mouth black bass, small-mouth black bass, spotted bass, or any of their subspecies, singly or in the aggregate	10
(2) striped bass	1
(3) blue, channel, or yellow flathead catfish, singly or in the aggregate	25
(4) crappie or white perch	25
(5) Walleye or sauger, singly or in the aggregate	5
(6) northern pike and muskellunge, singly or in the aggregate	3
(7) trout of the family Salmonidae, including but not limited to rainbow trout, brown trout, and coho salmon, singly or in the aggregate	5

(b) A person may possess at one time not more than 50 blue, channel, or yellow flathead catfish, singly or in the aggregate.

(c) The retention limit in this section for catfish does not apply to a person holding a commercial fishing license issued under Section 47.002 of this code.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1207, ch. 456, § 6(b), eff. Sept. 1, 1975.]

§ 66.107. Possession of Certain Fish While Using Spear Gun or Bow and Arrow

No person may possess fish other than carp, buffalo fish, gaspergou, garfish, and Rio Grande perch while using a spear gun and spear or a bow and arrow.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.108. Injuring Small Fish Prohibited

(a) No person may fail to return immediately to the water any crappie or bass under the minimum size taken from public fresh water.

(b) No person may unnecessarily injure crappie or bass under the minimum size taken from public fresh water.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.109. Fish Ladders

(a) The commissioners court of each county, by written order, may require the owner of a public or private dam or other obstruction on a regularly

flowing public freshwater stream to construct or repair fishways or fish ladders sufficient to allow fish in all seasons to ascend the dam or other obstruction for the purpose of depositing spawn.

(b) An owner who fails to construct or repair a fishway or fish ladder within 90 days after receiving the written order is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$500. Each week of violation following the 90-day period constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.110. Screens to Protect Fish

(a) The department may direct a person or corporation taking fresh water of the state to cover the entrance of the intake canal, pipe, or other device used for taking water with a screen to protect fish.

(b) The department may regulate the manner of installation and the specifications of screens and other obstructions required under this section.

(c) No person may fail to comply with a direction of the department made in writing under Subsection (a) of this section.

(d) A person who violates Subsection (c) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200. Each day's failure to comply constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.111. Sale and Purchase of Certain Fish

(a) No person may buy or offer to buy, sell or offer to sell, possess for the purpose of sale, transport or ship for the purpose of sale, or barter or exchange freshwater crappie, bass of the genus Micropterus, striped bass, walleye, sauger, northern pike, muskellunge, trout of the family Salmonidae, or flathead catfish.

(b) No person may sell or offer to sell any freshwater fish taken from the water of any county west of the Pecos River.

(c) Subsection (a) of this section does not apply to a fish reared in private water and marketed for the purpose of stocking the water of this state, nor to a fish shipped into this state and offered for sale for consumption.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of:

(1) not more than \$200 if Subsection (a) is violated; or

(2) not less than \$10 nor more than \$100 if Subsection (b) is violated.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1204, ch. 456, § 2, eff. Sept. 1, 1975.]

§ 66.112. Brood Fish

Employees of the department under the direction of the commission and the United States Fish and Wildlife Service of the Department of Interior may take brood fish from public fresh water at any time and in any manner to supply the needs of state and federal fish hatcheries.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.113. Removal of Rough Fish and Turtles From Fresh Water

(a) The department may take rough fish and turtles from public fresh water by means of crews under the supervision of the department, using methods of removal approved by the department.

(b) When the department determines that rough fish and turtles exist in public fresh water in numbers detrimental to the propagation and preservation of game fish, it may issue permits to applicants for rough fish and turtle removal.

(c) The department may not issue a permit to an applicant whose record within the knowledge of the department shows repeated violations of the fishing laws of the state to an extent that the department finds that ¹ the applicant's conduct to be in flagrant disregard of fish conservation laws, or if the applicant has previously had a permit issued under this section revoked for a violation of the law or a regulation of the commission.

(d) A permit issued under this section, unless revoked, is valid for a period set by the commission, not less than three months.

(e) Each permit applies to a single lake, or portion of a lake, stream, or river as determined by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

¹ So in enrolled bill.

§ 66.114. Rough and Game Fish Defined

In this subchapter:

(1) "Rough fish" means fish having no sporting value, the predatory fish, bony or rough-fleshed fish, or any other fish whose numbers should be controlled to protect and encourage the propagation of game fish. A game fish may not be classified as a rough fish.

(2) "Game fish" means black bass, white bass, crappie, bream, sunfish, and channel and yellow catfish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.115. Rough Fish: Regulations

The commission shall make regulations on the types of equipment that may be used by persons

holding a permit under Section 66.113 of this code according to the lake, stream, river, or portion of lake, stream, or river.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.116. Rough Fish: Fees, Bonds

(a) The commission shall set a fee which persons holding a permit to remove rough fish and turtles shall pay to the department for each pound of fish and turtles removed under the permit. The commission shall set the minimum total poundage each permit holder must take under the terms of the permit, which may vary according to the place where removal is authorized.

(b) Each holder of a permit to remove rough fish and turtles shall execute a bond in an amount set by the department and payable to the director. The bond shall be conditioned on the payment of the fee required by Subsection (a) of this section, on the removal of the minimum poundage required under the permit, and on the faithful compliance with the regulations of the commission and the law. The bond must be approved by the director.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.117. Revocation of Rough Fish Permit; Commercial License Required

(a) The department shall revoke the permit of any person who takes rough fish or turtles in violation of the law or of the regulations of the commission.

(b) No person may take rough fish or turtles unless he has acquired the appropriate commercial fishing license or may use nets and seines unless complying with tagging requirements.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.118. Rough Fish: Disposition

(a) Rough fish and turtles taken by a contractor under Section 66.113 of this code may be sold by the contractor.

(b) Rough fish and turtles taken by the department shall be used for feed for hatchery fish, and the surplus not used for feed shall be sold at the highest price obtainable. The receipts from the sale of rough fish shall be used for the removal of rough fish and turtles by the commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 66.119 to 66.200 reserved for expansion]

SUBCHAPTER C. SALTWATER FISHING

§ 66.201. Redfish

(a) No person may take from public water and retain, or place in a boat, creel, live-box, or other container or on a stringer, a redfish less than 14 inches long.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.2011. Red Drum: Daily Catch and Retention Limits

(a) No person may:

- (1) catch and retain in one day more than 10 red drum;
- (2) possess at one time more than 20 red drum;
- (3) possess at one time more than two red drum longer than 35 inches.

(b) This section does not apply to the holder of a commercial red drum license. Subdivisions (2) and (3) of Subsection (a) of this section do not apply to the holder of a fish dealer's license as to fish at the place of business or in a vehicle of the fish dealer.

(c) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$200. On a second or subsequent conviction, the person is punishable by a fine of not less than \$200 nor more than \$500 and shall forfeit the fishing license under which he is fishing.

(d) In addition to the penalty provided in Subsection (c) of this section, a person who violates this section shall have all equipment, other than vessels, in his possession used for the taking of red drum confiscated. This subsection expires on October 31, 1978.

[Added by Acts 1977, 65th Leg., p. 722, ch. 270, § 5, eff. Sept. 1, 1977.]

§ 66.202. Nets and Seines in Inside Water: Non-commercial Fishing

(a) No person engaged in noncommercial fishing in the inside water of this state may use for the purpose of catching fish a seine or drag seine or any other device except:

- (1) an ordinary pole and line;
- (2) a casting rod;
- (3) a rod and reel;
- (4) artificial bait;
- (5) a trotline or set line;
- (6) a cast net;
- (7) a minnow seine of not more than 20 feet in length for catching bait only; and

(8) a set net, trammel net, or strike net, the meshes of which may not be less than one and one-half inches from knot to knot.

(b) In this section, inside water is that water defined as "inside water" in Chapter 77 of this code and "noncommercial fishing" means the catching of fish for a purpose other than for pay, barter, sale, or exchange.

(c) A person who violates this section is guilty of a misdemeanor and on the first conviction is punishable by a fine of not less than \$25 nor more than \$100. On a second or subsequent conviction, the person is punishable by a fine of not less than \$100 nor more than \$200, and the person's fishing license is subject to cancellation. If the person's license is cancelled, he is not entitled to receive another fishing license for one year from the date of his conviction.

(d) Repealed by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(1), eff. May 20, 1977.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 382, ch. 190, § 5(1), eff. May 20, 1977.]

§ 66.203. Nets and Seines in Outside Water: Non-commercial Fishing

(a) No person engaged in noncommercial fishing in the outside water of this state may use a net or seine that fails to meet the requirements of Subsection (b) of this section.

(b) The mesh of a net or seine, not including the bag and 50 feet on each side of the bag, must have sides of not less than one and one-half inches. The bag and that part of the net or seine 50 feet on each side of the bag must have meshes the sides of which are not less than one inch. No net or seine or combination of nets and seines connected together may be longer than 2,000 feet.

(c) In this section, outside water is that water defined as "outside water" in Chapter 77 of this code, and "noncommercial fishing" means the catching of fish for a purpose other than for pay, barter, sale, or exchange.

(d) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$20 nor more than \$100. On a second conviction the person is punishable by a fine of not less than \$50 nor more than \$200 and may have his license suspended for a period of not less than 30 nor more than 90 days. On a third or subsequent conviction the person is punishable by confinement in the county jail for not less than 30 nor more than 90 days and may have his license suspended for a period of not less than one year. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.204. Vessels and Obstructions in Fish Passes

(a) No person may operate, possess, or moor a vessel or other floating device, or may place any piling, wire, rope, cable, net, trap, or other obstruction, in a natural or artificial pass opened, reopened, dredged, excavated, constructed, or maintained by the department as a fish pass between the Gulf of Mexico and an inland bay, within a distance of 2,800 feet inside the pass measured from the mouth of the pass where it empties into or opens on the Gulf of Mexico.

(b) The department shall erect permanent iron or concrete monuments showing the restricted area.

(c) This section does not restrict the power of the United States to regulate navigation.

(d) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$1 nor more than \$100. On a second or subsequent conviction the person is punishable by a fine of not less than \$1 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.205. Drum Seining Permits

(a) A person who has a lease for taking oysters in water where seining is prohibited may apply to the department for a permit to seine for drum.

(b) The application shall be under oath and must include a statement that drum are seriously damaging the applicant's oysters and that if the permit is issued he will not take and retain or destroy other food fish but will return them to the water.

(c) If the department finds that drum are seriously damaging the oysters of the applicant, the permit shall be issued. The permit must state the period of validity and must specify the area of its applicability.

(d) The department shall assign an employee of the department to supervise the seining.

(e) Seining for drum in prohibited water is lawful when done under the authority of a permit issued under this section and when done in the presence of the assigned employee.

(f) The holder of a permit shall pay \$2.50 for each day of seining under the permit.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.206. Trotline Tags

(a) The department shall issue numbered tags for trotlines used in public salt water.

(b) The commission may make regulations for the safe use of trotlines and to carry out the provisions of this section.

(c) A trotline tag shall be attached to each 300 feet of trotline or fractional part of 300 feet, and the

department shall collect a fee of \$1 for each tag issued.

(d) No person may use a trotline in public salt water unless the trotline has attached to it the proper number of trotline tags.

(e) A person who violates this section or a rule of the commission relating to safe trotline usage is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

(f) Repealed by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(2), eff. May 20, 1977.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 382, ch. 190, § 5(2), eff. May 20, 1977.]

§ 66.207. Fish Pound Net Prohibited

(a) No person may use a fish pound net in the water of the Gulf of Mexico within three nautical miles of the coastline.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.208. Commercial Joint Fishing Ventures

(a) No person who is engaged in taking seafood in a commercial joint venture may sell or offer to sell the products of the joint venture except in the regular course of the joint venture with the express or implied consent of the co-venturer.

(b) No person who is employed to take seafood may sell or offer to sell the products taken in the course of his employment without the express or implied consent of his employer.

(c) No person may purchase seafood with the knowledge that it is sold in violation of Subsection (a) or (b) of this section.

(d) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$100 nor more than \$200. On a second or subsequent conviction the person is punishable by a fine of not less than \$500 nor more than \$2,000 or by confinement in the county jail for not less than five days nor more than six months, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.209. Statistical Reports

(a) The department shall gather statistical information on the harvest of fish, shrimp, oysters, and other forms of edible marine life of the Texas coast.

(b) The department shall prescribe and distribute the report form. The form shall be designed to allow for statistical information concerning the

numbers and quantity by weight of seafood taken, the species taken, the kinds of equipment used, and the water from which the catch is made.

(c) No dealer who purchases fish, shrimp, oysters, or other forms of edible marine life directly from the fisherman may fail to file the report with the department each month on or before the 10th day of the month. No dealer required to report may willfully file an incorrect report.

(d) Any dealer who violates Subsection (c) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.210. Rough Fish

(a) The commission shall investigate saltwater species of fish. It shall classify and reclassify, when necessary, saltwater fish as game fish and nongame fish.

(b) In this subchapter:

(1) "Game fish" means species that are desirable because of their sport and recreational value and that strike or bite at bait or artificial lures.

(2) "Nongame fish" means species that have no sporting value, predatory fish, bony or rough-fleshed fish, and other species whose numbers should be controlled to protect and encourage the propagation of game fish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.211. Permits for Taking Rough Fish

(a) The commission shall issue permits for the taking of nongame fish in salt water to control nongame fish and to provide for their use when the commission finds that the taking will not adversely affect the conservation of game fish.

(b) The permit may authorize the use of nets, seines, and other devices that are otherwise prohibited, except that the commission may not authorize the use of a net or other device, the use of which was unlawful on May 26, 1941, in water in which the use of a trammel net, set net, or gill net was unlawful on that date. The permit shall specify the species of fish permitted to be taken.

(c) An applicant for a permit must:

(1) be a citizen of the United States and have resided in this state continuously for a period of at least six months before the date of the application; and

(2) not have been convicted of a violation of any fishing law of this state for a period of two years before the date of the application.

(d) The department shall collect a fee of \$5 for the issuance of the permit.

(e) The permit is valid for one year from the date of its issuance unless it is revoked prior to its expiration.

(f) The department shall inspect, approve, and attach metal identification tags to all devices used under this section for taking fish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.212. Holders of Rough Fish Permits: Offenses

(a) No person holding a permit to take rough saltwater fish may:

(1) use a net or other device that the commission may not authorize for use in water covered by the exception in Section 66.211 of this code;

(2) use for the taking of fish any device without there being attached to it a metal identification tag issued by the department;

(3) use any device that would be prohibited except for the permit to take any game fish or any other species of fish not authorized to be taken by the permit; or

(4) use any device that would be prohibited except for the permit in any manner that will or does carelessly or needlessly injure marine life other than those species authorized to be taken by the permit.

(b) A holder of a permit who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. On conviction he may also have the permit revoked.

(c) An officer of the department who finds a device authorized by permit being used in violation of this section shall immediately seize the device and hold it until after the trial. During the prosecution for an offense under this section, the holder of the permit may not use any device authorized by the permit but otherwise prohibited by law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.213. Possession of Illegal Nets and Seines

(a) No person may possess a seine, strike net, gill net, or trammel net in or on the tidal water of this state where the use of the seine or net for the catching of fish is prohibited unless the seine or net is on board a vessel in port or in a channel and going to or from the Gulf of Mexico or other waters where use of the seine or net is not prohibited.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200, and the person's commercial fishing or dealer's license, or both, is subject to cancellation. A person whose license is cancelled under this section may not re-

ceive another license for one year from the date of the conviction.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 382, ch. 190, § 4, eff. May 20, 1977.]

[Sections 66.214 to 66.300 reserved for expansion]

SUBCHAPTER D. TEXAS TERRITORIAL WATER

§ 66.301. Definition

In this subchapter, "coastal water" means all of the salt water of this state, including that portion of the Gulf of Mexico within the jurisdiction of this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.302. Licenses

(a) Except as provided in Subsections (b) and (c) of this section, the department shall grant to or withhold from alien vessels licenses required for boats or vessels used in fishing or shrimping in the coastal water of this state on the basis of reciprocity or retortion.

(b) The department shall issue licenses to a vessel of a nation designated as a friendly ally or neutral on receipt of a formal suggestion transmitted to the governor by the Secretary of State of the United States.

(c) The department shall not issue a license to any boat or vessel owned in whole or in part by any alien power, or a subject or national of an alien power, or any individual who subscribes to the doctrine of international communism or who has signed a treaty of trade, friendship, and alliance or a nonaggression pact with any communist power.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.303. Prohibited Acts

(a) No unlicensed alien vessel may take or attempt to take by any means or possess any natural resource of the coastal water of this state.

(b) A captain, master, or owner of any unlicensed alien vessel or boat who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$1,000 or by confinement in the county jail for not more than one year, or both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.304. Port Authorities and Navigation Districts

It is the duty of the port authorities and navigation districts of this state to prevent the use of any port facility in a manner that they reasonably sus-

pect may assist in the violation of this subchapter. They shall use all reasonable means, including the inspection of nautical logs, to ascertain from masters of newly arrived vessels of all types, other than warships of the United States, the presence of alien commercial fishing vessels within the coastal water of this state and shall promptly transmit the information to the department and to law enforcement agencies of this state as the situation may indicate. They shall request assistance from the United States Coast Guard in appropriate cases to prevent unauthorized departure from any port facility.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.305. Harbor Pilots

All harbor pilots shall promptly transmit any knowledge coming to their attention regarding possible violations of this subchapter to the appropriate navigation district or port authority or the appropriate law enforcement officials.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.306. Enforcement

All law enforcement agencies of the state, including agents of the department, are empowered and directed to arrest the masters and crews of vessels that are reasonably believed to be in violation of this chapter and to seize and detain the vessels and their equipment and catch. The arresting officer shall take the offending crews or property before the court having jurisdiction of the offense. The agencies are directed to request assistance from the United States Coast Guard in the enforcement of this Act when the agencies are without means to effectuate arrest and restraint of vessels and their crews operating in violation or probable violation of this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 66.307. Political Asylum

No crew member or master seeking bona fide political asylum shall be fined or imprisoned under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 67. NONGAME SPECIES

Section	
67.001.	Regulations.
67.002.	Management of Nongame Species.
67.003.	Continuing Scientific Investigations.
67.004.	Issuance of Regulations.
67.005.	Penalty.

§ 67.001. Regulations

The department by regulation shall establish any limitations on the taking, possession, transportation,

exportation, sale, and offering for sale of nongame fish and wildlife that the department considers necessary to manage these species.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 67.002. Management of Nongame Species

The department shall develop and administer management programs to insure the continued ability of nongame species of fish and wildlife to perpetuate themselves successfully.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 67.003. Continuing Scientific Investigations

The department shall conduct ongoing investigations of nongame fish and wildlife to develop information on populations, distribution, habitat needs, limiting factors, and any other biological or ecological data to determine appropriate management and regulatory information.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 67.004. Issuance of Regulations

(a) The regulations shall state the name of the species or subspecies, by common and scientific name, that the department determines to be in need of management under this chapter.

(b) The department shall conduct a public hearing on all proposed regulations and shall publish notice of the hearing in at least three major newspapers of general circulation in this state at least one week before the date of the hearing.

(c) The department shall solicit comments on the proposed regulations at the public hearing and by other means.

(d) On the basis of the information received at the hearing or by other means, the department may modify a proposed regulation.

(e) Regulations become effective 60 days after the date they are proposed unless withdrawn by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 67.005. Penalty

(a) A person who violates a regulation of the commission issued under this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$200.

(b) A person who violates a regulation of the commission issued under this chapter and who has been convicted on one previous occasion of a violation of a commission regulation under this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$200 nor more than \$500, or by confinement in jail for not less than 30 nor more than 90 days, or by both.

(c) A person who violates a regulation of the commission issued under this chapter and who has been convicted on two or more previous occasions of a violation of commission regulations under this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$500 nor more than \$2,000 and by confinement in jail for not more than six months nor more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 68. ENDANGERED SPECIES

Section	
68.001.	Definitions.
68.002.	Endangered Species.
68.003.	Statewide Extinction List.
68.004.	Amendments to List by Director.
68.005.	Petition of Reclassification.
68.006.	Permit for Taking Endangered Species.
68.007.	Propagation Permit Required.
68.008.	Original Propagation Permit.
68.009.	Renewal Propagation Permit.
68.010.	Reports by Permittee.
68.011.	Refusal or Cancellation of Permit.
68.012.	Appeal.
68.013.	Disposition of Fish or Wildlife.
68.014.	Regulations.
68.015.	Prohibited Acts.
68.016.	Sold Species to be Tagged.
68.017.	Seizure of Fish or Wildlife.
68.018.	Disposition of Funds; Appropriations.
68.019.	Applicability of Chapter.
68.020.	Exceptions.
68.021.	Penalty.

§ 68.001. Definitions

In this chapter:

- (1) "Fish or wildlife" means any wild mammal, aquatic animal, wild bird, amphibian, reptile, mollusk, or crustacean, or any part, product, egg, or offspring, of any of these, dead or alive.
- (2) "Management" means:

(A) the collection and application of biological information for the purpose of increasing the number of individuals within species or populations of fish or wildlife up to the optimum carrying capacity of their habitat and maintaining these numbers;

(B) the entire range of activities constituting a full scientific research program, including census studies, law enforcement, habitat acquisition and improvement, and education; and

(C) when and where appropriate, the protection of and regulation of the taking of fish and wildlife species and populations.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.002. Endangered Species

Species of fish or wildlife are endangered if listed on:

- (1) the United States List of Endangered Foreign Fish and Wildlife as in effect on August 27, 1973 (50 C.F.R. Part 17, Appendix A);
- (2) the United States List of Endangered Native Fish and Wildlife as in effect on August 27, 1973 (50 C.F.R. Part 17, Appendix D); or
- (3) the list of fish or wildlife threatened with statewide extinction as filed by the director of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.003. Statewide Extinction List

(a) The director shall file with the secretary of state a list of fish or wildlife threatened with statewide extinction.

(b) Fish or wildlife may be classified by the director as threatened with statewide extinction if the department finds that the continued existence of the fish or wildlife is endangered due to:

- (1) the destruction, drastic modification, or severe curtailment of its habitat;
- (2) its overutilization for commercial or sporting purposes;
- (3) disease or predation; or
- (4) other natural or man-made factors.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.004. Amendments to List by Director

(a) If the lists of endangered species issued by the United States are modified, the director shall file an order with the secretary of state accepting the modification. The order is effective immediately.

(b) The director may amend the list of species threatened with statewide extinction by filing an order with the secretary of state. The order is effective on filing.

(c) The director shall give notice of the intention to file a modification order under Subsection (b) of this section at least 60 days before the order is filed. The notice must contain the contents of the proposed order.

(d) If a reclassification petition is filed during the 60-day notice period required by Subsection (c) of this section, the order may not be filed until the conclusion of the proceeding on reclassification.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.005. Petition of Reclassification

(a) Three or more persons may petition the department to add or delete species of fish or wildlife from the statewide extinction list.

(b) The petition must present substantial evidence for the addition or deletion.

(c) If fewer than 50 people join in the petition, the department may refuse to review the classification list, but if 50 or more persons join in the petition, the department shall conduct a hearing to review the classification list. The hearing shall be open to the public, and notice of the hearing shall be given in at least three major newspapers of general circulation in the state at least one week before the date of the hearing.

(d) Based on the findings at the hearing, the department may file an order with the secretary of state altering the list of fish or wildlife threatened with statewide extinction. The order takes effect on filing.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.006. Permit for Taking Endangered Species

The provisions of Subchapter C, Chapter 43, of this code are applicable to all fish or wildlife classified as endangered, and it is a violation of this chapter to possess, take, or transport endangered fish or wildlife for zoological gardens or scientific purposes or to take or transport endangered fish or wildlife from their natural habitat for propagation for commercial purposes without the permit required by Section 43.022 of this code or a federal permit.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.007. Propagation Permit Required

No person may possess endangered fish or wildlife for the purpose of propagating them for sale unless he has first acquired a commercial propagation permit issued by the department under this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.008. Original Propagation Permit

(a) A person may apply for an original propagation permit by submitting an application containing information or statements as required by the department and by submitting an original propagation permit fee of \$300.

(b) The department shall issue the permit if it determines that the applicant has complied with Subsection (a) of this section, that the initial breeding stock was acquired under a permit issued under Section 43.022 of this code or was otherwise legally acquired, and that the applicant has not violated the laws of the United States, this state, or another state with respect to the acquisition of breeding stock.

(c) An original propagation permit must contain a description of endangered fish and wildlife authorized to be possessed under the permit.

(d) An original propagation permit is valid for one year from the date of its issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.009. Renewal Propagation Permit

(a) A person holding an original propagation permit or a renewal propagation permit is entitled to receive from the department a renewal propagation permit on application to the department and on the payment of a renewal propagation permit fee of \$550 if the application and fee are received by the department during the period beginning 10 days before the expiration date of the outstanding permit and extending through the expiration date of the permit.

(b) A renewal propagation permit is valid for a period of three years beginning on the date of its issuance.

(c) The department may refuse to renew any permit if it determines that it would be in the best interest of the species of fish or wildlife described in the permit.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.010. Reports by Permittee

A person holding a commercial propagation permit shall send to the department annually:

(1) a written evaluation by a veterinarian licensed to practice in this state of the physical conditions of the propagation facilities and the conditions of the fish or wildlife held under the permit; and

(2) a written report on forms prepared by the department relating to propagation activities during the previous year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.011. Refusal or Cancellation of Permit

(a) If, on the basis of the reports required by Section 68.010 of this code or an investigation or inspection by an authorized employee of the department, the department finds that a permit holder is improperly caring for or handling the fish or wildlife held under the permit, the department shall give written notice of the objectionable actions or conditions to the permit holder.

(b) If the department finds that the improper caring for or handling of the fish or wildlife is detrimental to the fish or wildlife and immediate protection is needed, the department may seize the fish or wildlife and authorize proper care pending the correction of the improper conditions or actions.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.012. Appeal

(a) A person aggrieved by the action of the department in refusing to grant or renew a commercial propagation permit or in cancelling a permit may appeal within 20 days of the final action of the department to a district court of Travis County or the county of his residence.

(b) The appeal shall be by trial de novo as are appeals from the justice court to the county court.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.013. Disposition of Fish or Wildlife

A person who ceases to hold a commercial propagation permit under this chapter shall dispose of endangered fish or wildlife held after the expiration or cancellation of the permit in the manner required by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.014. Regulations

The department shall make regulations necessary to administer the provisions of this chapter and to attain its objectives, including regulations to govern:

(1) permit application forms, fees, and procedures;

(2) hearing procedures;

(3) procedures for identifying endangered fish and wildlife or goods made from endangered fish or wildlife which may be possessed, propagated, or sold under this chapter; and

(4) publication and distribution of lists of species and subspecies of endangered fish or wildlife and their products.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.015. Prohibited Acts

(a) No person may possess, sell, distribute, or offer or advertise for sale endangered fish or wildlife unless the fish or wildlife have been lawfully born and raised in captivity for commercial purposes under the provisions of this chapter or federal law.

(b) No person may possess, sell, distribute, or offer or advertise for sale any goods made from endangered fish or wildlife unless the goods were made from fish or wildlife that were born and raised in captivity for commercial purposes under the provisions of this chapter or federal law.

(c) No person may sell, advertise, or offer for sale any species of fish or wildlife not classified as endangered under the name of any endangered fish or wildlife.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.016. Sold Species to be Tagged

No person may sell endangered fish or wildlife or goods made from endangered fish or wildlife unless the fish or wildlife or goods are tagged or labeled in a manner to indicate compliance with Section 68.015(a) and (b) of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.017. Seizure of Fish or Wildlife

(a) A peace officer who has arrested a person for a violation of this chapter may seize fish or wildlife or goods made from fish or wildlife taken, possessed, or made in violation of this chapter.

(b) Property taken under this section shall be delivered to the department for holding pending disposition of the court proceedings. If the court determines that the property was taken, possessed, or made in violation of the provisions of this chapter, the department may dispose of the property under its regulations. The costs of the department in holding seized fish or wildlife during the pendency of the proceedings may, in appropriate cases, be assessed against the defendant.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.018. Disposition of Funds; Appropriations

(a) All revenue received under this chapter shall be deposited in the state treasury to the credit of the general revenue fund.

(b) Funds for the administration of this chapter may be appropriated from the general revenue fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.019. Applicability of Chapter

All species and subspecies of wildlife classified as endangered are governed by this chapter to the exclusion of other regulatory and licensing laws.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.020. Exceptions

(a) This chapter does not apply to:

- (1) coyotes (prairie wolves);
- (2) cougars;
- (3) bobcats;
- (4) prairie dogs;
- (5) red foxes; or

(6) animals, fish, or fowl that are privately owned or to the management or taking of privately owned animals, fish, or fowl by the private owners.

(b) This chapter does not apply to the possession of mounted or preserved endangered fish or wildlife acquired before August 31, 1973, by public or private

nonprofit educational, zoological, or research institutions. The department may require an institution to furnish a list of mounted or preserved fish or wildlife possessed and proof of the time of acquisition.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 68.021. Penalty

(a) A person who violates any provision of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$200.

(b) A person who violates any provision of this chapter and who has been convicted on one previous occasion of a violation of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$200 nor more than \$500, or by confinement in jail for not less than 30 nor more than 90 days, or by both.

(c) A person who violates any provision of this chapter and who has been convicted on two or more previous occasions of a violation of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$500 nor more than \$2,000 and by confinement in jail for not less than six months nor more than one year.

(d) A violation of a regulation of the department issued under the authority of this chapter is a violation of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

SUBTITLE C. FUR-BEARING ANIMALS**CHAPTER 71. LICENSES****Section**

- 71.001. Definitions.
- 71.002. Trapper's License Required.
- 71.003. Propagation License.
- 71.004. Beaver and Otter Trapping License.
- 71.005. Wholesale and Retail Fur Buyer's Licenses.
- 71.006. Purchases by Retail Fur Buyer.
- 71.007. Purchases by Wholesale Fur Buyer.
- 71.008. Issuance of Licenses.
- 71.009. License Fees.
- 71.010. License Period.
- 71.011. Possession and Display of Licenses.
- 71.012. Inspections.
- 71.013. Fees of Issuing Agents.
- 71.014. Taking of Fur-Bearing Animals for Propagation; Reports.
- 71.015. Penalties.

§ 71.001. Definitions

In this subtitle:

(1) "Fur-bearing animal" means wild beaver, otter, mink, ringtailed cat, badger, skunk, racoon, muskrat, opossum, fox, or civet cat.

(2) "Trapper" means a person who takes the pelt of a fur-bearing animal for the purpose of sale and who sells or offers for sale the pelt of a fur-bearing animal of this state.

(3) "Retail fur buyer" means a person who purchases the pelt of a fur-bearing animal of this state from trappers only.

(4) "Wholesale fur buyer" means a person who purchases for himself or for another person the pelt of a fur-bearing animal of this state from a trapper or from a retail fur buyer.

(5) "Resident" means a person who has resided in this state for at least two years prior to the time an application for a trapper's license is made.

(6) "Nonresident" means any person applying for a trapper's license other than a resident.

(7) "Sale" includes barter and other transfers of ownership for consideration.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.002. Trapper's License Required

No person may take the pelt of a fur-bearing animal for the purpose of sale without first having acquired a trapper's license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.003. Propagation License

No person may take alive a wild fur-bearing animal for the purpose of sale without first having acquired a propagation license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.004. Beaver and Otter Trapping License

In addition to the other licenses required in this chapter, no person may trap beaver or otter outside the county of his residence without first having acquired a beaver-otter trapping license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.005. Wholesale and Retail Fur Buyer's Licenses

No person may purchase the pelt of a fur-bearing animal in this state unless he has acquired and possesses a valid wholesale fur buyer's license or a valid retail fur buyer's license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.006. Purchases by Retail Fur Buyer

No retail fur buyer may purchase in this state the pelt of a fur-bearing animal except from a licensed trapper.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.007. Purchases by Wholesale Fur Buyer

No wholesale fur buyer may purchase in this state the pelt of a fur-bearing animal except from a licensed trapper, a licensed retail fur buyer, or another licensed wholesale fur buyer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.008. Issuance of Licenses

The licenses authorized by this chapter shall be issued by the department, or an authorized agent of the department, to applicants on the payment of the license fees.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.009. License Fees

(a) The fee for a trapper's license is \$5 if the applicant is a resident and \$200 if the applicant is a nonresident.

(b) The fee for a propagation license is \$10.

(c) The fee for a beaver-otter trapping license is \$50.

(d) The fee for a retail fur buyer's license is \$5.

(e) The fee for a wholesale fur buyer's license is \$25.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.010. License Period

The license period for licenses issued under this chapter is September 1 of one year through August 31 of the following year, and a license is current and valid only for the license period for which it is issued.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.011. Possession and Display of Licenses

(a) A trapper shall carry the trapper's license on his person while taking fur-bearing animals.

(b) A wholesale fur buyer or a retail fur buyer shall carry on his person the required license while conducting business at a place other than an established place of business.

(c) A wholesale fur buyer or a retail fur buyer shall display the required license at all times at the established place of business for which the license is issued.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.012. Inspections

The established place of business of any wholesale or retail fur buyer and any vehicle being used by a trapper or a wholesale or retail fur buyer for the collection or transportation of pelts of fur-bearing

animals is subject to inspection without a warrant by game management officers at any time.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.013. Fees of Issuing Agents

County clerks and other authorized agents of the department may retain 20 cents of the fee for the issuance of a trapper's license or a retail or wholesale fur buyer's license and 50 cents of the fee for the issuance of a beaver-otter trapper's license as a collection fee.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.014. Taking of Fur-Bearing Animals for Propagation; Reports

(a) A person holding a propagation license permit may take alive fur-bearing animals only during the open season for the taking of fur-bearing animals.

(b) The holder of a propagation license shall report to the department on or before March 16 each year. The report must show the number and kind of fur-bearing animals held in captivity and the number and kind of fur-bearing animals and pelts disposed of during the previous year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 71.015. Penalties

(a) Except as provided in another subsection of this section, a person who violates any provision of this chapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

(b) A person who violates Section 71.004 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$200.

(c) A person who violates Section 71.003 of this code or who fails to comply with Section 71.014 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

(d) A person subject to sentencing under Subsection (a) or (c) of this section forfeits his license and becomes ineligible to acquire another until one year after the date of his conviction, if the jury, or the court in the absence of a jury, assesses forfeiture.

(e) A person who is sentenced under Subsection (c) of this section forfeits his license under Subsection (d) of this section, and if he takes, sells, offers for sale, buys, or offers to buy a fur-bearing animal or pelt during the period he is ineligible to acquire another license, he is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100 and is ineligible to acquire a license for a period of one year from the date of his conviction if so assessed by the jury or court.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 72. LIMITATIONS ON TAKING FUR-BEARING ANIMALS

Section

- 72.001. Taking During Open Season.
- 72.002. Open Seasons.
- 72.003. Possession of Green Pelt.
- 72.0035. Sale of Fur-Bearing Animal Carcass [NEW].
- 72.004. Hunting Mink With Dogs.
- 72.005. Trapping Without Consent of Landowner.
- 72.006. Protection of Muskrats.
- 72.007. Penalties.

§ 72.001. Taking During Open Season

No person may take or attempt to take the pelt of a fur-bearing animal for the purpose of sale at any time except during the open season. A person may take fur-bearing animals at any time if the taking is for any purpose other than the sale of the pelt.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 72.002. Open Seasons

The open seasons for the taking of pelts of fur-bearing animals are:

- (1) muskrat, from November 15 of one year through March 15 of the following year;
- (2) mink, from November 15 of one year through January 15 of the following year; and
- (3) all other fur-bearing animals, during all of January and December of each year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 72.003. Possession of Green Pelt

(a) The possession of a green or undried pelt of a fur-bearing animal after the time specified by this section by a trapper or a retail fur buyer is prima facie evidence of a violation of Section 72.001 of this code.

(b) The times are:

- (1) for all fur-bearing animals except muskrat:
 - (A) February 5 of any year by a licensed resident or nonresident trapper;
 - (B) February 15 of any year by a licensed retail fur buyer; and
- (2) for muskrat:
 - (A) March 20 of any year for a licensed resident or nonresident trapper;
 - (B) March 30 of any year by a licensed retail fur buyer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 72.0035. Sale of Fur-Bearing Animal Carcass

(a) No person may sell or offer for sale in Grimes, Walker, and Madison counties the carcass of a rac-

coon, fox, or bobcat during the period beginning on February 1 and extending through November 30 of each year.

(b) In this section, "carcass" means the body of a dead animal with the skin attached.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each animal sold or offered for sale in violation of this section constitutes a separate offense.

[Added by Acts 1977, 65th Leg., p. 1419, ch. 576, § 1, eff. Aug. 29, 1977.]

§ 72.004. Hunting Mink With Dogs

(a) No person may hunt or take wild mink with dogs.

(b) No person may possess the pelt of a mink while hunting with dogs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 72.005. Trapping Without Consent of Landowner

No person may set a trap or deadfall on any enclosed land without the consent of the owner. Enclosed land is land enclosed by a fence, water, or other natural or artificial barrier, or a combination of barriers used by the owner as a method of enclosure.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 72.006. Protection of Muskrats

(a) No person may destroy the bed, nest, or breeding place of a muskrat or take a muskrat by any means except trapping.

(b) No person may trap, kill, or set a trap for a muskrat on land of another without the consent of the owner or lessee of the land.

(c) No person may possess the hide of a muskrat on land of another without the consent of the owner or lessee of the land unless the hide was lawfully taken and legally belongs to the person having possession of it.

(d) No person may purchase the hide or fur of a muskrat on the land of another.

(e) This section does not prevent the owner of land from taking muskrats at any time by any means.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 72.007. Penalties

(a) A person who violates Section 72.001 or 72.003 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

(b) A person who violates Section 72.004, 72.005, or 72.006 of this code is guilty of a misdemeanor and

on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

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**SUBCHAPTER A. PUBLIC AND PRIVATE
OYSTER BEDS**

§ 76.001. Natural Oyster Bed

(a) A natural oyster bed exists when at least five barrels of oysters are found within 2,500 square feet of any position on a reef or bed.

(b) In this section, a barrel of oysters is equal to three boxes of oysters in the shell. The dimensions of a box are 10 inches by 20 inches by 13-½ inches. In filling a box for measurement, the oysters may not be piled more than 2-½ inches above the height of the box at the center. Two gallons of shucked oysters without shells equals one barrel of oysters in the shell.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.002. Designation of Public and Private Beds

(a) All natural oyster beds are public.

(b) All oyster beds not designated as private are public.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.003. Beds Subject to Location

Except as provided in Section 76.004 of this code, an oyster bed or reef, other than a natural oyster bed, is subject to location by the department. This section does not apply to a bed or reef that has been exhausted within an eight-year period.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.004. Riparian Rights

(a) The lawful occupant of a grant of land in this state has the exclusive right to use any creek, bayou, lake, or cove included within the metes and bounds of the original grant for the planting or sowing of oysters.

(b) If the creek, bayou, lake, or cove is not included in the original grant, a riparian owner has an exclusive right in the creek, bayou, lake, or cove for the planting and sowing of oysters to the middle of the creek, bayou, lake, or cove or to 100 yards from the shore, whichever distance is shorter.

(c) The right of a riparian owner of land along any bay shore in this state to plant oysters extends 100 yards into the bay from the high-water mark or from where the land survey ceases. The right to a

natural oyster bed under this subsection is not exclusive.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.005. Affidavit of Riparian Rights

(a) The department may require the owner of riparian rights described in Section 76.004 of this code when offering oysters for sale to make an affidavit stating that the oysters were produced on his property.

(b) The failure of an owner of riparian rights described in Section 76.004(a) of this code to have an affidavit when required by the department or to show it to a game management officer on request or to the person to whom the oysters are offered for sale when required by the department is prima facie evidence that the oysters were produced from public beds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.006. Application for Location; Fee

(a) Any citizen of the United States or any domestic corporation may file a written application with the department for a certificate authorizing the applicant to plant oysters and make a private oyster bed in the public water of the state.

(b) The application must describe the location desired.

(c) The application must be accompanied by a fee of \$20.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.007. Maximum Acreage Under Location

No person may own, lease, or control more than 100 acres of land covered by water under certificates of location.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.008. Lease or Control by Foreign Corporation Prohibited

No corporation other than those incorporated under the laws of this state may lease or control land under a certificate of location.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.009. Examination and Survey of Location

(a) On receipt of an application for a location, the department shall examine the proposed location as soon as practicable by any efficient means.

(b) If the location is subject to certification, the department shall have the location surveyed by a competent surveyor.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.010. Areas Not Subject to Location

The following areas are not subject to location:

- (1) a natural oyster bed;
- (2) a bay shore area within 100 yards of the shore;
- (3) an area subject to an exclusive riparian right; and
- (4) an area already under certification as a location.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.011. Survey Markings and Buoys

(a) In making a location, the surveyor shall plant two iron stakes or pipes having a diameter of not less than two inches on the shoreline nearest to the proposed location, so that one stake or pipe is at each end of the location. The stakes or pipes shall be set at least three feet in the ground and with reference to bearings of at least three permanent objects or natural landmarks.

(b) The locator shall place and maintain, under the direction of the department, a buoy at each corner of the location farthest from the land.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.012. Locator's Certificate

(a) The department shall issue to each locator a certificate signed and sealed by the director.

(b) The certificate must contain:

- (1) the date of the application;
- (2) the date of the survey; and
- (3) a description of the location by metes and bounds with reference to points of the compass and natural objects by which the location may be found and verified.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.013. Survey Fee

(a) Before delivery of the certificate, the locator shall pay to the department the surveyor's fee and other costs of establishing the location.

(b) The amount of the fee required by Section 76.006(c) of this code may be deducted from the amount owed to the department under this section.

(c) If the amount paid under Section 76.006(c) of this code exceeds the amount owed under this section, the difference shall be returned to the locator.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.014. Filing of Certificate

(a) Before the expiration of 60 days following the date of the certificate, the locator shall file the

certificate with the county clerk of the county of the location.

(b) The clerk shall file the certificate in a well-bound book kept for that purpose and shall return the original certificate and a registration receipt to the locator. The clerk is entitled to receive as a fee for filing the certificate the same fee as for recording deeds.

(c) The original certificate and certified copies of it are admissible in court under the same rules governing the admissibility of deeds and certified copies of deeds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.015. Rights of Locator

(a) The holder of a certificate of location as provided for in Section 76.012 of this code is protected in his possession of the location against trespass in the same manner as are freeholders.

(b) This section applies only as long as the stakes or pipes and buoys required by this chapter are maintained in their correct positions and the locator complies with the law and the regulations governing the fish and oyster industries.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.016. Fencing of Location

A locator or his assignee may fence all or part of his location if the fence does not obstruct navigation into or through a regular channel or cut leading to other public water.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.017. Location Rental

(a) No rental fee is owed on any location when oysters are not sold or marketed from the location for a period of five years after the date of the establishment of the location.

(b) When oysters are sold or marketed from the location and thereafter, the holder of the certificate shall pay to the department \$1.50 per acre of location per year and two cents for each barrel of oysters from the location sold.

(c) Rental fees are due annually by March 1.

(d) The failure to pay any rental when due terminates the lease.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.018. Oyster Production Required

If oysters from the location are not sold or marketed within five years from the date of the establishment of the location, the lease is void.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 76.019 to 76.030 reserved for expansion]

SUBCHAPTER B. OYSTER PERMITS

§ 76.031. Application for Permit

(a) A person desiring to plant oysters on his own location or to take oysters from oyster reefs and public water shall apply to the department for an oyster permit.

(b) Only those persons who are citizens of Texas or corporations composed of American citizens and chartered by this state to engage in the culture of oysters or to transact business in the purchase and sale of fish and oysters may apply for a permit.

(c) The application must:

(1) state the purpose for taking oysters; and

(2) give the quantity of oysters to be taken from designated areas.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.032. Discretion to Issue Permit

The department may issue or refuse to issue a permit to any applicant.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.033. Conditions of Permit

(a) The department shall require the permittee to take only the oysters authorized in the permit from beds or reefs designated in the permit.

(b) The department shall:

(1) mark off the exact area of beds or reefs from which oysters may be taken;

(2) designate the bottoms on which oysters may be deposited if they are taken to be prepared for market;

(3) require the permittee to cull the oysters on the grounds where they are to be located; and

(4) specify what implements may be used in taking oysters.

(c) The department may make other conditions or regulations to protect and conserve oysters on public reefs and beds.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.034. Minimum Size

No permittee may take oysters of a smaller size than 3-½ inches from hinge to mouth unless authorized by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.035. Oysters Property of Permittee

All oysters taken or deposited in public water by the holder of an oyster permit under the terms of a permit are the personal property of the permit holder.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.036. Marking Beds

(a) The holder of a permit shall clearly and distinctly mark, by buoys, stakes, or fences, the boundaries of the areas designated in the permit from which he may take or in which he may deposit oysters.

(b) No person may be prosecuted for taking oysters from the bed of a permittee unless the boundaries are established and maintained as provided in this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.037. Theft of Oysters From Private Bed

(a) No person may fraudulently take oysters placed on private beds without the consent of the owner of the private bed or from beds or deposits made for the purpose of preparing oysters for market without the consent of the owner of the oysters who lawfully deposited them.

(b) A person who violates this section is guilty of a felony and on conviction is punishable by imprisonment in the penitentiary for not less than one nor more than two years.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.038. Interference With Buoys or Markers

(a) No person may deface, injure, destroy, or remove a buoy, marker, or fence used to designate or enclose a private oyster bed or location where oysters have been deposited for preparation for market without the consent of the owner of the bed or location.

(b) No person may deface, injure, destroy, or remove a buoy, marker, or sign of the department used for designating water closed for the taking of fish or oysters without the consent of the department.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.039. Prohibited Sales

(a) No person gathering oysters for planting or for depositing for market preparation on locations or on private oyster beds may sell, market, or dispose of the oysters gathered, at the time they are gathered, for any other purpose than planting or preparing for market.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

(c) This section does not affect the right of a person to sell or assign an oyster location or private bed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 76.040 to 76.100 reserved for expansion]

SUBCHAPTER C. OYSTER DREDGE LICENSE

§ 76.101. Oyster Dredge License Required

No person may take or attempt to take oysters from the public water of this state by the use of a dredge without first having acquired an oyster dredge license from the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.102. Exemptions From License

An oyster dredge license is not required if the boat taking the oysters is licensed as a commercial bay or bait shrimp boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.103. Types of Licenses; Period of Validity

(a) The department may issue commercial oyster dredge licenses and sports oyster dredge licenses.

(b) An oyster dredge license expires on August 31 following the date of its issuance or on August 31 of the yearly period for which it is issued.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.104. License Fees

(a) The fee for a commercial oyster dredge license is \$25.

(b) The fee for a sports oyster dredge license is \$5.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.105. Commercial License: Dredge Size

No holder of a commercial oyster dredge license may use more than one dredge which may not exceed 36 inches in width.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.106. Sports License: Dredge Size

No holder of a sports oyster dredge license may use more than one dredge which may not exceed 14 inches in width.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.107. Sale of Sports Oysters Prohibited

No person may sell oysters taken under the authority of a sports oyster dredge license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.108. Open Season

(a) No person may take oysters from public beds or reefs except during the open season or except by permit issued by the department.

(b) The open season is the period beginning on November 1 of one year and extending through April 30 of the following year.

(c) There is no closed season in that part of Laguna Madre and abutting water south of the Port Mansfield Channel.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.109. Night Dredging Prohibited

During the open season, no person may take oysters from public water during the period between sunset and sunrise.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.110. Number and Description of Dredges

(a) No person may possess on board any commercial fishing boat, barge, float, or other vessel more than one oyster dredge. If a vessel is towing another vessel, the towing and towed vessels combined may not have on board more than one dredge.

(b) No person may possess on board any commercial fishing boat, barge, float, or other vessel, or any combination of vessels in tow, a dredge:

(1) exceeding 36 inches in width across the mouth; or

(2) having a capacity of more than two bushels.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.111. Retention Limits

(a) No person may have on board any vessel in the public water of this state, or on any combination of vessels in tow, more than 50 barrels of culled oysters of the legal size.

(b) A barrel is equal to three bushels.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.112. Oyster Size Limits

(a) No person may take or possess a cargo of oysters more than five percent of which are between three-fourths inch and three inches measured from beak to bill or along an imaginary line through the long axis of the shell.

(b) A cargo of undersized oysters shall be determined by taking at random five percent of the total cargo of oysters as a sample, of which not more than five percent may measure less than three inches along an imaginary straight line through the long axis of the shell.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.113. Culling Oysters

(a) No person may fail or refuse to cull oysters between three-fourths inches and three inches measured as provided in Section 76.112 of this code at the time the oysters are taken or to fail or refuse to return culled oysters to the reef immediately.

(b) No person may possess more than one bushel of uncultured oysters during the period he is on the reef.

(c) Uncultured oysters shall be kept separate from culled oysters.

(d) If returning undersized oysters to the bed from which they were taken is impractical, the department may sell them.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.114. Exception to Size and Retention Limits

(a) The commission by permit may allow the use of one or more dredges of any size and cargoes in excess of 50 barrels in transplanting to or harvesting from private leases.

(b) The commission by permit may allow the taking and retention of cargoes having oysters between three-fourths inch and three inches in a greater percentage than five percent.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.115. Closing Areas

(a) The commission may close an area to the taking of oysters when the commission finds that the area is being overworked or damaged or the area is to be reseeded or restocked.

(b) The commission may open closed areas when appropriate.

(c) Before closing any area, the commissioner shall post notices of the closing in fish and oyster houses in two towns nearest the area to be closed and shall publish notice in a daily newspaper of general circulation in the area to be closed. The notices shall be posted and published at least three days before the effective date of the closing.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1220, ch. 456, § 18, eff. Sept. 1, 1975.]

§ 76.116. Oysters From Polluted Areas

(a) There is no open season for taking oysters from areas declared to be polluted by the State Department of Health.

(b) The department may authorize by permit the transplanting of oysters from polluted areas to private oyster leases.

(c) A person removing oysters from polluted areas without a permit shall replace the oysters in the beds from which they were taken as directed by authorized employees of the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.117. Obedience to Orders

No person may fail or refuse to obey a lawful order of a commissioned game management officer of the department issued under the authority of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.118. Penalty

A person who violates a provision of this subchapter or a regulation of the commission issued under this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each day of a continuing violation constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 76.119 to 76.200 reserved for expansion]

SUBCHAPTER D. SHELLFISH IN
POLLUTED WATER

§ 76.201. Definitions

In this subchapter:

(1) "Shellfish" means oysters, clams, and mussels, either fresh or frozen and either shucked or in the shell.

(2) "Polluted area" means an area that is continuously or intermittently subject to the discharge of sewage or other wastes, or to the presence of coliform organisms in quantities likely to indicate that shellfish taken from the area are unfit for human consumption.

(3) "Commissioner" means the State Commissioner of Health.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.202. Declaration of Polluted Areas

(a) The commissioner shall declare any area within the jurisdiction of the state to be polluted if he finds that it is a polluted area.

(b) The commissioner shall close to the taking of shellfish for a period he deems advisable any water to which shellfish from polluted areas may have been transferred.

(c) The commissioner shall establish by order the areas which he declares to be polluted and shall modify or revoke the orders in accordance with the results of sanitary and bacteriological surveys conducted by the State Department of Health. The commissioner shall file the orders in the office of the State Department of Health and shall furnish copies of the orders describing polluted areas to any interested person without charge.

(d) The commissioner shall conspicuously outline polluted areas on maps, which he shall furnish without charge to any interested person. The failure of any person or persons to avail themselves of this information does not relieve them from a violation of this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.203. Rules and Regulations

(a) The commissioner, with the approval of the State Board of Health, shall make rules and regulations establishing specifications for plant facilities and for the harvesting, transporting, storing, handling, and packaging of shellfish.

(b) The commissioner shall file the rules and regulations in the office of the secretary of state.

(c) The rules and regulations are effective three months from the date of their promulgation.

(d) The commissioner shall furnish without charge printed copies of the rules and regulations to any interested person on request.

(e) The commissioner may make reasonable and necessary regulations, not inconsistent with any provision of this subchapter, for the efficient enforcement of this subchapter.

(f) The violation of any regulation made under this subchapter is a violation of this subchapter. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.204. Inspection of Shellfish Plants

(a) The commissioner or his authorized agent shall inspect all shellfish plants and the practices followed in the handling and packaging of shellfish. If it is found that the operator is complying with the rules and regulations promulgated under this subchapter, the commissioner shall issue a certificate attesting to the compliance.

(b) The commissioner or his authorized agent may reinspect a plant at any time and shall revoke the certificate on refusal of the operator to permit an inspection or free access at reasonable hours, or on a finding that the plant is not being operated in compliance with the rules and regulations promulgated under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.205. Taking Shellfish From Polluted Areas

No person may take, sell, or offer or hold for sale any shellfish from an area declared by the commissioner to be polluted without complying with all rules and regulations made by the commissioner to insure that the shellfish have been purified.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.206. Transplanting Shellfish From Polluted Areas

(a) Section 76.205 of this code does not prohibit the transplanting of shellfish from polluted water when permission for the transplanting is first obtained from the Parks and Wildlife Department and the transplanting is supervised by the department.

(b) The department shall furnish a copy of the transplant permit to the commissioner prior to the commencement of transplanting activity.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.207. Purification of Shellfish

The commissioner may allow purification of shellfish taken from polluted areas by artificial means, subject to the rules and regulations of the commissioner and subject to supervision deemed necessary by the commissioner in the interest of public health.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.208. Sale of Shellfish Improperly Handled

No person may sell or offer or hold for sale any shell stock or shucked shellfish that have not been handled and packaged in accordance with specifications fixed by the commissioner under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.209. Sale of Shellfish From Improper Facilities

No person may sell or offer or hold for sale any shellfish where the facilities for packaging and handling the shellfish do not comply with specifications fixed by the commissioner under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.210. Unlawfully Operating a Shellfish Plant

No person may operate a shellfish plant engaged in the handling and packaging of shellfish, either shucked or in the shell, without a valid certificate issued by the commissioner for each plant or place of business.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.211. Sale of Shellfish Without a Certificate Number

No person may sell or offer for sale any shellfish that are not in a container bearing a valid certificate number from a state or a nation whose shellfish certification program conforms to the current Manual of Recommended Practice for Sanitary Control of the Shellfish Industry, issued by the United States

Public Health Service. The provisions of this section do not apply to the sale for on-premises consumption of shellfish removed from a certified container. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.212. Compliance With Regulations

(a) The commissioner shall give any plant a reasonable time to comply with regulations issued under this subchapter after the date of promulgation, but not longer than six months unless an extension is granted.

(b) On a showing that more time is reasonably required, the commissioner may extend the time for compliance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.213. Enforcement

Commissioned officers of the Parks and Wildlife Department shall enforce the provisions of Section 76.205 of this code. Other provisions of this subchapter shall be enforced by the commissioner and his authorized representatives with assistance from the officers of the department as determined by the director.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.214. Disposition of Unfit or Unlawful Shellfish

Any shellfish that are held or offered for sale at retail or for human consumption, and that have not been handled and packaged in accordance with the specifications fixed by the commissioner under this subchapter, or that are not in a certified container as provided in this subchapter or are otherwise found by the commissioner to be unfit for human consumption, are subject to immediate condemnation, seizure, and confiscation by the commissioner or his agents. The shellfish shall be held, destroyed, or otherwise disposed of as directed by the commissioner.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.215. Performance Bond

In order to insure that the certificate holder will comply with all legal requirements imposed under this subchapter, the commissioner, when reasonably necessary for the enforcement of this subchapter, may require each person holding a plant certificate to post and maintain with him a good and sufficient bond with a corporate surety or two personal sureties approved by the commissioner, or a cash deposit in a form acceptable to the commissioner. Any failure to comply with the legal requirements of this subchapter will result in the certificate holder or his

surety paying as forfeiture to the commissioner a sum not to exceed \$1,000.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 76.216. Penalty

A person who violates any provision of this subchapter or a regulation of the commissioner is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$200 nor more than \$500. Each day of a continuing violation constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 77. SHRIMP

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SUBCHAPTER A. GENERAL PROVISIONS

§ 77.001. Definitions

In this chapter:

- (1) "Coastal water" means all the salt water of this state, including that portion of the Gulf of Mexico within the jurisdiction of the state.
- (2) "Inside water" means all bays, inlets, outlets, passes, rivers, streams, and other bodies of water landward from the shoreline of the state along the Gulf of Mexico and contiguous to, or connected with, but not a part of, the Gulf of Mexico and within which the tide regularly rises and falls and in which saltwater shrimp are found or into which saltwater shrimp migrate.
- (3) "Outside water" means the salt water of the state contiguous to and seaward from the shoreline of the state along the Gulf of Mexico as the shoreline is projected and extended in a continuous and unbroken line, following the contours of the shoreline, across bays, inlets, outlets, passes, rivers, streams, and other bodies of water; and that portion of the Gulf of Mexico extending from the shoreline seaward and within the jurisdiction of the state.
- (4) "Major bays" means the deeper, major bay areas of the inside water, including Sabine Lake, Trinity Bay, Galveston Bay, East Galveston Bay, West Galveston Bay, Matagorda Bay

(including Keller's Bay and East Matagorda Bay), Tres Palacios Bay, Espiritu Santo Bay, Lavaca Bay from the present causeway seaward, San Antonio Bay, Ayres Bay, Aransas Bay, Mesquite Bay, and Corpus Christi Bay, all exclusive of tributary bays, bayous, and inlets.

(5) "Possess" means the act of having in possession or control, keeping, detaining, restraining, or holding as owner, or under a fishing ley, or as agent, bailee, or custodian of another.

(6) "Commercial gulf shrimp boat" means any boat that is required to be numbered or registered under the laws of the United States or of this state and that is used for the purpose of catching or assisting in catching shrimp and other edible aquatic products from the outside water of the state for pay or for the purpose of sale, barter, or exchange, or from salt water outside the state for pay or for the purpose of sale, barter, or exchange, and that unloads at a port or other point in the state without having been previously unloaded in another state or foreign country.

(7) "Commercial bay shrimp boat" means a boat that is required to be numbered or registered under the laws of the United States or this state and that is used for the purpose of catching or assisting in catching shrimp and other edible aquatic products from the inside water of this state for pay or for the purpose of sale, barter, or exchange.

(8) "Commercial bait shrimp boat" means a boat that is required to be numbered or registered under the laws of the United States or of this state and that is used for the purpose of catching or assisting in catching shrimp for use as bait and other edible aquatic products from the inside water of the state for pay or for the purpose of sale, barter, or exchange.

(9) "Shrimp house operator" means a person who operates a shrimp house, plant, or other establishment for compensation or profit for the purpose of unloading and handling, from commercial gulf shrimp boats or commercial bay shrimp boats, fresh shrimp and other edible aquatic products caught or taken from the coastal water of the state or from salt water outside the state and brought into the state without having been previously unloaded in another state or foreign country, but does not include a person holding a wholesale fish dealer's license under Section 47.009 of this code.

(10) "Bait-shrimp dealer" means a person who operates an established place of business in a coastal county of the state for compensation or profit for the purpose of handling shrimp caught for use as bait from the inside water of this state, but does not include a person holding

a wholesale fish dealer's license under Section 47.009 of this code.

(11) "Individual bait-shrimp trawl" means a trawl, net, or rig used for the purpose of catching shrimp for one's own personal use.

(12) "Second offense" and "third and subsequent offenses" mean offenses for which convictions have been obtained within three years prior to the date of the offense charged.

(13) "Contiguous zone," means that area of the Gulf of Mexico lying adjacent to and offshore of the jurisdiction of the State of Texas and in which shrimp of the genus *Penaeus* are found.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1220, ch. 456, § 20(a), eff. Sept. 1, 1975.]

§ 77.002. License Fees

License fees provided in this chapter are a privilege tax on catching, buying, selling, unloading, transporting, or handling shrimp within the jurisdiction of this state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.003. Disposition of Funds

Money received for licenses issued under this chapter or fines for violations of this chapter shall be remitted to the department by the 10th day of the month following the date of collection.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.004. Research Program

(a) The department shall conduct continuous research and study of:

(1) the supply, economic value, environment, and breeding habits of the various species of shrimp;

(2) factors affecting the increase or decrease in shrimp;

(3) the use of trawls, nets, and other devices for the taking of shrimp;

(4) industrial and other pollution of the water naturally frequented by shrimp; and

(5) statistical information gathered by the department on the marketing, harvesting, processing, and catching of shrimp landed at points in the state.

(b) The research may be conducted by the department or an agency designated by the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.005. Reporting by Licensee

A licensee under this chapter who lands shrimp in the state shall submit to the department by the 10th day of each month, on forms furnished by the department, a report stating:

(1) the number of pounds of shrimp landed at points in the state by the licensee during the reporting period;

(2) the water from which the shrimp were taken; and

(3) the names of the species of shrimp.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.006. Department Findings and Report

(a) Based on the study and reports obtained under Section 77.004 and 77.005 of this code, the department shall make findings of fact and enter the findings in the permanent records of the department.

(b) The findings of fact shall be published as a report and presented to the governor and each member of the legislature before each regular session of the legislature.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 77.007 to 77.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO SHRIMPING

§ 77.011. License Requirement

No person may operate in the coastal water without obtaining the appropriate license, if required, as prescribed in this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.012. Foreign Shrimp

Provisions of this chapter prohibiting possession, sale, purchase, unloading, or other handling of shrimp apply to shrimp caught in this state and shrimp coming from another state or country unless specifically provided otherwise.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.013. Size

Except as provided by this chapter, no person may catch, possess, or have on board a boat within coastal water, or buy, sell, unload, transport, or handle, an amount of fresh shrimp, except sea bobs, which average in count of individual specimens more than 65 headless fresh shrimp to the pound or more than 39 heads-on fresh shrimp to the pound.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.014. Method of Taking Count

(a) An authorized employee of the department shall take the count of shrimp in the presence of the person possessing the shrimp.

(b) The employee shall select a minimum of three representative samples for each 1,000 pounds or fraction of 1,000 pounds of headless or heads-on shrimp being sampled.

(c) Each sample must weigh five pounds after draining at least three minutes.

(d) The count per pound for the sample is determined by dividing the number of specimens in the sample by five.

(e) The average count per pound for the entire quantity being sampled is determined by totalling the count per pound for each sample and dividing that total by the number of samples.

(f) The average count per pound as determined under this section is prima facie evidence of the average count per pound of the shrimp in the entire cargo or quantity of shrimp sampled.

(g) Headless and heads-on shrimp shall be sampled, weighed, and counted separately.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.015. Gradation and Processing

Shrimp found to be of legal size under this chapter may subsequently be graded for size for packaging, processing, or sale.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.016. Restrictions on Individual Bait-Shrimp Trawl

No person may use, possess, or have on board a boat in coastal water more than one individual bait-shrimp trawl, or an individual bait-shrimp trawl:

(1) with a mesh size of less than eight and three-fourths inches in length between the two most widely separated knots in any consecutive series of five stretched meshes after the trawl is placed in use;

(2) exceeding 20 feet in length between the doors or boards or other spreading device; or

(3) with doors or boards exceeding 15 inches by 30 inches each, or a total of 450 square inches each.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.017. Possession After Season

No person may retain saltwater shrimp in their fresh state legally taken in the coastal water of this state for more than five days after the end of an open season for the taking of shrimp unless he is a licensed bait dealer or sports fisherman.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.018. Foreign Trawl or Shrimp

(a) A person may possess or have on board a boat in the coastal water of Orange or Jefferson county a trawl and spreading device that may lawfully be used in the coastal water of another state if:

(1) the trawl and equipment are immediately en route to or from a home port or destination on land;

(2) the trawl and equipment have been used during the open season for shrimp in another state; and

(3) the trawl and equipment are not used or intended for use in the coastal water of this state in violation of this chapter.

(b) A person may possess or have on board a boat in the coastal water of Orange or Jefferson county shrimp that are lawfully caught in the coastal water of another state if the catch is immediately en route to or from a home port or destination on land. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.019. Prohibited Handling of Shrimp

No shrimp house operator, wholesale fish dealer, retail fish dealer, wholesale truck dealer, retail truck dealer, or other person holding a license issued by the department may knowingly unload, buy, or handle in any way shrimp or bait shrimp:

(1) from an unlicensed gulf shrimp boat or unlicensed commercial bay shrimp boat;

(2) of a prohibited size;

(3) caught in the inside water or outside water during the closed season for the water; or

(4) in violation of a provision of this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.020. Penalty

A person who violates a provision of this chapter except Section 77.024 of this code, is guilty of a misdemeanor and on conviction is punishable:

(1) by a fine of not less than \$50 nor more than \$200 for the first offense;

(2) by a fine of not less than \$100 nor more than \$500, or confinement in the county jail for not less than 10 days nor more than 60 days, or both, for the second offense; and

(3) by a fine of not less than \$500 nor more than \$2,000 and confinement in the county jail for not less than 30 days nor more than six months for the third offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.021. Separate Offense

Each day on which a violation occurs constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.022. Responsibility for Violation

(a) When a vessel is involved in a violation of this chapter, the captain of the vessel shall be considered primarily responsible for the violation. A member of the crew of a vessel shall not be guilty of a violation unless it also be charged that the member of the crew acted in violation of the orders of the captain of the vessel.

(b) The owner of a vessel involved in a violation of this chapter may not be found guilty of the violation unless it is charged and proved that the owner knowingly directed, authorized, permitted, agreed to, aided, or acquiesced in the violation. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1213, ch. 456, § 13(i), eff. Sept. 1, 1975.]

§ 77.023. License Forfeiture

(a) On conviction for a third and subsequent offense under this chapter, a license under which operations involved in the violation are being conducted is subject to forfeiture.

(b) A license that is forfeited under this section may not be reissued for a period of 12 months from the date of forfeiture.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.024. Operation Without License

(a) No person whose license has been forfeited under Section 77.023 of this code may do business without a new license or possess another license for the period of forfeiture.

(b) A person violating this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$2,500 nor more than \$5,000 and confinement in the county jail for not less than six months nor more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.025. Period of Limitation

*Text as added by § 13(j) of Acts 1975,
64th Leg., p. 1213, ch. 456*

Except as provided in Article 12.05, Code of Criminal Procedure, 1965, as amended, an indictment or information for a violation of this chapter may be presented within one year after the date of the commission of the offense and not afterward.

[Acts 1975, 64th Leg., p. 1213, ch. 456, § 13(j), eff. Sept. 1, 1975.]

*For text as added by § 20(g) of Acts 1975,
64th Leg., p. 1222, ch. 456, see
Section 77.025, post*

§ 77.025. Confiscation and Disposal of Shrimp

*Text as added by § 20(g) of Acts 1975, 64th Leg.,
p. 1222, ch. 456*

When an enforcement officer of the department believes that a person has unlawful possession of any shrimp taken in violation of this chapter, all shrimp aboard any vessel involved or in the trawl, whether in storage, on deck, and whether alive or dead, whole or headed, frozen or fresh, shall be deemed to have been taken in violation of the chapter and shall be confiscated by the arresting officer. The cargo of shrimp shall be sold to the highest of three bidders by the officer. The proceeds of the sale shall be deposited in the state treasury to the credit of suspense fund number 900, pending the outcome of the action taken against the person charged with the illegal possession. Unless the person is found guilty, all the proceeds shall be paid to the defendant. [Acts 1975, 64th Leg., p. 1222, ch. 456, § 20(g), eff. Sept. 1, 1975.]

*For text as added by § 13(j) of Acts 1975, 64th
Leg., p. 1213, ch. 456, see Section 77.025, ante*

[Sections 77.026 to 77.030 reserved for expansion]

SUBCHAPTER C. SHRIMP LICENSES

§ 77.031. Commercial Bay Shrimp Boat License

(a) No person may operate a commercial bay shrimp boat for the purpose of catching or assisting in catching shrimp and other edible aquatic products from the inside water unless the owner has obtained a commercial bay shrimp boat license.

(b) The fee for a commercial bay shrimp boat license is \$40.

(c) A commercial bay shrimp boat license expires on March 1 of the year following the date of issuance.

(d) An applicant for a commercial bay shrimp boat license must submit to the department an affidavit that the applicant intends to derive the major portion of his livelihood from commercial shrimp fishery and that he will maintain adequate facilities to conduct the business.

(e) Except as provided in Section 77.0371 of this code, not more than one commercial bay shrimp boat license may be issued to a boat during the licensing period.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1213, ch. 456, § 13(g), eff. Sept. 1, 1975.]

§ 77.032. Issuance of Commercial Bay Shrimp Boat License

A commercial bay shrimp boat license may be issued only in the months of January and February unless the applicant has acquired title to the shrimp boat by purchase or new construction after the last day of February of the year for which the license is sought, in which case the applicant must submit an affidavit that the boat was acquired after the last day of February and that prior to the last day of February the applicant had not entered into an agreement to acquire the boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.033. Commercial Bait-Shrimp Boat License

(a) No person may operate a commercial bait-shrimp boat for the purpose of catching or assisting in catching shrimp for use as bait only and other edible aquatic products from the inside water unless the owner of the boat has obtained a commercial bait-shrimp boat license.

(b) The fee for a commercial bait-shrimp boat license is \$40.

(c) A commercial bait-shrimp boat license expires August 31 following the date of issuance.

(d) Not more than one commercial bait-shrimp boat license may be issued to a boat for each licensing period.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.034. Inspection for Commercial Bait-Shrimp Boat License

Before the issuance of a commercial bait-shrimp boat license, an authorized employee of the department shall inspect the boat to be licensed to insure that adequate facilities are present and that 50 percent of the daily catch of the bait shrimp may be maintained alive.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.035. Commercial Gulf Shrimp Boat License

(a) No person may operate a commercial gulf shrimp boat for catching or assisting in catching shrimp and other edible aquatic products from the outside water, or have on board a boat, or unload, or allow to be unloaded at a port or point in this state, shrimp and other edible aquatic products caught or taken from the outside water or from salt water outside the state without having been previously unloaded in some other state or foreign country, unless the owner of the boat has obtained a commercial gulf shrimp boat license.

(b) The fee for a commercial gulf shrimp boat license is \$50.

(c) The commercial gulf shrimp boat license expires August 31 following the date of issuance.

(d) Except as provided in Section 77.0371 of this code, not more than one commercial gulf shrimp boat license may be issued to a boat during the licensing period.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1213, ch. 456, § 13(h), eff. Sept. 1, 1975.]

§ 77.036. Official Registration

(a) An applicant for a commercial shrimp boat license issued under this subchapter must submit to the department the boat's United States Bureau of Customs official document or the Texas certificate of number for a motorboat.

(b) The certificate of license issued by the department for a commercial shrimp boat must contain the name of the boat and the number appearing on the United States Bureau of Customs official document or the Texas certificate of number.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.037. Transfer of License

A commercial shrimp boat license issued under this subchapter may be transferred on the application of the licensee only from a boat that has been destroyed or lost to a boat acquired by the licensee as a replacement.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.0371. Duplicate License of Transfer of Vessel

On the sale of any boat licensed under this subchapter, the department, on receipt of an application from the new owner and the surrender of the original license, shall issue, without charge, a duplicate license reflecting the change of ownership.

[Acts 1975, 64th Leg., p. 1212, ch. 456, § 13(a), eff. Sept. 1, 1975.]

§ 77.038. Display of Licenses

A commercial shrimp boat license issued under this subchapter must be prominently displayed on the bow, outside the wheelhouse, or at another point outside the boat designated by the department, and on each side of the boat, evidencing payment of the license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.039. License Design

(a) A commercial shrimp boat license issued under this subchapter must be a metal or plastic sign or emblem at least 32 square inches in size, and have a different color or design for each license period.

(b) The character, color, and design of each class of commercial shrimp boat license issued under this subchapter must be distinguishable.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.040. Other Licenses Required

(a) A person holding a commercial shrimp boat license under this subchapter is not required to obtain a commercial fishing boat license under Section 47.007 of this code.

(b) The captain and each paid member of the crew of a boat having a commercial shrimp boat license issued under this subchapter must have a tidal water commercial fisherman's license issued under Section 47.003 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.041. Gear on Commercial Shrimp Boat

All shrimp trawls and fishing gear, except fishnets or seines, with which a boat having a commercial shrimp boat license issued under this subchapter is equipped may be used unless the use is otherwise prohibited by law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.042. Shrimp House Operator License

(a) No person may engage in business as a shrimp house operator unless he has obtained a shrimp house operator's license issued by the department.

(b) The fee for a shrimp house operator's license is \$150.

(c) A shrimp house operator's license expires August 31 following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.043. Bait-Shrimp Dealer License

(a) No person may engage in business as a bait-shrimp dealer unless he has obtained a bait-shrimp dealer's license from the department for each bait stand or place of business he maintains.

(b) The fee for a bait-shrimp dealer's license is \$40.

(c) A bait-shrimp dealer's license expires August 31 following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.044. Issuance of Bait-Shrimp Dealer's License

(a) The department shall issue a bait-shrimp dealer's license only after it has determined that the applicant for the license is a bona fide bait-shrimp dealer.

(b) A bait-shrimp dealer's license may not be held by a person who also holds a shrimp house operator's license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.045. Rights and Duties of Bait-Shrimp Dealer

(a) The holder of a bait-shrimp dealer's license may sell, purchase, and handle shrimp, minnows, fish, and other forms of aquatic life for sale or resale for fish bait purposes in the coastal counties of this state.

(b) The holder of a bait-shrimp dealer's license is not required to obtain a bait dealer's license issued under Section 47.014 of this code unless he engages in the business in a county other than a coastal county.

(c) Frozen dead bait held under a bait-shrimp dealer's license must be packaged and labeled "Bait Shrimp" in block letters at least one inch in height.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.046. Exemptions From Bait-Shrimp Dealer's License

A bait-shrimp dealer's license is not required for:

(1) grocery stores in coastal counties which do not unload or purchase shrimp directly from commercial bait-shrimp boats;

(2) bait dealers in coastal counties who do not sell or offer for sale or handle shrimp for sale or resale for bait purposes, but these dealers must have a bait-dealer's license issued under Section 47.014 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.047. Prohibited Handling of Shrimp by Bait-Shrimp Dealer

No bait-shrimp dealer may knowingly unload, buy, or handle in any way bait shrimp from an unlicensed commercial bait-shrimp boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.048. Individual Bait-Shrimp Trawl License

(a) No person may possess or have on board a boat in coastal water an individual bait-shrimp trawl unless the owner of the trawl has obtained an individual bait-shrimp trawl license from the department.

(b) The fee for the individual bait-shrimp trawl license is \$5.

(c) The individual bait-shrimp trawl license expires on August 31 following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 77.049 to 77.060 reserved for expansion]

SUBCHAPTER D. SHRIMPING IN
OUTSIDE WATER

§ 77.061. General Closed Season

Except as specifically provided in this subchapter, no person may catch shrimp in outside water:

(1) from June 1 to July 15, both dates inclusive, or during a period provided under Section 77.062 of this code, as applicable; or

(2) extending from the coastline of Texas up to and including seven fathoms in depth from December 16 of each year to February 1 of the following year, both dates inclusive, unless taking sea bobs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1220, ch. 456, § 20(b), eff. Sept. 1, 1975.]

§ 77.062. Change in General Closed Season

Based on sound biological data, the commission may change the opening and closing dates of the June 1 to July 15 closed season to provide for an earlier, later, or longer season not to exceed 60 days. The commission may change the closing date with 72 hours public notice and may reopen the season with 24 hours notice. The commission may delegate to the director the duties and responsibilities of opening and closing the shrimping season under this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1220, ch. 456, § 20(b), eff. Sept. 1, 1975.]

§ 77.0621. Contiguous Zone Season

Except as specifically provided in this subchapter, no citizen of this state may catch from the contiguous zone shrimp during a closed season as provided in Subdivision (1) of Section 77.061 of this code, including a closed season modified as provided in Section 77.062 of this code.

[Acts 1975, 64th Leg., p. 1221, ch. 456, § 20(c), eff. Sept. 1, 1975.]

§ 77.063. General Limitation on Nets

(a) Except as specifically provided in this subchapter, no person may catch shrimp in the outside water with, or possess or have on board a boat in the coastal water for use in outside water, a trawl, except a try net or test net, with a mesh size of less than eight and three-fourths inches in length between the two most widely separated knots in any consecutive series of five stretched meshes after the trawl has been put in use. Measurement shall be made in the section of the trawl which is normally under tension when in use.

(b) No person may use a try net in outside water exceeding 12 feet in width as measured from board to board or between the extremes of any other spreading device.

(c) This section does not apply to the taking of sea bobs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.064. Night Shrimping

No person may catch shrimp of any size or species in the outside water extending from the coastline of Texas up to and including seven fathoms in depth during the period beginning 30 minutes after sunset and ending 30 minutes before sunrise.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.065. White Shrimp

(a) A licensed commercial gulf shrimp boat operator may catch white shrimp in the outside water not exceeding four fathoms in depth from June 1 to July 15, both dates inclusive, or during the period prescribed under Section 77.062 of this code.

(b) No more than one net may be used at a time, except a try net, and the trawl may not exceed 25 feet in width as measured along the corkline or headrope from hanging to hanging.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1221, ch. 456, § 20(e), eff. Sept. 1, 1975.]

§ 77.066. Sea Bobs

(a) No commercial gulf shrimp boat operator may catch sea bobs with a trawl exceeding 25 feet in width measured along the corkline from board to board or between the extremes of any other spreading device or with a trawl having a mesh size in excess of six and one-half inches in length between the two most widely separated knots in any consecutive series of five stretched meshes after the trawl has been placed in use. Not more than one trawl may be used at a time.

(b) No person catching sea bobs may catch or have on board a boat any other species of shrimp which exceed ten percent, in weight or number, of the entire catch.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.067. Noncommercial Bait-Shrimping

(a) A person may catch shrimp for use as bait only at any time of the year in the outside water with an individual bait-shrimp trawl, cast net, dip net, bait trap, or minnow seine not larger than 20 feet in length manually operated on foot only without the use of any mechanical means or devices.

(b) No person catching shrimp with an individual bait-shrimp trawl may possess or have on board a boat in the outside water more than two quarts of shrimp per person or four quarts of shrimp per boat for use as bait.

(c) Shrimp caught under this section are not subject to the size requirements set out in Section 77.013 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.068. Noncommercial Shrimping

(a) Subject to the limitations prescribed in this section, during the open season in outside water a person may catch shrimp for personal use by means of:

(1) a cast net, dip net, bait trap, or minnow seine that is not more than 20 feet long and that is manually operated on foot only without the use of any mechanical means or devices;

(2) an individual bait-shrimp trawl; or

(3) a manually operated seine not exceeding 400 feet in length with a mesh of not less than one and one-half inch square, except for the bag and 50 feet on each side of the bag, the mesh of which may not be larger than one inch square.

(b) A person may catch for personal use not more than 100 pounds of shrimp (in their natural state with heads attached) each day during the open season in outside water.

(c) The seine described in Subsection (a)(3) of this section may not be used within one mile of any natural or man-made pass leading from inside water to outside water, and any shrimp or marine life caught with the seine but not kept by the person using the seine shall be returned to the water. Shrimp caught with this seine may not be sold. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.069. Sale of Noncommercial Shrimp

No person may buy, sell, offer for sale, or handle in any way for profit shrimp caught in outside water with an individual bait-shrimp trawl, dip net, cast net, bait trap, or minnow seine not larger than 20 feet in length.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.070. Possession of Shrimp

Except as permitted by Section 77.065 and Section 77.067 of this code, no person may possess or have on board a boat in coastal water, or buy, sell, unload, transport, or handle in any way, shrimp caught in the outside water during the closed season or shrimp taken unlawfully from the contiguous zone during the closed season.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1221, ch. 456, § 20(d), eff. Sept. 1, 1975.]

§ 77.071. Regulations in Contiguous Zone

(a) The department shall not enforce any regulations in the contiguous zone if it determines that the shrimp it desires to manage are being harvested on a meaningful basis by vessels not subject to the same or similar regulations.

(b) The department may negotiate reciprocal agreements with another state with respect to the application of one state's shrimping regulations in its contiguous zone to citizens of the other state.

[Acts 1975, 64th Leg., p. 1221, ch. 456, § 20(f), eff. Sept. 1, 1975.]

[Sections 77.072 to 77.080 reserved for expansion]

SUBCHAPTER E. SHRIMPING IN INSIDE WATER

§ 77.081. Application

No person may catch shrimp of any size or species within the inside water except as provided in this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.082. Shrimping in Passes

No person may catch shrimp of any size or species within the natural or man-made passes leading from the inside water to the outside water.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.083. Heading Shrimp

No person may head shrimp aboard a boat in the inside water or dump or deposit shrimp heads in the inside water except in artificial passes, canals, or basins.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.084. Trawl Doors

Except during the period from August 15 to December 15, both dates inclusive, no person may have on board a boat in the inside water for use on the inside water more than one set of trawl doors or other spreading devices nor more than one set of try-net doors.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.085. Try Nets

No person may use, possess, or have on board a boat in inside water a try net or test net exceeding 12 feet in width measured along the corkline or headrope from hanging to hanging.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1212, ch. 456, § 13(b), eff. Sept. 1, 1975.]

§ 77.086. Mesh Size

(a) Except as provided in this subchapter, no person may catch shrimp in the inside water with, or possess or have on board a boat in the coastal water for use in inside water, a trawl and bag or trawl liner having a mesh size of less than eight and three-fourths inches in length between the two most widely separated knots in any consecutive series of five stretched meshes after the trawl or bag has been placed in use. The measurement shall be made in the section of the trawl which is normally under tension when in use.

(b) This section does not apply to try nets or test nets.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1212, ch. 456, § 13(c), eff. Sept. 1, 1975.]

§ 77.087. Net Width

During the period from August 15 to December 15 of each year, both dates inclusive, no person may catch shrimp of any size or species in the major bays with more than one net or a net exceeding 65 feet in width measured along the corkline or headrope from hanging to hanging. This section does not apply to try nets or test nets.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1212, ch. 456, § 13(d), eff. Sept. 1, 1975.]

§ 77.088. Night Shrimping Prohibited

Except as provided in this subchapter, no person may catch shrimp or use or operate a net or trawl to catch shrimp of any size or species in the inside water except during the period beginning 30 minutes before sunrise and ending 30 minutes after sunset.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.089. Noncommercial Bait-Shrimping

(a) A person may catch shrimp for use as bait only at any time of the year in inside water with an individual bait-shrimp trawl, cast net, dip net, bait trap, or minnow seine not larger than 20 feet in length manually operated without the use of any mechanical means or devices.

(b) No person catching shrimp with an individual bait-shrimp trawl may possess or have on board a boat in the inside water more than two quarts of shrimp per person or four quarts of shrimp per boat for use as bait.

(c) Shrimp caught under this section are not subject to the size requirement set out in Section 77.013 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.090. Noncommercial Shrimping

(a) A person may catch shrimp for personal use with an individual bait-shrimp trawl, cast net, dip net, bait trap, or minnow seine not larger than 20 feet in length manually operated on foot only and without the use of any mechanical means or devices:

(1) in major bays of inside water from August 15 to December 15 in an amount not to exceed 100 pounds of shrimp per day; and

(2) in major bays of inside water from May 15 to July 15, both dates inclusive, in an amount not to exceed 15 pounds of shrimp per day.

(b) The weight of shrimp taken or caught under this section is determined in their natural state with heads attached.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 340, ch. 167, § 1, eff. Aug. 29, 1977.]

§ 77.091. Commercial Shrimp Season

A licensed commercial bay shrimp boat operator may catch shrimp of lawful size in the major bays during the periods from August 15 to December 15, both dates inclusive, and May 15 to July 15, both dates inclusive.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.092. Commercial Shrimp Limit

(a) During the period from May 15 to July 15, both dates inclusive, a licensed commercial bay shrimp boat operator may catch not more than 300 pounds of shrimp per boat per calendar day, and may possess or have on board a boat in the inside water or unload or attempt to unload at a point in this state not more than 300 pounds of shrimp.

(b) The weight of shrimp must be determined in their natural state with heads attached.

(c) Shrimp caught or taken under this section are not subject to the size requirement set out in Section 77.013 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.093. Commercial Shrimp Nets

In major bays of inside water during the period from May 15 to July 15, no licensed commercial bay shrimp boat operator may catch shrimp with more than one net at a time, except a try net, or with a net:

(1) exceeding 25 feet in length measured along the corkline or headrope from hanging to hanging; or

(2) having meshes, including the meshes of the bag or liner, in excess of six and one-half inches between the most widely separated knots in any consecutive series of five stretched meshes after the net or bag has been placed in use.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1213, ch. 456, § 13(e), eff. Sept. 1, 1975.]

§ 77.094. Commercial Bait-Shrimp Season

A licensed commercial bait-shrimp boat operator in the inside water may catch shrimp of any size or species for use as bait only at any time of the year. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.095. Commercial Bait-Shrimp Limit

(a) No licensed commercial bait-shrimp boat operator may catch more than 150 pounds of shrimp per boat per calendar day, or possess or have on board a boat, or unload or attempt to unload at a point in the state more than 150 pounds of shrimp.

(b) The weight of the shrimp must be determined in their natural state with heads attached. Not more than 50 percent of the shrimp may be dead and 50 percent of the shrimp must be kept in a live condition on board the vessel taking the bait shrimp.

(c) Shrimp caught or taken under this section are not subject to the size requirement set out in Section 77.013 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.096. Commercial Bait-Shrimp Nets

No licensed commercial bait-shrimp boat operator may catch shrimp in inside water with:

(1) more than one net at a time, except that one try net not exceeding five feet in width as measured along the corkline or headrope from hanging to hanging may also be used;

(2) a net exceeding 25 feet in width measured along the corkline or headrope from hanging to hanging; or

(3) a net or bag having a mesh size of not less than six and one-half inches in length between the two most widely separated knots in any consecutive series of five stretched meshes after the net or bag has been placed in use.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1213, ch. 456, § 13(f), eff. Sept. 1, 1975.]

§ 77.097. Commercial Bait-Shrimping at Night

(a) No licensed commercial bait-shrimp boat operator may catch shrimp for use as bait between sunset and sunrise except during the period beginning December 16 of one year and ending August 14 of the following year, both dates inclusive.

(b) Bait-shrimp may be taken at any time of the day or night in the water of the Laguna Madre. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.098. Bait-Shrimp Sale

No licensed commercial bait-shrimp boat operator may sell or unload shrimp caught under this sub-

chapter at any time except to a bona fide bait-shrimp dealer or a sports fisherman operating a boat in inside water.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 77.099. Sale of Noncommercial Shrimp

No person may buy, sell, offer for sale, or handle in any way for profit shrimp caught in inside water with an individual bait-shrimp trawl, dip net, cast net, bait trap, or minnow seine not larger than 20 feet in length.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 78. CLAMS, MUSSELS, AND SPONGE CRABS**SUBCHAPTER A. MUSSELS, CLAMS, OR NAIADS****Section**

78.001. License Required.

78.002. License Form; Expiration.

78.003. License Fee.

78.004. Unlawful Acts.

SUBCHAPTER B. SPONGE CRABS

78.101. Definitions.

78.102. Unlawful Taking of Sponge Crabs.

SUBCHAPTER A. MUSSELS, CLAMS, OR NAIADS**§ 78.001. License Required**

No person may take any mussels, clams, or naiads or their shells from the public water of the state without a license.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 78.002. License Form; Expiration

The license form shall be prescribed by the department and shall designate the water in which the licensee may operate. The license expires one year after the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 78.003. License Fee

The license fee is \$10, payable to the department, with an additional \$25 fee for permission to use a dredge.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 78.004. Unlawful Acts

A person who violates the provisions of Section 78.001 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 78.005 to 78.100 reserved for expansion]

SUBCHAPTER B. SPONGE CRABS

§ 78.101. Definitions

"Coastal water" has the same meaning as is given to the term by the Texas Shrimp Conservation Act (Chapter 77 of this code).
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 78.102. Unlawful Taking of Sponge Crabs

(a) No person may take sponge crabs from the coastal water of the state by any means.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 79. EXTENDED FISHERY JURISDICTION [NEW]

- Section
79.001. Compliance.
79.002. Authority.
79.003. Suspension of Other Laws.

§ 79.001. Compliance

The department is authorized to cooperate with the Gulf of Mexico Fishery Management Council established pursuant to the Fishery Conservation and Management Act of 1976 (16 U.S.C.A. Section 1801 et seq.), in developing state management programs which are consistent with plans proposed by the council and approved by the secretary of commerce.
[Added by Acts 1977, 65th Leg., p. 1280, ch. 501, § 2, eff. June 15, 1977.]

§ 79.002. Authority

New regulatory authority by the department may occur only if federal regulation in state waters is proposed and under no other circumstances. When necessary to retain jurisdiction of resources in the state, and only then, the department may follow procedures outlined in Chapter 61 of this code in promulgating rules for harvest of any and all species of marine life subject to the Fishery Conservation and Management Act of 1976 (16 U.S.C.A. Section 1801 et seq.).
[Added by Acts 1977, 65th Leg., p. 1280, ch. 501, § 2, eff. June 15, 1977.]

§ 79.003. Suspension of Other Laws

Irrespective of exclusions or limited application of the Uniform Wildlife Regulatory Act (Chapter 61 of this code) or any chapter in Title 7 of this code the commission shall exercise the authority set out in Section 79.002 of this code and conflicting provisions

limiting the area, species to which applicable, or special seasons, are hereby suspended when the proclamation of the commission becomes effective, but only for the period specified in such proclamation.
[Added by Acts 1977, 65th Leg., p. 1281, ch. 501, § 2, eff. June 15, 1977.]

SUBTITLE E. WILDLIFE MANAGEMENT AREAS, SANCTUARIES, AND PRESERVES

CHAPTER 81. MANAGEMENT AREAS AND PRESERVES: GENERAL AUTHORITY

SUBCHAPTER A. ACTS PROHIBITED IN WILDLIFE PROTECTION AREAS

- Section
81.001. Taking of Wildlife From Hatcheries and Reservations Prohibited.
81.002. Predacious Animals on Hatcheries or Reservations.
81.003. Trespass on State Hatcheries and Reservations.
81.004. Fishing in Sanctuary.
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81.006. Taking or Possessing Species From Wildlife Management Areas.

SUBCHAPTER B. FISH HATCHERIES

- 81.101. Saltwater Areas.
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81.103. Property Acquisition; Manner and Means.
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SUBCHAPTER C. FISH SANCTUARIES

- 81.201. Creation of Freshwater Sanctuaries.
81.202. Purposes of Sanctuaries.
81.203. Designation of Sanctuaries.
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81.205. Amount of Fresh Water Set Aside in One County.
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- 81.301. Creation of Game Preserves.
81.302. Instrument of Transfer.
81.303. Declaration of Preserve.
81.304. Maximum Acreage Per County.
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SUBCHAPTER E. WILDLIFE MANAGEMENT AREAS

- 81.401. Management of Areas.
81.402. Regulation of Hunting and Fishing.
81.403. Permits.
81.404. Contracts for Renewal of Fur-Bearing Animals.

SUBCHAPTER F. SCIENTIFIC AREAS

- 81.501. Creation of Scientific Areas.
81.502. Powers and Duties.
81.503. Land of Public Entities.
81.504. Effect on Existing Areas.
81.505. Protected Status.
81.506. Funds to be Specifically Appropriated.

SUBCHAPTER A. ACTS PROHIBITED IN
WILDLIFE PROTECTION AREAS

§ 81.001. **Taking of Wildlife From Hatcheries and Reservations Prohibited**

(a) No person may take, injure, or kill any fish kept by the state in its hatcheries, or any bird or animal kept by the state on its reservation grounds or elsewhere for propagation or exhibition purposes.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.002. **Predacious Animals on Hatcheries or Reservations**

(a) No person may bring into or keep any cat, dog, or other predacious animal on a fish hatchery or reservation for the propagation or exhibition of birds or animals.

(b) Any predacious animal found on the grounds of a hatchery or reservation is a nuisance and any authorized employee of the department shall destroy the animal. When an animal is destroyed under the authority of this subsection, no damage suit for the destruction of the animal may be brought.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.003. **Trespass on State Hatcheries and Reservations**

(a) No person may enter without the permission of the department on the grounds of a state fish hatchery or on grounds set apart by the state for the propagation and keeping of birds and animals.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$25. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.004. **Fishing in Sanctuary**

(a) No person may fish or attempt to take fish from a fish sanctuary designated under Subchapter C of this chapter.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.005. **Hunting on Game Preserves Prohibited**

(a) No person may hunt, take, or molest a game bird or animal in a state game preserve created under Subchapter D of this chapter.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.006. **Taking or Possessing Species From Wildlife Management Areas**

(a) No person may take or attempt to take or possess any wildlife or fish from a wildlife management area except in the manner and during the times permitted by the department under Subchapter E of this chapter.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 81.007 to 81.100 reserved for expansion]

SUBCHAPTER B. FISH HATCHERIES

§ 81.101. **Saltwater Areas**

The commission may construct and maintain saltwater hatcheries and propagation farms for fish, oysters, and game on islands owned by the state in coastal water. Funds available to the department for the enforcement of game, fish, and oyster laws may be used for costs and expenses authorized under this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.102. **Freshwater Areas**

The department may purchase land for the construction, maintenance, enlargement, and operation of freshwater fish hatcheries, and for the construction and maintenance of passes leading from one body of tidewater to another. On approval of the title by the attorney general, purchases may be made from funds appropriated to the department. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.103. **Property Acquisition; Manner and Means**

The department may enter on, condemn, and appropriate land, easements, rights-of-way, and property of any person or corporation in the state for the purpose of erecting, constructing, enlarging, and maintaining fish hatcheries, buildings, equipment, roads, and passageways to the hatcheries. The department may also enter on, condemn, and appropriate land, easements, rights-of-way, and property of any person or corporation in the state for the purpose of constructing, enlarging, and maintaining passes or channels from one body of tidewater to another body of tidewater in the state. The manner and method of condemnation, assessment, and payment of damages is the same as is provided for railroads.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.104. Condemnation Suits

Condemnation suits under this subchapter shall be brought in the name of the State of Texas by the attorney general at the request of the department and shall be held in Travis County. All costs in the proceedings shall be paid by the state or by the person against whom the proceedings are had, to be determined as in the case of railroad condemnation proceedings. All damages and pay or compensation for property awarded in the proceedings shall be paid by the comptroller against any fund in state treasury that is limited in use for fish or wildlife purposes and that is appropriated to the department. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 81.105 to 81.200 reserved for expansion]

SUBCHAPTER C. FISH SANCTUARIES

§ 81.201. Creation of Freshwater Sanctuaries

The department, with the approval of the commissioners court of the affected county, shall set aside and reserve portions of each public freshwater stream or other body of water as fish sanctuaries in the county for the propagation of freshwater fish in their natural state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.202. Purposes of Sanctuaries

The department shall use fish sanctuaries to increase and preserve the supply of freshwater fish in all fresh water where the fish supply has been reduced from any cause below the maximum number of fish in their natural state that the water will support.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.203. Designation of Sanctuaries

When the department determines that any public fresh water in its natural state has a lesser supply of fish than it can support, the department, without delay, shall set aside and designate one or more portions of the water as a sanctuary for the propagation of freshwater fish in order to increase the supply of fish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.204. Sanctuary Duration

An area set aside and designated as a sanctuary under Section 81.203 of this code may be used for a sanctuary for any period not longer than five years. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.205. Amount of Fresh Water Set Aside in One County

No more than 50 percent of the public fresh water in any county may be set aside or designated as a sanctuary or sanctuaries.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.206. Proclamation

(a) Sanctuaries shall be set aside and designated by proclamation of the commission signed by the chairman.

(b) The proclamation must contain:

- (1) the area to be included in the sanctuary;
- (2) the reason for creation of the sanctuary;
- (3) the date on which the proclamation takes effect;
- (4) the duration of the proclamation; and
- (5) a statement that the sanctuary is set aside and designated under the authority of this subchapter, the citation of which must be included.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.207. Notice

The department shall give notice of the creation of a sanctuary by each of the following methods:

- (1) by posting copies of the proclamation on the courthouse door of each county in which the sanctuary is located;
- (2) by publishing a brief summary of the proclamation in a newspaper in the county in which the sanctuary is located, or in a newspaper of an adjoining county if the county where the sanctuary is located has no newspaper, once each week for five consecutive weeks; and
- (3) by posting at least six signs bearing the conspicuous inscription "State Fish Sanctuary—No Fishing" around the boundary of the sanctuary.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.208. Effective Date of Proclamation

The proclamation takes effect on the day of the last publication of the notice required by Section 81.207(2) of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.209. Excluded Counties

This subchapter does not apply to Wichita, Clay, Baylor, and Wilbarger counties.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 81.210 to 81.300 reserved for expansion]

SUBCHAPTER D. GAME PRESERVES

§ 81.301. Creation of Game Preserves

A person who owns and possesses land in this state may transfer to the state the right to preserve, protect, and introduce for propagation specified game birds or game animals for any period not less than 10 years.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.302. Instrument of Transfer

(a) The right to preserve, protect, and introduce for propagation the game animals and game birds shall be transferred by a written and acknowledged instrument executed by the owner of the land.

(b) The instrument shall be filed with the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.303. Declaration of Preserve

The commission may declare land described in an instrument of transfer as game preserve land for the period of time specified in the instrument.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.304. Maximum Acreage Per County

The aggregate acreage of game preserve land in a county may not exceed 10 percent of the total acreage of the county.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.305. Numbering of Preserves

Game preserves shall be numbered in the order of the filing of the instrument of transfer for the preserve.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.306. Control of Game Preserves

The department shall control all land declared to be game preserve land for the preservation, protection, and propagation of game birds and game animals as authorized under the respective instrument of transfer. Authorized employees of the department may enter on game preserves in the performance of their duties.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.307. Posting Preserves

The department shall prepare and post signs at each gate or other entrance to a preserve. The signs shall be printed to read: "State Game Preserve, Trespassing Prohibited."

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 81.308 to 81.400 reserved for expansion]

SUBCHAPTER E. WILDLIFE MANAGEMENT AREAS

§ 81.401. Management of Areas

The department may manage, along sound biological lines, wildlife and fish found on any land the department has or may acquire as a wildlife management area.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.402. Regulation of Hunting and Fishing

(a) The department may prohibit hunting and fishing in game management areas to protect any species of wildlife or fish.

(b) The department from time to time, as sound biological management permits, may allow open seasons for hunting or fishing.

(c) During an open season the department may prescribe the number, kind, sex, and size of game or fish that may be taken.

(d) The department may prescribe the means, methods, and conditions for the taking of game or fish during an open season.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.403. Permits

(a) Except as provided in Subsection (b) of this section, special permits for hunting of wildlife on game management areas shall be issued by the department to applicants by means of an impartial method of distribution subject to limitations on the maximum number of permits to be issued.

(b) No person may receive a special permit for hunting on game management areas for two consecutive years unless all applications from persons who applied but did not receive a permit for the preceding year are filled.

(c) The department shall charge a permit fee in the amount set by the commission based on the costs of the department in issuing the permits, enforcing game laws, and protecting hunters during hunting periods on game management areas.

(d) This subchapter does not exempt any person from compliance with hunting license laws.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.404. Contracts for Removal of Fur-Bearing Animals

(a) The department may contract for the removal of fur-bearing animals and reptiles in wildlife management areas under the control of the department. The removal of fur-bearing animals and reptiles shall be according to sound biological management practices.

(b) Contracts for the removal of fur-bearing animals and reptiles shall be entered into under the direction of the State Board of Control in the manner provided by general law for the sale of state property, except that the department shall determine the means, methods, and quantities of fur-bearing animals and reptiles to be taken, and the department may accept or reject any bid received by the board of control.

(c) Fur-bearing animals may be removed only during the open season provided in Section 72.002 of this code. Reptiles may be removed at any time unless there is a proclamation relating to a specific species of reptiles in effect under Chapter 67 of this code, in which case that species of reptiles may be removed only during the open season provided for in the proclamation.

(d) Revenue received by the department under this section shall be deposited in the special game and fish fund.

[Acts 1975, 64th Leg., p. 1207, ch. 456, § 5, eff. Sept. 1, 1975.]

[Sections 81.405 to 81.500 reserved for expansion]

SUBCHAPTER F. SCIENTIFIC AREAS

§ 81.501. Creation of Scientific Areas

The department may promote and establish a state system of scientific areas for the purposes of education, scientific research, and preservation of flora and fauna of scientific or educational value. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.502. Powers and Duties

To the extent necessary to carry out the purposes of this subchapter, the department may:

- (1) determine the acceptance or rejection of state scientific areas proposed for incorporation into a state system of scientific areas;
- (2) make and publish all rules and regulations necessary for the management and protection of scientific areas;
- (3) cooperate and contract with any agencies, organizations, or individuals for the purposes of this subchapter;
- (4) accept gifts, grants, devises, and bequests of money, securities, or property to be used in accordance with the tenor of such gift, grant, devise, or bequest;
- (5) formulate policies for the selection, acquisition, management, and protection of state scientific areas;
- (6) negotiate for and approve the dedication of state scientific areas as part of the system;

(7) advocate research, investigations, interpretive programs, and publication and dissemination of information pertaining to state scientific areas and related areas of scientific value;

(8) acquire interests in real property by purchase; and

(9) hold and manage lands within the system.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.503. Land of Public Entities

All public entities and their agencies are authorized and urged to acquire, administer, and dedicate land as state scientific areas within the system under the policies of the commission authorized by this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.504. Effect on Existing Areas

Inclusion of a state or local park, preserve, wildlife refuge, or other area within the system established under this subchapter does not cancel, supersede, or interfere with any other law or provision of an instrument relating to the use, management, or development of the area for other purposes except that any agency administering an area within the system is responsible for preserving the natural character of the area under the policies of the commission. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.505. Protected Status

Neither the designation of an area as a scientific area within the state system nor an intrusion, easement, or taking allowed by the commission under this subchapter voids or replaces a protected status under the law which the area would have if it were not included within the system.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 81.506. Funds to be Specifically Appropriated

The commission may not use any funds for the acquisition of scientific areas other than those specifically appropriated for use under this subchapter. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 82. STATUTORY SANCTUARIES AND PRESERVES

SUBCHAPTER A. GUS ENGELING WILDLIFE MANAGEMENT AREA

- Section 82.001. Creation.
- 82.002. Prohibitions on Hunting, Fishing, Trapping, and Seasons.

- Section
 82.003. Special Permits.
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**SUBCHAPTER B. CONNIE HAGAR WILDLIFE
 SANCTUARY—ROCKPORT**

- 82.101. Creation and Boundaries.
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**SUBCHAPTER C. BLACK GAP WILDLIFE MANAGEMENT
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- 82.201. Creation.
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**SUBCHAPTER E. GAME AND FISH RESERVE: MARION
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- 82.401. Land Set Aside.
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**SUBCHAPTER F. INGLESIDE COVE WILDLIFE SANCTUARY:
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- 82.501. Creation.
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SUBCHAPTER G. FISH HATCHERIES: SMITH COUNTY

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SUBCHAPTER H. ISLAND CHANNEL

- 82.651. Island Channel.

**SUBCHAPTER I. LAKE CORPUS CHRISTI
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- 82.701. Game Sanctuary.
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SUBCHAPTER J. LASALLE COUNTY RIVERS SANCTUARY

- 82.711. Creation.
 82.712. Prohibited Acts.
 82.713. Penalty.

**SUBCHAPTER K. MCMULLEN COUNTY
 RIVERS SANCTUARY**

- Section
 82.721. Creation.
 82.722. Prohibited Acts.
 82.723. Penalty.

**SUBCHAPTER A. GUS ENGELING WILDLIFE
 MANAGEMENT AREA**

§ 82.001. Creation

The department may manage wildlife and fish species in the Gus Engeling Wildlife Management Area in Anderson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.002. Prohibitions on Hunting, Fishing, Trapping, and Seasons

(a) The department may prohibit all hunting, trapping, and fishing within the management area for any period of time necessary to safeguard any species of wildlife or fish found within the management area.

(b) The department, as sound biological management practices warrant, may prescribe open seasons for hunting, trapping, and fishing within the management area.

(c) The department may prescribe the number, kind, sex, and size of any wildlife and fish that may be taken from the area and may prescribe the means and methods for taking and the conditions under which any wildlife or fish species may be taken within the area.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.003. Special Permits

Any special permit issued for the taking of wildlife or fish species within the management area is available to all applicants on an impartial basis to the extent of the total number of permits issued. No person may receive a special permit for two consecutive years unless all applications from persons who applied but did not receive a special permit in the preceding year are filled. The provisions of this section do not waive the license requirements as provided by law.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.004. Unlawful Acts

No person may hunt or possess any wildlife or fish species taken from the area except as permitted by the department under the provision of this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.005. **Penalty**

A person who violates any provision of this subchapter or who takes wildlife or fish at any time except as permitted by the department is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.006 to 82.100 reserved for expansion]

SUBCHAPTER B. CONNIE HAGAR WILDLIFE SANCTUARY—ROCKPORT

§ 82.101. **Creation and Boundaries**

The Connie Hagar Wildlife Sanctuary—Rockport in Aransas County is described as follows:

Being all of the water area of Aransas Bay and Little Bay between the shoreline of Live Oak Peninsula and a line described as follows:

BEGINNING at the point where the city limits of the City of Rockport intersects the shoreline of the Aransas Bay;

THENCE, one mile due east to a point in Aransas Bay;

THENCE, in a northeasterly direction approximately 1-3/8 miles to a point which is 1/2 mile due east of Nine Mile Point;

THENCE, in a north by northwesterly direction approximately 2 miles to a point which is 1/2 mile due east of the channel entrance to the Fulton Harbor;

THENCE, due west to the shoreline of Live Oak Peninsula.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.102. **Boundary Markers**

The department shall place suitable markers defining the boundaries of the wildlife sanctuary. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.103. **Unlawful Act**

No person may hunt any bird or animal within the wildlife sanctuary.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.104. **Penalties**

A person who violates any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.105 to 82.200 reserved for expansion]

SUBCHAPTER C. BLACK GAP WILDLIFE MANAGEMENT AREA, CULBERSON AND HUDSPETH COUNTIES

§ 82.201. **Creation**

The department may set aside a fenced game management area in Culberson and Hudspeth counties for the protection and perpetuation of Texas Bighorn Mountain Sheep (*Ovis canadensis texiana*). [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.202. **Acceptance of Gifts; Game Fund**

The department may accept gifts of land in Culberson and Hudspeth counties or money to be deposited in the special game and fish fund. The gifts shall be used for the Texas Bighorn Sheep management unit.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.203. **Land Purchase; School Lands**

The department may purchase the surface rights in not more than eight sections of public school lands located in Culberson and Hudspeth counties in the following blocks: Blocks 65 and 66, T. & P. Ry. Co. land; Blocks 42-1/2, 43, 54-1/2, Public School Lands. The minerals on the land purchased shall be reserved to the school fund and managed by the school land board. The price to be paid for the land shall not exceed \$1 per acre and shall be paid for by the department out of the special game and fish fund. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.204. **Other Land; Title Approval**

The department may purchase other land in Culberson and Hudspeth counties as necessary for the operation of the game management unit. The department may pay for the land out of the special game and fish fund on approval of the title by the attorney general.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.205. **Land Purchase; Private**

The department may enter on, condemn, and appropriate not more than 12 sections of land belonging to any person or corporation in Culberson and Hudspeth counties for the purpose stated in this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.206. **Condemnation**

The method of condemnation, assessment, and payment of damages is the same as is provided by law for railroads. Condemnation suits brought under this subchapter shall be brought in the name of

the State of Texas by the attorney general at the request of the department. All costs in the proceedings shall be paid by the state or by the person against whom the proceedings are had, to be determined as in the case of railroad proceedings. All damages and pay or compensation for property awarded in the proceedings shall be paid by the state by warrant drawn on the special game and fish fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.207. Expenditures

All expenditures provided under this subchapter shall be made from the special game and fish fund. The expenditures shall not exceed \$20,000 in one year. Three-fourths of the expenditures shall be reimbursed out of federal aid in wildlife restoration funds available to the state.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.208 to 82.300 reserved for expansion]

SUBCHAPTER D. WILDLIFE SANCTUARY: GALVESTON COUNTY

§ 82.301. Creation

The group of small islands located in Galveston Bay near Smith's Point and known as Vingt et Un Islands are a state wildlife sanctuary.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.302. Unlawful Acts

No person may hunt or in any way molest any of the birds on any of the islands or within 50 yards of the islands, nor may any person enter on the islands for any purpose without first obtaining permission from the department.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.303. Penalties

A person violating any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.304 to 82.400 reserved for expansion]

SUBCHAPTER E. GAME AND FISH RESERVE: MARION AND HARRISON COUNTIES

§ 82.401. Land Set Aside

All of the public land and school land situated in, under, and adjacent to the bed of Caddo Lake in the counties of Marion and Harrison are withdrawn from sale and preserved for public use as a state game and fish reserve.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.402. Creation

The department may establish one or more game sanctuaries in the water of Caddo Lake for the protection of wild ducks, geese, and all other migratory birds. The sanctuaries shall protect the birds from being pursued, hunted, taken, or disturbed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.403. Boundary Markers

The department shall designate and define the boundaries of the sanctuaries by placing markers or signs around the boundaries of each sanctuary with the words "Game Preserve" on each marker or sign. The markers or signs shall be placed not more than 500 yards apart.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.404. Amount of Area Set Aside

The sanctuaries shall not include more than 20 percent of the area of the lake.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.405. Public Hunting and Fishing

The public may hunt and fish on all of the water of the lake except that water set aside for sanctuaries.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.406. Investigation of Feasibility of Timber Land Purchase

The department, in conjunction with the state forester, shall investigate the feasibility and desirability of acquiring title to a block of timbered land adjacent to the lake comprising from 5,000 to 10,000 acres, to be placed under the joint control of the state forester and the department, with the view of ultimately preserving a belt of native forest for the future and also for the propagation of game.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.407. Mineral Rights

The mineral rights under the land reserved for the sanctuaries are withdrawn from sale and the rights may not be offered for sale until the legislature directs the rights to be sold.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.408. Unlawful Acts

(a) No person may hunt any kind of game on the sanctuaries established under this subchapter.

(b) No person may hunt any birds, fowl, or game of any kind on the sanctuaries established under this subchapter.

(c) No person may pursue or frighten or attempt to pursue or frighten any birds, fowl, or game of any kind on the sanctuaries established under this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.409. Penalty

A person who violates any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$500, and in addition, the hunting license of the violator is subject to forfeiture for one year following the date of the conviction.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.410 to 82.500 reserved for expansion]

SUBCHAPTER F. INGLESIDE COVE WILDLIFE
SANCTUARY: SAN PATRICIO AND
NUECES COUNTIES

§ 82.501. Creation

The Ingleside Cove Wildlife Sanctuary is composed of an area in San Patricio and Nueces counties described as follows:

BEGINNING at Kinney Bayou on the east shoreline of Ingleside Cove, also known as North Shore Channel;

THENCE, in a northwesterly direction along the shoreline to channel marker number "22" with a flashing red light every 4 seconds known as Donnel Point;

THENCE, due west crossing the Reynolds Channel to the east side of a spoil bank;

THENCE, following the eastern edge of this spoil bank in a southeasterly direction to its southern most point, continuing southeast crossing Ingleside cut to the north shore of Ingleside Point;

THENCE, in an easterly and southeasterly direction along the east shoreline following the

Reynolds Channel through Ingleside Point to the southern most portion of this cut;

THENCE, due east across the Reynolds Channel to the west shoreline of the mainland known as the southern most portion of Ingleside Cove;

THENCE, following the shoreline in a northerly direction being the east shoreline of Ingleside Cove to the point of beginning.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.502. Marking Boundaries

The department shall place suitable markers defining the boundary of the wildlife sanctuary as described in this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.503. Unlawful Acts

(a) No person may hunt any bird within the sanctuary.

(b) No person may fish by any means other than rod and reel within the sanctuary.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.504. Penalties

A person who violates any provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.505 to 82.600 reserved for expansion]

SUBCHAPTER G. FISH HATCHERIES:
SMITH COUNTY

§ 82.601. Creation

The department may construct, enlarge, and maintain fish hatcheries in Smith County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.602. Property Acquisition

The department may enter on, condemn, and appropriate land, water rights, easements, rights-of-way, and property of any person or corporation in Smith County for the purposes designated in this subchapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.603. Condemnation; Manner and Means

The method of condemnation, assessment, and payment of damages is the same as is provided for

railroads. Condemnation suits brought under this subchapter shall be brought in the name of the State of Texas by the attorney general at the request of the department. All costs in the proceedings shall be paid by the state or by the person against whom the proceedings are had, to be determined as in the case of railroad condemnation proceedings. All damages and pay or compensation for property awarded in the proceedings shall be paid by the state by warrant drawn by the comptroller against any fund in the state treasury appropriated to the department for the use of constructing and maintaining fish hatcheries.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.604 to 82.650 reserved for expansion]

SUBCHAPTER H. ISLAND CHANNEL

§ 82.651. **Island Channel**

(a) The department may construct and maintain a channel through Padre Island, Mustang Island, and St. Jo Island, or any of them.

(b) The department may contract for the construction of a channel under this section on approval by the commission and approval from the federal government of an application for authority to construct channels.

(c) The cost of the construction and maintenance of a channel constructed under this section may be paid from the special game and fish fund only. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.652 to 82.700 reserved for expansion]

SUBCHAPTER I. LAKE CORPUS CHRISTI GAME SANCTUARY

§ 82.701. **Game Sanctuary**

All the water of Lake Corpus Christi in San Patricio and Live Oak counties is a game sanctuary. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.702. **Prohibited Acts**

(a) Except as provided in Subsection (b) of this section, no person may enter on the portion of Lake Corpus Christi that is a game sanctuary with a gun or rifle, and no person may attempt to shoot a bird or animal in the portion of Lake Corpus Christi that is a game sanctuary.

(b) A person may hunt ducks and geese during the open seasons for ducks and geese with a shotgun in the portion of Lake Corpus Christi in San Patricio County. This exception does not apply to hunting

within one mile of the boy scout camp, the girl scout camp, or Lake Corpus Christi Park.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.703. **Markers**

The Parks and Wildlife Department shall erect appropriate markers at intervals adequately spaced to warn hunters of the one-mile limit around the boy scout camp, the girl scout camp, and Lake Corpus Christi Park in San Patricio County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 82.704. **Penalty**

A person who violates Section 82.702 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 82.705 to 82.710 reserved for expansion]

SUBCHAPTER J. LASALLE COUNTY RIVERS SANCTUARY [NEW]

§ 82.711. **Creation**

All of the land area and public water in state-owned riverbeds in LaSalle County, including the Nueces and Frio rivers, is a game sanctuary.

[Added by Acts 1977, 65th Leg., p. 2072, ch. 823, § 1, eff. Aug. 29, 1977.]

§ 82.712. **Prohibited Acts**

(a) Except as permitted under Subsections (b) and (c) of this section, no person may possess, shoot, or hunt with a firearm, bow and arrow, or crossbow in the game sanctuary created by Section 82.711 of this code.

(b) Subsection (a) of this section does not apply to a peace officer of this state, a law enforcement officer of the United States, or a member of the armed forces of the United States or of this state during the time that the officer or member is in the actual discharge of official duties.

(c) Subsection (a) of this section does not apply to waterfowl hunting on any reservoir owned, operated, or maintained by a governmental entity now existing or to be constructed on said rivers.

[Added by Acts 1977, 65th Leg., p. 2072, ch. 823, § 1, eff. Aug. 29, 1977.]

§ 82.713. **Penalty**

A person who violates Section 82.712 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Added by Acts 1977, 65th Leg., p. 2072, ch. 823, § 1, eff. Aug. 29, 1977.]

[Sections 82.714 to 82.720 reserved for expansion]

SUBCHAPTER K. MCMULLEN COUNTY RIVERS
SANCTUARY [NEW]

§ 82.721. Creation

All of the land area and public water in state-owned riverbeds in McMullen County, including the Nueces and Frio rivers, is a game sanctuary. [Added by Acts 1977, 65th Leg., p. 2072, ch. 823, § 2, eff. Aug. 29, 1977.]

§ 82.722. Prohibited Acts

(a) Except as permitted under Subsections (b) and (c) of this section, no person may possess, shoot, or hunt with a firearm, bow and arrow, or crossbow in the game sanctuary created by Section 82.721 of this code.

(b) Subsection (a) of this section does not apply to a peace officer of this state, a law enforcement officer of the United States, or a member of the armed forces of the United States or of this state during the time that the officer or member is in the actual discharge of official duties.

(c) Subsection (a) of this section does not apply to waterfowl hunting on any reservoir owned, operated, or maintained by a governmental entity now existing or to be constructed on said rivers. [Added by Acts 1977, 65th Leg., p. 2072, ch. 823, § 2, eff. Aug. 29, 1977.]

§ 82.723. Penalty

A person who violates Section 82.722 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200. [Added by Acts 1977, 65th Leg., p. 2073, ch. 823, § 2, eff. Aug. 29, 1977.]

CHAPTER 83. FEDERAL-STATE
AGREEMENTS

- Section
- 83.001. Fish Restoration Projects.
- 83.002. Commercial Fisheries Research.
- 83.003. Wildlife-Restoration Projects.
- 83.004. Migratory Game Bird Reservations.

§ 83.001. Fish Restoration Projects

The department shall conduct and establish cooperative fish restoration projects under an Act of Congress entitled "An Act to provide that the United States shall aid the States in fish restoration and management projects" (Public Law No. 681, 81st Congress). The department shall comply with the act and rules and regulations promulgated under the act by the secretary of the interior. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 83.002. Commercial Fisheries Research

(a) The department shall conduct research in and develop commercial fisheries under an Act of Congress entitled "Commercial Fisheries Research and Development Act of 1964" (Title 16, Sections 779-779f, U.S.C.A.). The department shall comply with the act and the rules and regulations promulgated under the act by the secretary of the interior.

(b) Funds received from the federal government and appropriated by the state for research and development of commercial fisheries shall be deposited in the state treasury to the credit of the special game and fish fund. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 83.003. Wildlife-Restoration Projects

The department shall establish and conduct cooperative wildlife-restoration projects under an Act of Congress entitled "An Act to provide that the United States shall aid the States in wildlife-restoration projects, and for other purposes" (Public Law No. 415, 75th Congress). The department shall comply with the act and rules and regulations promulgated under the act by the secretary of agriculture. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 83.004. Migratory Game Bird Reservations

(a) The United States of America may acquire by purchase, gift, devise, or lease areas of land or water in this state necessary for the establishment of migratory bird reservations under an Act of Congress entitled "An Act to more effectively meet the obligations of the United States under the Migratory Bird Treaty with Great Britain by lessening the dangers threatening migratory game birds from drainage and other causes by the acquisition of areas of land and of water to furnish in perpetuity reservations for the adequate protection of such birds; and authorizing appropriations for the establishment of such areas, their maintenance and improvement and for other purposes."

(b) The state retains jurisdiction and authority over the areas which are not incompatible with the administration, maintenance, protection, and control of the areas by the United States under the act. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

SUBTITLE F. MARL, SAND, GRAVEL, SHELL,
AND MUDSHELL

CHAPTER 86. MARL, SAND, GRAVEL,
SHELL, AND MUDSHELL

- Section
- 86.001. Management and Protection.
- 86.002. Permit Required; Penalty.

Section	
86.003.	Application for Permit.
86.004.	Granting of Permit.
86.005.	Economic Considerations.
86.006.	Permit.
86.007.	Permits Not Assignable.
86.008.	Denial of Permit.
86.009.	Termination and Revocation.
86.010.	Removal and Replanting of Oysters and Oyster Beds.
86.011.	No Special Privileges.
86.012.	Sales of Materials.
86.013.	Use on Roads.
86.014.	Use for Seawalls, etc.
86.015.	Sand From Corpus Christi and Nueces Bays.
86.016.	Deposit of Funds.
86.017.	Use of Funds.
86.018.	Taking From Certain Areas Prohibited.
86.019.	Oil and Gas Lessees.

§ 86.001. Management and Protection

The commission shall manage, control, and protect marl and sand of commercial value and all gravel, shell, and mudshell located within the tidewater limits of the state, and on islands within those limits, and within the freshwater areas of the state not embraced by a survey or private land, and on islands within those areas.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.002. Permit Required; Penalty

(a) No person may disturb or take marl, sand, gravel, shell, or mudshell under the management and protection of the commission or operate in or disturb any oyster bed or fishing water for any purpose other than that necessary or incidental to navigation or dredging under state or federal authority without first having acquired from the commission a permit authorizing the activity.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each day's operation in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.003. Application for Permit

(a) A person desiring a permit may apply to the commission.

(b) The application must be in writing and must describe the area in which authorization to operate is sought.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.004. Granting of Permit

The commission may grant a permit to an applicant who has complied with all requirements of the commission if the commission finds that the disturbing, taking, and carrying away of marl, sand, gravel, shell, or mudshell will not:

(1) damage or injuriously affect any island, reef, bar, channel, river, creek, or bayou used for navigation, or any oysters, oyster beds, or fish in or near the water used in the operation; and

(2) change or injuriously affect any current that would affect navigation.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.005. Economic Considerations

In determining whether or not a permit should be granted, the commission shall consider the injurious effect on oysters, oyster beds, and fish in or near the water used in the operation as well as the needs of industry for marl, sand, gravel, shell, and mudshell and its relative value to the state for commercial use.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.006. Permit

(a) The permit shall identify the person authorized to disturb, take, or carry away marl, sand, gravel, shell, or mudshell and shall describe the nature of the material that may be disturbed, taken, or carried away.

(b) The permit shall describe the area where the operation may occur and shall state the purpose of the operation.

(c) The permit may contain other terms and conditions.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.007. Permits Not Assignable

A permit issued under this chapter is not assignable.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.008. Denial of Permit

If the commission refuses to grant a permit to an applicant, it shall make a full written finding of facts explaining the reason for the refusal.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.009. Termination and Revocation

The failure or refusal by the holder of a permit to comply with any term or condition of the permit operates as an immediate termination and revocation of all rights conferred or claimed under the permit.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.010. Removal and Replanting of Oysters and Oyster Beds

(a) The commission may remove oysters and oyster beds and replant them in other natural or artificial reefs if the commission finds that the removal and replanting will benefit the growth and propagation or the betterment of oysters and oyster beds or fishing conditions.

(b) The removal and replanting of oysters and oyster beds shall be at the expense of the person holding a permit or of an applicant for a permit and not the state.

(c) Before authorizing the removal and replanting of oysters or oyster beds the commission shall give notice to interested parties and hold a hearing on the subject.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.011. No Special Privileges

No special privileges or exclusive rights may be granted to any person to take marl, sand, gravel, shell, or mudshell or to operate in or on any place under this chapter.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.012. Sales of Materials

(a) The commission, with the approval of the governor, may sell marl, sand, gravel, shell, and mudshell for not less than four cents a ton.

(b) The commission may require other terms and conditions for the sale of marl, sand, gravel, shell, and mudshell.

(c) Payment for sales shall be made to the commission.

(d) Marl, sand, gravel, shell, and mudshell may be removed without payment to the commission if removed from land or flats patented to a navigation district by the state for any use on the land or flats or on any adjoining land or flats for any purpose for which the land or flats may be used under the authority of the patent to the district.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.013. Use on Roads

(a) A county, subdivision of a county, city, or town that has a permit to take marl, sand, gravel, shell, or mudshell is not required to purchase marl, sand, gravel, shell, or mudshell taken and used for roads and streets.

(b) A county, subdivision of a county, city, or town that purchases marl, sand, gravel, shell, or mudshell for use on roads and streets from a holder of a permit who has purchased the material from the commission may receive a refund of the amount paid

by the permit holder by submitting a sworn itemized account of an official of the county, subdivision of the county, city, or town. All refunds under this subsection must be approved by the commission and be paid by the comptroller by warrant.

(c) The State Highway Commission may receive a refund of the amount paid to the commission for the purchase of marl, sand, gravel, shell, or mudshell used by the highway commission on public roads.

(d) The commission may make regulations for the payment of refunds under this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.014. Use for Seawalls, etc.

(a) The commission shall grant to any county, city, or town that is authorized under Title 118, Revised Civil Statutes of Texas, 1925, to build and maintain seawalls a permit for the taking of marl, sand, gravel, shell, or mudshell to be used for the building, extending, protecting, maintaining, or improving any seawall, breakwater, levee, dike, floodway, or drainway.

(b) Permits under this section shall be issued under regulations established by the commission.

(c) A county, city, or town taking marl, sand, gravel, shell, or mudshell under this section is not required to purchase the marl, sand, gravel, shell, or mudshell.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.015. Sand From Corpus Christi and Nueces Bays

Sand and other deposits having no commercial value may be taken from Corpus Christi and Nueces bays for filling and raising the grade of the salt flats in the northern part of the city of Corpus Christi and the lowlands lying north of the north boundary line of the city of Corpus Christi, in Nueces County, and south of the south boundary line of the city of Portland, in San Patricio County, without making payments for it to the commission.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.016. Deposit of Funds

The proceeds from the sale of marl, sand, gravel, shell, and mudshell shall be deposited in the special game and fish fund.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.017. Use of Funds

Funds collected by the commission from the sale of marl, sand, gravel, shell, and mudshell may be used for the enforcement of the provisions of this chapter, the payment of refunds, and the construc-

tion and maintenance of fish hatcheries. No less than three-fourths of the proceeds from the sale of marl, sand, gravel, shell, and mudshell, after the payment of refunds, shall be used for the construction and maintenance of fish hatcheries.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.018. Taking From Certain Areas Prohibited

(a) No person may take marl, sand, gravel, shell, or other material from any place between a seawall and the water's edge, from a beach or shoreline within 300 feet of the mean low tide, or within one-half mile of the end of any seawall, for any purpose other than that necessary or incidental to navigation or dredging under state or federal authority.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 86.019. Oil and Gas Lessees

This chapter does not require the holder of an oil and gas lease executed by the state to obtain a permit from the commission to exercise any right granted under the lease or other laws of this state. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

TITLE 6. COMPACTS

CHAPTER 91. GULF STATES COMPACT

Section

- 91.001. Members of Commission.
- 91.0011. Application of Sunset Act [NEW].
- 91.002. Terms of Commission Members.
- 91.003. Delegate of Commissioner.
- 91.004. Powers and Duties.
- 91.005. Cooperation of State Agencies.
- 91.006. Reports.
- 91.007. Auditor.
- 91.008. Text of Compact.

§ 91.001. Members of Commission

The three members of the Gulf States Marine Fisheries Commission from the state authorized under Article III of the Gulf States Marine Fisheries Compact are:

- (1) the executive director of the department;
- (2) a legislator appointed jointly by the lieutenant governor and speaker of the house of representatives; and
- (3) a citizen with a knowledge of the marine fisheries problems appointed by the governor with the advice and consent of the senate.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 91.0011. Application of Sunset Act

The office of Gulf States Marine Fisheries Compact Commissioner for Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished, and this chapter expires effective September 1, 1985.

[Added by Acts 1977, 65th Leg., p. 1844, ch. 735, § 2.087, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

§ 91.002. Terms of Commission Members

(a) The executive director of the department shall serve on the Gulf States Marine Fisheries Commission in an ex-officio capacity, and his term expires when he ceases to hold the office of executive director of the department. His successor as a member of the Gulf States Marine Fisheries Commission is his successor as executive director of the department.

(b) The legislator appointed as a member of the Gulf States Marine Fisheries Commission shall serve in an ex-officio capacity, and his term expires at the time he ceases to hold his legislative office. His successor as a member of the Gulf States Marine Fisheries Commission shall be appointed as provided by Section 91.001(2) of this code.

(c) The citizen appointed as a member of the Gulf States Marine Fisheries Commission shall serve a term of three years or until his successor has been appointed and has qualified. A vacancy in this position shall be filled for the unexpired term by appointment by the governor with the advice and consent of the senate.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 91.003. Delegate of Commissioner

The executive director of the department as ex-officio member of the Gulf States Marine Fisheries Commission may delegate to an authorized employee of the department the power to be present and participate, including the right to vote for the executive director, at any meeting, hearing, or proceeding of the Gulf States Marine Fisheries Commission. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 91.004. Powers and Duties

All the powers provided for in the compact and all the powers necessary or incidental to the carrying out of the compact are granted to the Gulf States Marine Fisheries Commission and members of the commission. These powers are in aid of and supplemental to but not a limitation on the powers vested in the Gulf States Marine Fisheries Commission by other laws of this state or by the terms of the compact.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 91.005. Cooperation of State Agencies

(a) All officers of the state shall do all things falling within their respective jurisdictions necessary or incidental to the carrying out of the compact.

(b) All officers, bureaus, departments, and persons in state government shall furnish the Gulf States Marine Fisheries Commission information and data requested by the commission and aid the commission by loan of personnel or other means lying within their legal rights.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 91.006. Reports

The Gulf States Marine Fisheries Commission shall keep accurate accounts of receipts and disbursements and shall submit on or before February 10 of each year a report to the governor and legislature of the state containing:

(1) a detailed description of the transactions conducted by the commission during the preceding calendar year;

(2) recommendations for any legislative action considered advisable or necessary to carry out the intent and purposes of the compact.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 91.007. Auditor

The state auditor from time to time shall examine the accounts and books of the Gulf States Marine Fisheries Commission, including receipts, disbursements, and other items relating to its financial standing. The auditor shall report the results of the examination to the governor of each state that is a party to the compact.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 91.008. Text of Compact

The Gulf States Marine Fisheries Compact reads as follows:

GULF STATES MARINE FISHERIES COMPACT

The contracting states solemnly agree:

ARTICLE I

Whereas the Gulf Coast States have the proprietary interest in and jurisdiction over fisheries in the waters within their respective boundaries, it is the purpose of this compact to promote the better utilization of the fisheries, marine, shell and anadromous, of the seaboard of the Gulf of Mexico, by the development of a joint program for the promotion and protection of such fisheries and the prevention of the physical waste of the fisheries from any cause.

ARTICLE II

This compact shall become operative immediately as to those states ratifying it whenever any two or more of the states of Florida, Alabama, Mississippi, Louisiana and Texas have ratified it and the Congress has given its consent, pursuant to Article I, Section 10 of the Constitution of the United States. Any state contiguous to any of the aforementioned states or riparian upon waters which flow into waters under the jurisdiction of any of the aforementioned States and which are frequented by anadromous fish or marine species, may become a party hereto as hereinafter provided.

ARTICLE III

Each state joining herein shall appoint three representatives to a commission hereby constituted and designated as the Gulf States Marine Fisheries Commission. One shall be the head of the administrative agency of such State charged with the conservation of the fishery resources to which this compact pertains; or, if there be more than one officer or agency, the official of that State named by the Governor thereof. The second shall be a member of the Legislature of such State designated by such Legislature, or in the absence of such designation, such legislator shall be designated by the Governor thereof; provided that if it is constitutionally impossible to appoint a legislator as a commissioner from such State, the second member shall be appointed in such manner as may be established by law. The third shall be a citizen who shall have a knowledge of and interest in the marine fisheries, to be appointed by the Governor. This commission shall be a body corporate with the powers and duties set forth herein.

ARTICLE IV

The duty of the said commission shall be to make inquiry and ascertain from time to time such methods, practices, circumstances and conditions as may be disclosed for bringing about the conservation and the prevention of the depletion and physical waste of the fisheries, marine, shell and anadromous, of the Gulf Coast. The commission shall have power to recommend the coordination of the exercise of the police powers of the several States within their respective jurisdictions to promote the preservation of these fisheries and their protection against over-fishing, waste, depletion or any abuse whatsoever, and to assure a continuing yield from the fishery resources of the aforementioned States. To that end the commission shall draft and recommend to the Governors and Legislatures of the various signatory States, legislation dealing with the conservation of the marine, shell and anadromous fisheries of the Gulf seaboard. The commission shall from time to time present to the Governor of each compacting State its recommendations relating to enactments to

be presented to the Legislature of that State in furthering the interest and purposes of this compact. The commission shall consult with and advise the pertinent administrative agencies in the States party hereto with regard to problems connected with the fisheries, and recommend the adoption of such regulations as it deems advisable. The commission shall have power to recommend to the States party hereto the stocking of the waters of such States with fish and fish eggs or joint stocking by some or all of the States party hereto, and when two or more States shall jointly stock waters the commission shall act as the coordinating agency for such stocking.

ARTICLE V

The commission shall elect from its number a chairman and vice-chairman and shall appoint, and at its pleasure remove or discharge, such officers and employees as may be required to carry the provisions of this compact into effect and shall fix and determine their duties, qualifications and compensation. Said commission shall adopt rules and regulations for the conduct of its business. It may establish and maintain one or more offices for the transaction of its business, and may meet at any time or place; but must meet at least once a year.

ARTICLE VI

No action shall be taken by the commission in regard to its general affairs except by the affirmative vote of a majority of the whole number of compacting States. No recommendation shall be made by the commission in regard to any species of fish except by the affirmative vote of a majority of the compacting States which have an interest in such species. The commission shall define what shall be an interest.

ARTICLE VII

The Fish and Wildlife Service of the Department of the Interior of the Government of the United States shall act as the primary research agency of the Gulf States Marine Fisheries Commission, cooperating with the research agencies in each State for that purpose. Representatives of the said Fish and Wildlife Service shall attend the meetings of the commission. An advisory committee to be representative of the commercial salt water fishermen and the salt water anglers and such other interests of each State as the commissioners deem advisable may be established by the commissioners from each State for the purpose of advising those commissioners upon such recommendations as it may desire to make.

ARTICLE VIII

When any State, other than those named specifically in Article II of this compact, shall become a party hereto for the purpose of conserving its ana-

dromous fish or marine species in accordance with the provisions of Article II, the participation of such State in the action of the commission shall be limited to such species of fish.

ARTICLE IX

Nothing in this compact shall be construed to limit the powers of the proprietary interest of any signatory State, or to repeal or prevent the enactment of any legislation or the enforcement of any requirement by a signatory State, imposing additional conditions and restrictions to conserve its fisheries.

ARTICLE X

It is agreed that any two or more States party hereto may further amend this compact by acts of their respective Legislatures, subject to approval of Congress as provided in Article I, Section X, of the Constitution of the United States, to designate the Gulf States Marine Fisheries Commission as a joint regulating authority for the joint regulation of specific fisheries affecting only such States as shall so compact, and at their joint expense. The representatives of such States shall constitute a separate section of the Gulf States Marine Fisheries Commission for the exercise of the additional powers so granted, but the creation of such section shall not be deemed to deprive the States so compacting of any of their privileges or powers in the Gulf States Marine Fisheries Commission as constituted under the other Articles of this compact.

ARTICLE XI

Continued absence of representation or of any representative on the commission from any State party hereto, shall be brought to the attention of the Governor thereof.

ARTICLE XII

The operating expenses of the Gulf States Marine Fisheries Commission shall be borne by the States party hereto. Such initial appropriation as set forth below shall be made available yearly until modified as hereinafter provided:

Florida	\$3,500.00
Alabama	1,000.00
Mississippi	1,000.00
Louisiana	5,000.00
Texas	2,500.00
Total	\$13,000.00

The proration and total cost per annum of Thirteen Thousand (\$13,000.00) Dollars, above mentioned, is estimative only, for initial operations, and may be changed when found necessary by the commission and approved by the Legislatures of the respective States. Each State party hereto agrees

to provide in the manner most acceptable to it, the travel costs and necessary expenses of its commissioners and other representatives to and from meetings of the commission or its duly constituted sections or committees.

ARTICLE XIII

This compact shall continue in force and remain binding upon each compacting State until renounced by Act of the Legislature of such State, in such form as it may choose; provided that such renunciation shall not become effective until six months after the effective date of the action taken by the Legislature. Notice of such renunciation shall be given the other States party hereto by the Secretary of State of compacting State so renouncing upon passage of the Act.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

TITLE 7. LOCAL AND SPECIAL LAWS

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- 101. Anderson County.
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- 103. Angelina County.
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- 132. Camp County.
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- 143. Collin County.
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- 145. Colorado County.
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- 147. Comanche County.
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- 149. Cooke County.
- 150. Coryell County.
- 151. Cottle County.
- 152. Crane County.
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- 154. Crockett County.
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- 156. Dallam County.
- 157. Dallas County.
- 158. Dawson County.
- 159. Deaf Smith County.
- 160. Delta County.
- 161. Denton County.
- 162. DeWitt County.
- 163. Dickens County.
- 164. Dimmit County.
- 165. Donley County.
- 166. Duval County.
- 167. Eastland County.
- 168. Ector County.
- 169. Edwards County.
- 170. Ellis County.
- 171. El Paso County.
- 172. Erath County.
- 173. Falls County.
- 174. Fannin County.
- 175. Fayette County.
- 176. Fisher County.
- 177. Floyd County.
- 178. Foard County.
- 179. Fort Bend County.
- 180. Franklin County..
- 181. Freestone County.
- 182. Frio County.
- 183. Gaines County.
- 184. Galveston County.
- 185. Garza County.
- 186. Gillespie County.
- 187. Glasscock County.
- 188. Goliad County.
- 189. Gonzales County.
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- 191. Grayson County.
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- 217. Hutchinson County.
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- 219. Jack County.
- 220. Jackson County.
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- 222. Jeff Davis County.
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- 224. Jim Hogg County.
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- 226. Johnson County.
- 227. Jones County.
- 228. Karnes County.
- 229. Kaufman County.
- 230. Kendall County.
- 231. Kenedy County.
- 232. Kent County.
- 233. Kerr County.
- 234. Kimble County.
- 235. King County.
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- 237. Kleberg County.
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- 239. Lamar County.
- 240. Lamb County.
- 241. Lampasas County.
- 242. La Salle County.
- 243. Lavaca County.
- 244. Lee County.
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- 246. Liberty County.
- 247. Limestone County.
- 248. Lipscomb County.
- 249. Live Oak County.
- 250. Llano County.
- 251. Loving County.
- 252. Lubbock County.
- 253. Lynn County.
- 254. McCulloch County.
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- 256. McMullen County.
- 257. Madison County.
- 258. Marion County.
- 259. Martin County.
- 260. Mason County.
- 261. Matagorda County.
- 262. Maverick County.
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- 265. Midland County.
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- 297. Roberts County.
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- 300. Runnels County.
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- 306. San Saba County.
- 307. Schleicher County.
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- 312. Smith County.
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- 316. Sterling County.
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- 318. Sutton County.
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- 325. Titus County.
- 326. Tom Green County.
- 327. Travis County.
- 328. Trinity County.
- 329. Tyler County.
- 330. Upshur County.
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- 346. Williamson County.
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- 348. Winkler County.
- 349. Wise County.
- 350. Wood County.
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- 352. Young County.
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CHAPTER 101. ANDERSON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

101.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

- 101.011. Fish Sale.
- 101.012. Nets.
- 101.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 101.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Anderson County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 101.002 to 101.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 101.011. Fish Sale

(a) No person, firm, or corporation may fish for, take, catch, or have in possession for sale, or carry, transport, or ship for sale, or buy or sell, or offer to buy or sell, barter, or exchange any fish, except bait fish, caught from the water of the Neches River in Anderson County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$100. Each fish caught and each sale or shipment in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 214, ch. 105, § 4, eff. Sept. 1, 1977.]

§ 101.012. Nets

(a) During the months of June, July, August, September, October, November, December, and January, no person may place or use a setnet or dragnet or seine or take or catch fish in the water of the Neches River in Anderson County.

(b) This section does not prohibit the use of minnow seines as provided by law.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 101.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit any catfish, perch, crappie, white perch, bass, trout, or other edible fish on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Anderson County and leave the fish to die without the intention to eat the fish or use them for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left in violation of this section is a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 102. ANDREWS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

103.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

- 103.011. Squirrel Season.
- 103.012. Repealed.
- 103.013. Trailing Wounded Deer With Dogs.

SUBCHAPTER C. BIRDS

- 103.021. Quail.
- 103.022. Turkey.

SUBCHAPTER D. FISH

- 103.031. Fish.

SUBCHAPTER E. FUR-BEARING ANIMALS

- 103.041. Fox.
- 103.042. Fur-Bearing Animals.

§ 102.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Andrews County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 103. ANGELINA COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 103.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies in Angelina County only to freshwater fish in Sam Rayburn Reservoir.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 103.002 to 103.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 103.011. Squirrel Season

(a) No person may hunt squirrel in Angelina County at any time except during the period beginning on October 1 and extending through January 15.

(b) A person who violates a provision of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 103.012. Repealed by Acts 1977, 65th Leg., p. 37, ch. 21, § 1, eff. March 24, 1977

§ 103.013. Trailing Wounded Deer With Dogs

A person may use dogs to trail a wounded deer in Angelina County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 103.014 to 103.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 103.021. Quail

(a) No person may hunt wild quail in Angelina County except during the period beginning on December 1 and extending through January 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. The taking or killing of each bird in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 103.022. Turkey

(a) No person may hunt wild turkey in Angelina County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$300. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 103.023 to 103.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 103.031. Fish

(a) No person may use a net with less than three inches square mesh to take fish in the water of Angelina County, excluding Sam Rayburn Reservoir.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$500, or confinement in the county jail for not less than 10 days nor more than 30 days, or both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 103.032 to 103.040 reserved for expansion]

SUBCHAPTER E. FUR-BEARING ANIMALS

§ 103.041. Fox

(a) No person may shoot or attempt to shoot or trap wild fox in Angelina County on land other than that which he owns, leases, or holds under an agreement to work the land unless:

(1) the fox is rabid; or

(2) prior written consent to kill fox from the owner or lessee of the land on which he is hunting has been obtained.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 103.042. Fur-Bearing Animals

(a) No person may take the pelt of a fur-bearing animal in Angelina County except during the months of January and December.

(b) Only during the season set out in Subsection (a) of this section, a person may take fur-bearing animals by a trap or other mechanical device on property that he owns or on property for which a written permit has been given by the owner for trapping purposes.

(c) Pelts of fur-bearing animals taken under this section may be sold or offered for sale.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 104. ARANSAS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

- 104.001. Regulatory Act: Applicability.
- 104.002. Partial Exclusion of Certain Area.

SUBCHAPTER B. FISH

- 104.011. Shrimp.
- 104.012. Net-Free Zone.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 104.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources of Aransas County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 104.002. Partial Exclusion of Certain Area

For that part of San Antonio Bay lying within the northeast part of Aransas County, the Aransas River where it forms the boundary with Refugio County, and Copano Creek where it forms the boundary with Calhoun County, wildlife resources under the Uniform Wildlife Regulatory Act includes only fish, aquatic life, and marine animals and does not include oysters.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 104.003 to 104.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 104.011. Shrimp

In Aransas County shrimp are not covered under the Uniform Wildlife Regulatory Act.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 104.012. Net-Free Zone

(a) The net-free zone in Aransas County is comprised of Little Bay and the water area of Aransas Bay within one-half mile of a line from Hail Point on the Lamar Peninsula, then direct to the eastern end of Goose Island, then along the southern shore of Goose Island, then along the causeway between Lamar Peninsula and Live Oak Peninsula, then along the eastern shoreline of the Live Oak Peninsula past the town of Fulton, past Nine-mile Point, past the town of Rockport to a point at the east end of Talley Island. The net-free zone also includes that part of Copano Bay within 1,000 feet of the causeway between Lamar Peninsula and Live Oak Peninsula.

(b) No person may set or drag a net or seine except a minnow seine not exceeding 20 feet in length for taking bait in the net-free zone.

(c) No person may place or set a trotline or crab trap in the net-free zone.

(d) A person who violates a provision of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 105. ARCHER COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

- 105.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

- 105.011. Fish Sale.
- 105.012. Leaving Fish to Die.
- 105.013. Injuring Fish.
- 105.014. Special Charge.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 105.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Archer County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 105.002 to 105.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 105.011. Fish Sale

(a) No person, firm, or corporation may barter, sell, offer for barter or sale, or buy any bass, perch, crappie, catfish, or any other fish, except minnows, taken from the water located in the valley of the Big Wichita River from the diversion dam on the Big Wichita River in the northeast corner of Archer County, above the dam and up the valley of the Big Wichita River to the storage dam on the river in Baylor County, up the river from the storage dam as far as the water is impounded in the river by the storage dam in Archer County, or from any water in Lake Wichita in Archer County, or from Diversion Lake formed in Archer County, or from the water in laterals leading off of irrigation canals connected with Lake Kemp or the diversion dam, or from any water in Archer County in the lateral, canal, or drainage ditch leading from what is known as the

South Side Canal out of Diversion Lake from a point in the South Side Canal in Section No. 16, of Denton County school lands, League No. 4, Wichita County, to Holliday Creek and down Holliday Creek to Lake Wichita in Archer County, or from the water of Lake Arrowhead located in Archer County or any water in Lake Kickapoo in Archer County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50 for each violation.

(c) Each fish caught, sold, or purchased in violation of this section constitutes a separate offense.

(d) A person alleged to have violated this section may be prosecuted in the county where the fish are caught, where he is found with them in his possession, or the county where the fish are sold, bartered, offered for sale or barter, or bought.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 105.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the water described in Subsection (a), Section 105.011 of this code, any bass, crappie, white perch, sunfish, drum, catfish, or other edible fish and leave the fish to die without any intent to eat the fish, or leave any minnows without any intent to use them for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$1 nor more than \$25. Each fish allowed to die constitutes a separate offense. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 105.013. Injuring Fish

(a) No person may injure or destroy any fish by using dynamite, powder, other explosive, or poison in any of the water described in Subsection (a), Section 105.011 of this code.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$1,000, and may be confined in the county jail for not more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 105.014. Special Charge

District judges of Archer County shall give a special charge on this subchapter to the grand juries of Archer County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 106. ARMSTRONG COUNTY

§ 106.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Armstrong County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 107. ATASCOSA COUNTY

§ 107.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Atascosa County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 108. AUSTIN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

108.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

108.011. Squirrel Season.

108.012. Squirrel Retention Limits.

SUBCHAPTER C. FISH

108.021. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 108.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies only to the following wildlife resources in Austin County:

- (1) deer;
- (2) quail; and
- (3) turkey.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 108.002 to 108.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 108.011. Squirrel Season

(a) No person may hunt squirrel in Austin County except during the open season.

(b) The open season for squirrel in Austin County is during May, June, July, October, November, and December of each year.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 108.012. Squirrel Retention Limits

(a) No person may take or kill more than 10 squirrels in one day in Austin County.

(b) No person may possess at one time more than 20 squirrels taken or killed in Austin County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each squirrel taken or possessed in violation of this section is a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 108.013 to 108.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 108.021. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 109. BAILEY COUNTY

§ 109.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Bailey County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 110. BANDERA COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

110.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

110.011. Injuring Fish.

110.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 110.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Bandera County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 110.002 to 110.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 110.011. Injuring Fish

(a) No person may destroy fish in the freshwater streams of Bandera County by the use of any dynamite, powder, or other explosive.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$1,000 and may be confined in the county jail for not more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 110.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Bandera County any catfish, crappie, perch, white perch, bass, trout, or other edible fish and leave the fish to die without any intention to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 111. BASTROP COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

111.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

111.011. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 111.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Bastrop County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 111.002 to 111.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 111.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 112. BAYLOR COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

112.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

- 112.011. Fish Sale.
- 112.012. Leaving Fish to Die.
- 112.013. Injuring Fish.
- 112.014. Special Charge.
- 112.015. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 112.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Baylor County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 112.002 to 112.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 112.011. Fish Sale

(a) No person, firm, or corporation may barter, sell, offer for barter or sale, or buy any bass, perch, crappie, catfish, or any other fish, except minnows, taken from the water located in the valley of the Big Wichita River from where the lower or diversion dam on the Big Wichita River is located, above the dam, up the valley of the river to the storage dam on the river in Baylor County, up the valley of the river from the storage dam as far as the water is impounded by the dam in the river in Baylor County, or from any water impounded in Baylor County by the diversion dam, or from any water impounded in Baylor County by the storage dam, or from any water in the Big Wichita River in Baylor County connecting with the big reservoir or Lake Kemp created by the storage dam with the diversion reservoir or Diversion Lake formed in Baylor County by the diversion dam, or from any water of the irrigation canals connected with Lake Kemp or the diversion dam, or from any water in laterals leading off of the canals in Baylor County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50 for each violation.

(c) Each fish caught, sold, or purchased in violation of this section constitutes a separate offense.

(d) A person alleged to have violated this section may be prosecuted in the county where the fish are caught, where he is found with them in possession,

or where the fish are sold, bartered, offered for sale or barter, or bought.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 112.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the water described in Subsection (a), Section 112.011 of this code, any bass, crappie, white perch, sunfish, drum, catfish, or other edible fish and leave the fish to die without any intent to eat the fish or leave any minnows without any intent to use them for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$1 nor more than \$25. Each fish allowed to die constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 112.013. Injuring Fish

(a) No person may injure or destroy any fish by using dynamite, powder, other explosive, or poison in any of the water described in Subsection (a), Section 112.011 of this chapter.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$1,000 and by confinement in the county jail for not more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 112.014. Special Charge

District judges of the judicial districts of Baylor County shall give a special charge on Sections 112.011 through 112.013 of this code to the grand juries of Baylor County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 112.015. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 113. BEE COUNTY

§ 113.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Bee County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 114. BELL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

114.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

114.011. Repealed.
114.012. Repealed.

SUBCHAPTER A. APPLICATION OF UNIFORM WILDLIFE REGULATORY ACT

§ 114.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Bell County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 114.002 to 114.010 reserved for expansion]

SUBCHAPTER B. FISH

§§ 114.011, 114.012. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait, see, now, § 66.010.

CHAPTER 115. BEXAR COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

115.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

115.011. Axis Deer.
115.012. Axis Deer; Treated as Other Deer.

SUBCHAPTER C. FISH

115.021. Fish Sale.
115.022. Leaving Fish to Die.
115.023. Injuring Fish.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 115.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Bexar County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 115.002 to 115.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 115.011. Axis Deer

In Bexar County, wild axis deer not individually owned are included under the term "wildlife resources" for regulatory purposes under the Uniform Wildlife Regulatory Act (Chapter 61 of this code). [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 115.012. Axis Deer: Treated as Other Deer

(a) The regulations on the taking of axis deer not individually owned in Bexar County shall be the same as for other deer.

(b) The licensing and tagging requirements of Chapter 42 of this code shall be uniformly applied to axis deer not individually owned, and no extra deer tags may be issued for axis deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 115.013 to 115.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 115.021. Fish Sale

(a) No person may barter, sell, or offer to barter or sell any bass, white perch, crappie, catfish taken from the streams of Bexar County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 and not more than \$50. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 115.022. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Bexar County any catfish, crappie, perch, white perch, bass, trout, or other edible fish and leave the fish to die without any intention to eat the fish or use them for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 115.023. Injuring Fish

(a) No person may destroy fish in the freshwater streams of Bexar County by the use of any dynamite, powder, or other explosive.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$1,000 and

may be confined in the county jail for not more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 116. BLANCO COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

- 116.001. Regulatory Act: Applicability.
116.002. Regulatory Act: Archery Season Exclusion [NEW].

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING [REPEALED]

116.011 to 116.017. Repealed.

SUBCHAPTER C. FISH

- 116.021. Fish Sale.
116.022. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 116.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Blanco County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 116.002. Regulatory Act: Archery Season Exclusion

The Parks and Wildlife Commission may not authorize for Blanco County a special open season for the taking of deer, turkey, or javelina by means of bow and arrow only.

[Added by Acts 1977, 65th Leg., p. 1621, ch. 635, § 1, eff. Aug. 29, 1977.]

[Sections 116.003 to 116.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING [REPEALED]

§§ 116.011 to 116.017. Repealed by Acts 1977, 65th Leg., p. 1258, ch. 484, § 3(b), eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 1621, ch. 635, § 2, eff. Aug. 29, 1977

[Sections 116.018 to 116.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 116.021. Fish Sale

(a) No person may take, offer, or possess for the purpose of sale any catfish, perch, crappie, bream, or bass in Blanco County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 116.022. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977.

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 117. BORDEN COUNTY

§ 117.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Borden County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 118. BOSQUE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

- 118.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

- 118.011. Sale of Fish From Lake Waco or Bosque River.
118.012. Sale of Fish From the Brazos River or Lake Whitney.
118.013. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 118.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Bosque County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 118.002 to 118.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 118.011. Sale of Fish From Lake Waco or Bosque River

(a) No person may barter or sell, offer to barter or sell, or buy any bass, crappie, perch, channel or Opelousas catfish, or any other fish, except bait fish, taken from the water of Lake Waco or the Bosque Rivers and their tributaries in Bosque County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50. Each fish caught, possessed, sold, offered for sale, or purchased in violation of this section constitutes a separate offense.

(c) A person alleged to have violated this section may be prosecuted in the county where the offense is committed, where he is found with the fish, or where the fish are sold or offered for sale.

(d) The district judges of the judicial districts of Bosque County shall give a special charge on this section to the grand juries of Bosque County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 214, ch. 105, § 5, eff. Sept. 1, 1977.]

§ 118.012. Sale of Fish From the Brazos River or Lake Whitney

(a) No person may offer, expose, or possess for sale or sell any fish taken from the water of the Brazos River, Lake Whitney, or their tributaries in Bosque County except as authorized by the department.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. The possession of each fish in violation of this section constitutes a separate offense. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 118.013. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977
Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 119. BOWIE COUNTY

§ 119.001. Regulatory Act: Applicability
Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Bowie County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 120. BRAZORIA COUNTY

§ 120.001. Regulatory Act: Applicability
Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Brazoria County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 121. BRAZOS COUNTY

§ 121.001. Regulatory Act: Applicability
Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Brazos County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 122. BREWSTER COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
122.001. Regulatory Act: Applicability

SUBCHAPTER B. FISH

122.011. Regulatory Act: Exemption.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 122.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Brewster County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 122.002 to 122.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 122.011. Regulatory Act: Exemption

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to fish in Brewster County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 123. BRISCOE COUNTY

§ 123.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Briscoe County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 124. BROOKS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
124.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

124.011. Collared Peccary.
124.012. Buck Deer [NEW].

SUBCHAPTER C. BIRDS

124.021. Quail.

SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT

§ 124.001. **Regulatory Act: Applicability**

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Brooks County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 124.002 to 124.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 124.011. **Collared Peccary**

(a) Except as provided in Subsection (b) of this section, a person may take, capture, shoot, or kill collared peccary (javelina) at any time in Brooks County.

(b) No person may sell or offer for sale, or take, kill, or possess for the purpose of sale collared peccary (javelina) or any part of a collared peccary (javelina).

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each collared peccary (javelina) sold, offered for sale, or taken or possessed for the purpose of sale constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 124.012. **Buck Deer**

(a) In Brooks County, "buck deer" means a wild buck deer with a hardened antler protruding through the skin.

(b) The definition in this section prevails in Brooks County over the definitions provided in Sections 63.008 and 62.052, Parks and Wildlife Code. [Added by Acts 1977, 65th Leg., p. 1342, ch. 533, § 1, eff. June 15, 1977.]

[Sections 124.013 to 124.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 124.021. **Quail**

(a) No person may take or kill quail in Brooks County except during the open season, which is December 1 of one year to January 31 of the following year, both dates inclusive.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each quail killed or taken in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 125. BROWN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT

Section

125.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

125.011. Fish Sale.

125.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT

§ 125.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Brown County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 125.002 to 125.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 125.011. **Fish Sale**

(a) No person may sell or offer for sale any bass, white perch, crappie, channel catfish, or catfish caught, trapped, or ensnared in the streams of Brown County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 125.012. **Leaving Fish to Die**

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Brown County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 126. BURLESON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT

Section

126.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

126.011. Regulatory Act: Exemption.

126.012. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 126.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Burleson County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 126.002 to 126.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 126.011. **Regulatory Act: Exemption**

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to fish in Burleson County except those fish in the Somerville Reservoir.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 126.012. **Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977**

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 127. BURNET COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
127.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

127.011. Definitions.
127.012. Open Archery Season.
127.013. Prohibited Archery Equipment.
127.014. Deer Permits.
127.015. Limit and Possession of Deer.
127.016. Penalty.
127.017. Possession of Firearms.

SUBCHAPTER C. FISH

127.021. Fish Sale.
127.022. Leaving Fish to Die.
127.023. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 127.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Burnet County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 127.002 to 127.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 127.011. **Definitions**

As used in this subchapter:

(1) "Buck deer" means a deer that has a hardened antler protruding through the skin.

(2) "Antlerless deer" is any deer other than a buck deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 127.012. **Open Archery Season**

(a) The open archery season in Burnet County begins on October 1 and extends through October 31 each year.

(b) During the open archery season, a person may hunt, take, and kill wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, and collared peccary (javelina) by means of bows and arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 127.013. **Prohibited Archery Equipment**

No person may hunt, take, or kill wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) in Burnet County by means of:

(1) a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards;

(2) arrows that are not equipped with broadhead hunting points at least seven-eighths inch in width and not more than one and one-half inches in width;

(3) arrows that do not have on them in a nonwater-soluble medium the name and address of the user; or

(4) poisoned, drugged, or explosive arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 127.014. **Deer Permits**

(a) At least 15 days prior to the opening date of the open archery season, a landowner or lessee in Burnet County who desires to permit the hunting of deer on his land with bows and arrows during the open archery season may apply to the department for antlerless deer permits.

(b) The department shall issue to each applicant the number of antlerless deer permits consistent with sound wildlife management practices and consistent with any law authorizing the department to regulate the taking of antlerless deer.

(c) Landowners or lessees receiving antlerless deer permits shall return the fully completed stubs from used permits and all unused permits and stubs to the issuing officer not later than January 10 of the year following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 127.015. Limit and Possession of Deer

(a) No person may take or kill more than one antlerless deer with bow and arrow during the open archery season.

(b) No person may possess an antlerless deer in Burnet County unless he has in his possession an antlerless deer permit on which appears the date of the kill, the hunter's name, and the signature of the owner or agent on whose tract the deer was killed.

(c) No person may possess the carcass of any deer in Burnet County that does not have attached to it a tag issued to him on his valid hunting license unless the carcass has been finally processed.

(d) In Burnet County no person may attach the bonus deer tag from a valid hunting license to a deer other than an antlerless deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 127.016. Penalty

A person who violates Section 127.012 through Section 127.015 of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 127.017. Possession of Firearms

(a) No person may hunt, kill, or take wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) during the open archery season in Burnet County while having any type of firearm or crossbow on his person or in his possession and simultaneously possessing a bow and arrow in an automobile or in a hunting camp.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

[Sections 127.018 to 127.020 reserved for expansion]

SUBCHAPTER C. FISH.

§ 127.021. Fish Sale

(a) No person may sell or offer for sale any bass, white perch, crappie, or catfish caught, trapped, or ensnared in the streams of Burnet County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 127.022. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Burnet County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention to eat the fish or use them for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 127.023. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 128. CALDWELL COUNTY

§ 128.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Caldwell County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 129. CALHOUN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

129.001. Regulatory Act: Applicability.

129.002. Wildlife Act Applicability: Exclusions.

SUBCHAPTER B. FISH

129.011. Guadalupe River: Fishing Methods.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 129.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Calhoun County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 129.002. Wildlife Act Applicability: Exclusions

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to oysters and shrimp in Calhoun County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 129.003 to 129.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 129.011. Guadalupe River: Fishing Methods

(a) No person may catch fish from the Guadalupe River in Calhoun County except by:

- (1) hook and line;
- (2) trotline;
- (3) flounder gig and light; or
- (4) cast net or minnow seine not exceeding 20 feet in length to be used for catching bait only.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 130. CALLAHAN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

130.001. Regulatory Act: Applicability.

SUBCHAPTER B. LAKE BAIRD

- 130.011. Repealed.
- 130.012. Fish Sale.
- 130.013. Discharge of Firearm.
- 130.014. Penalty.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 130.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Callahan County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 130.002 to 130.010 reserved for expansion]

SUBCHAPTER B. LAKE BAIRD

§ 130.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 130.012. Fish Sale

No person may sell, buy, offer to sell or buy, or take or possess for commercial purposes fish, except bait fish, taken from Lake Baird in Callahan County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 214, ch. 105, § 6, eff. Sept. 1, 1977.]

§ 130.013. Discharge of Firearm

(a) Except as provided in this section, no person may shoot, fire, or discharge any pistol or rifle in, on, along, or across Lake Baird in Callahan County.

(b) This section does not apply to peace officers or other representatives of the department in the conduct of their official duties.

(c) This section does not apply to a person hunting with a shotgun during an open season in Callahan County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 130.014. Penalty

A person who violates this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each fish taken or possessed in violation of this subchapter constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 131. CAMERON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

- 131.001. Regulatory Act: Applicability.
- 131.002. Regulatory Act: Shrimp and Oysters in Outside Water Excluded.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

131.011. Audubon Society Land.

SUBCHAPTER C. FISH

131.021. Flounder, Speckled Trout, and Redfish Size Limits.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 131.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Cameron County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 131.002. Regulatory Act: Shrimp and Oysters in Outside Water Excluded

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to shrimp and oysters in the outside water of the Gulf of Mexico in Cameron County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 131.003 to 131.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 131.011. Audubon Society Land

(a) This section applies to Green Island and the group of three islands in Big Bay and the flats, reefs, and shallow water near those islands in Cameron County during the period that the National Association of the Audubon Societies is the lessee of those islands.

(b) No person, other than an agent, representative, or employee of the National Association of Audubon Societies or an officer of this state or the United States may enter on the land without the knowledge or consent of the association for the purpose of hunting a bird or for the purpose of taking or destroying a bird egg or nest.

(c) No person may hunt or molest a bird on the described land whether the person is on or off the described land.

(d) No person may discharge a firearm or explosive on or above the described land.

(e) No person may land, tie, or anchor a fishing boat in the described land.

(f) This section does not prohibit an agent, representative, or employee of the association from:

(1) hunting birds known to be a prey on other birds or eggs; or

(2) taking birds and eggs for propagation, conservation, or scientific purposes.

(g) This section does not prohibit a person from taking refuge on the described land because of storms.

(h) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$500 or by confinement in jail for not less than 10 days nor more than 6 months, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 131.012 to 131.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 131.021. Flounder, Speckled Trout, and Redfish Size Limits

(a) No person in Cameron County may retain or place in a container or boat or on a stringer a speckled trout less than 12 inches long, a flounder less than 12 inches long, or a redfish less than 14 inches long.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each fish retained in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 132. CAMP COUNTY

SUBCHAPTER A. APPLICABILITY TO UNIFORM WILDLIFE REGULATORY ACT

Section

132.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS [REPEALED]

132.011 to 132.015. Repealed.

SUBCHAPTER C. BIRDS [REPEALED]

132.021, 132.022. Repealed.

SUBCHAPTER D. FUR-BEARING ANIMALS [REPEALED]

132.031, 132.032. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 132.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources of Camp County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 598, ch. 214, § 1, eff. Aug. 29, 1977.]

[Sections 132.002 to 132.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS [REPEALED]

§§ 132.011 to 132.015. Repealed by Acts 1977, 65th Leg., p. 598, ch. 214, § 2, eff. Aug. 29, 1977

[Sections 132.016 to 132.020 reserved for expansion]

SUBCHAPTER C. BIRDS [REPEALED]

§§ 132.021, 132.022. Repealed by Acts 1977, 65th Leg., p. 598, ch. 214, § 2, eff. Aug. 29, 1977

[Sections 132.023 to 132.030 reserved for expansion]

SUBCHAPTER D. FUR-BEARING ANIMALS [REPEALED]

§§ 132.031, 132.032. Repealed by Acts 1977, 65th Leg., p. 598, ch. 214, § 2, eff. Aug. 29, 1977

CHAPTER 133. CARSON COUNTY

§ 133.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Carson County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 134. CASS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

134.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

- 134.011. Deer Season.
- 134.012. Deer Limit.
- 134.013. Use of Firearms.
- 134.014. Penalty.
- 134.015. Squirrel.

SUBCHAPTER C. BIRDS

- 134.021. Turkey.
- 134.022. Quail.

SUBCHAPTER D. FISH

- 134.031. Methods of Fishing.
- 134.032. Crappie.

SUBCHAPTER E. LAKE TEXARKANA

- 134.041. Discharge of Firearm.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 134.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Cass County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 134.002 to 134.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 134.011. Deer Season

No person may hunt deer in Cass County except during the open season, which is November 16 through November 21 and December 26 through December 31.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 134.012. Deer Limit

(a) No person may take or kill more than two deer during an open season in Cass County.

(b) No person may take, kill, or possess any deer except a buck deer with a pronged antler in Cass County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 134.013. Use of firearms

(a) No person may use .22 caliber rimfire ammunition to hunt deer in Cass County.

(b) No person may hunt wild deer in Cass County by any means other than with a rifle or shotgun capable of being fired from the shoulder.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 134.014. Penalty

A person who violates Sections 134.011 through 134.013 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each deer taken, killed, or possessed in violation of this subchapter constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 134.015. Squirrel

(a) No person may take or kill squirrel in Cass County except during the months of October, November, and December.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$1 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 134.016 to 134.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 134.021. Turkey

(a) No person may possess wild turkey killed or caught in Cass County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 134.022. Quail

(a) No person may hunt wild quail in Cass County except during the open season, which is December 1 through February 15.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a

fine of not less than \$10 nor more than \$100. Each bird taken or killed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 134.023 to 134.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 134.031. Methods of Fishing

(a) No person may take or catch fish in the public fresh water of Cass County by any means other than an ordinary hook and line, set hook and line, gig, or artificial bait.

(b) Except as provided in Subsections (c) and (d) of this section, no person may place in the public fresh water of Cass County any seine, net, or other device or trap for taking or catching fish.

(c) A minnow seine not longer than 20 feet may be used to catch minnows for bait.

(d) A hoop, trammel or gill net with meshes not less than three inches square may be used in the fresh water of Cass County for taking or catching buffalo fish, carp, and catfish except during the months of March and April.

(e) No person may use a pond net.

(f) All fish and minnows more than two and one-half inches long taken in seining for minnows must be returned to the water alive.

(g) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 134.032. Crappie

There is no daily catch or retention limit on crappie or white perch in Cass County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 134.033 to 134.040 reserved for expansion]

SUBCHAPTER E. LAKE TEXARKANA

§ 134.041. Discharge of Firearm

(a) Except as provided in this section, no person may shoot a pistol or rifle in, on, along, or across Lake Texarkana.

(b) Subsection (a) of this section does not apply to peace officers, game wardens, or representatives of the department in the lawful discharge of their duties.

(c) Subsection (a) of this section does not apply to a person hunting with a shotgun during an open

season or when it is lawful to hunt in or on Lake Texarkana.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 135. CASTRO COUNTY

§ 135.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Castro County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 136. CHAMBERS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section	
136.001.	Regulatory Act: Applicability.
136.002.	Regulatory Act: Red Drum.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

136.011.	Hunting With Certain Weapons.
136.012.	Shooting in Certain Places.
136.013.	Enforcement; Penalties.

SUBCHAPTER C. GAME ANIMALS

136.021.	Squirrel.
136.022.	Deer.

SUBCHAPTER D. BIRDS

136.031.	Turkey.
136.032.	Quail.

SUBCHAPTER E. FISH

136.041.	Catfish Size Limits.
136.042.	Net Size for Rough Fish and Catfish.
136.043.	Seining Near Cities Prohibited.
136.044.	Galveston and Trinity Bays: Nets.
136.045.	East Galveston Bay: Nets.
136.046.	Other Water: Fishing Methods.
136.047.	Commission May Close Certain Water.
136.048.	Nets and Trotlines: Use [NEW].

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 136.001. Regulatory Act: Applicability

[Text of section effective until October 1, 1978]

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources of Chambers County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[For text of section effective October 1, 1978, see § 136.001, post]

§ 136.001. **Regulatory Act: Applicability**

[Text of section effective October 1, 1978]

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources of Chambers County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 724, ch. 270, § 8, eff. Oct. 1, 1978.]

For text of section effective until October 1, 1978, see § 136.001, ante

§ 136.002. **Regulatory Act: Red Drum**

[Text of section added effective October 1, 1978]

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to red drum in Chambers County.

[Added by Acts 1977, 65th Leg., p. 724, ch. 270, § 8, eff. Oct. 1, 1978.]

[Sections 136.003 to 136.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 136.011. **Hunting With Certain Weapons**

(a) No person in Chambers County may hunt with a shotgun using a shell larger than No. four squirrel shot or with a rifle larger than a rimfire .22 caliber rifle where deer are known to roam, except during the open season for deer.

(b) The evidence of possession of a shotgun and shell containing larger than No. four squirrel shot or a rifle larger than a rimfire .22 caliber rifle in or through woods where deer are known to roam constitutes prima facie evidence of a violation of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 136.012. **Shooting in Certain Places**

(a) No person may shoot a pistol or rifle in, on, along, or across the water of the Trinity River, Wallisville Reservoir, and Lake Anahuac in Chambers County.

(b) No person may shoot a pistol, crossbow, bow and arrow, shotgun, or rifle in, on, along, or across the water of Oyster Bayou in Chambers County from State Highway 65 south to the mouth of Oyster Bayou in East Bay.

(c) The water described in Subsections (a) and (b) of this section are part of the public fresh water of this state suited and adapted to the preservation, protection, and propagation of game and fish, and

this section is to aid in the preservation, protection, and propagation of game and fish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 136.013. **Enforcement; Penalties.**

(a) Section 136.012 of this code does not apply to a person hunting migratory waterfowl with a shotgun during a prescribed open season in and on the Trinity River and the Wallisville Reservoir.

(b) Sections 136.011 and 136.012 of this code do not apply to peace officers, or representatives of the department in the lawful discharge of their duties.

(c) It is the duty of the department to enforce the provisions of this subchapter, and enforcement officers may arrest without a warrant a person violating a provision in his presence.

(d) A person who violates Section 136.011 or Section 136.012 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 136.014 to 136.020 reserved for expansion]

SUBCHAPTER C. GAME ANIMALS

§ 136.021. **Squirrel**

(a) No person may hunt squirrel in Chambers County except during the open seasons beginning on May 1 and extending through July 31 and beginning on October 15 and extending through January 15.

(b) No person in Chambers County may take or kill more than 10 squirrels during a day or possess more than 20 squirrels at a time.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each squirrel killed, taken, or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 136.022. **Deer**

(a) No person may hunt wild deer in Chambers County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$500.

(c) This section expires on November 16, 1980.

[Acts 1975, 64th Leg., p. 1220, ch. 456, § 19(a), eff. Sept. 1, 1975.]

[Sections 136.023 to 136.030 reserved for expansion]

SUBCHAPTER D. BIRDS

§ 136.031. Turkey

(a) No person may hunt wild turkey in Chambers County except during the open season beginning on November 16 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 136.032. Quail

(a) No person may hunt quail in Chambers County except during the open season beginning on December 1 and extending through February 15.

(b) No person in Chambers County may kill or take more than 12 quail of all varieties during a day or possess more than 24 quail of all varieties at a time.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each quail taken, killed, or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 43, ch. 27, § 1, eff. Aug. 29, 1977.]

[Sections 136.033 to 136.040 reserved for expansion]

SUBCHAPTER E. FISH

§ 136.041. Catfish Size Limits

(a) No person may retain or place in a container or boat or on a stringer a catfish caught from the public water of Chambers County which is less than 11 inches long.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50. Each fish retained in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 136.042. Net Size for Rough Fish and Catfish

(a) In Chambers County, except in the water of Trinity Bay, Lake Anahuac, and Turtle Bay Bayou, a hoop net, gill net, and trammel net may be used for the catching of rough fish and catfish only.

(b) No person may use in the water described in Subsection (a) of this section for the purpose of taking rough fish or catfish a hoop net, gill net, or trammel net having meshes smaller than three inches.

(c) No person may take bass or crappie with a net authorized by this section.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 136.043. Seining Near Cities Prohibited

(a) No person may attempt to take any fish, shrimp, green turtle, loggerhead, or terrapin by the use of a seine, drag, fyke, setnet, trammel net, trap, dam, or weir from a bay or other navigable water in Chambers County within one mile of the limits of a city.

(b) In this section, "city" means any community having 100 or more families within an area of one square mile.

(c) A city shall set out and maintain buoys, stakes, or other markers showing the limits within which Subsection (a) of this section applies.

(d) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. In a prosecution under this section, identification of the boat from which a violation occurred, if any, is prima facie evidence against the owner, lessee, person in charge, or master of the boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 136.044. Galveston and Trinity Bays: Nets

(a) No person may possess, use, or place in or on that portion of Galveston Bay or Trinity Bay in Chambers County lying north of a line from Eagle Point to Smith Point a setnet, gill net, trap, or other device for the catching of fish.

(b) A person may possess and use in the water described in Subsection (a) of this section a trammel net not exceeding 1,200 feet in length and having mesh of not less than three and one-half inches when stretched.

(c) This section does not prohibit the possession of a device the use of which is prohibited in the water described in Subsection (a) of this section when the device is on board a vessel in port or in a channel while under way to a place where the use of the device is not prohibited.

(d), (e) Repealed by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(3), eff. May 20, 1977.

(f) A person who violates this section is guilty of a misdemeanor and on a first conviction shall be punished by a fine of not less than \$50 nor more than \$250. On a second or subsequent conviction he may be punished by a fine of not less than \$50 nor more than \$250, and his commercial fishing license is subject to forfeiture.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 382, ch. 190, § 5(3), eff. May 20, 1977.]

§ 136.045. East Galveston Bay: Nets

(a) Except as provided in Subsection (b) of this section, it is lawful to use strike nets, gill nets, trammel nets, and shrimp trawls for the purpose of taking fish in the water of East Galveston Bay in Chambers County during the period beginning on August 15 and extending through May 15 of the following year.

(b) No person may use a strike net, gill net, trammel net, or shrimp trawl for the purpose of taking fish in any of the following water of Chambers County at any time:

(1) water lying northwest of a line from Kemah in Galveston County to Mesquite Knoll in Chambers County; and

(2) water of Galveston Bay lying east of a line from the extreme western point of Smith's Point in Chambers County to the west bank of Siever's Cut where East Bay intersects with the north bank of the Intracoastal Canal on Bolivar Peninsula in Galveston County at Siever's Fish Camp, which cut is between Elm Grove Point and Baffle Point, both points being on the north shore of Bolivar Peninsula.

(c) No person operating under the authority of Subsection (a) of this section may use a strike net, gill net, trammel net, or shrimp trawl for catching fish if the meshes are less than one and one-half inches from knot to knot.

(d), (e) Repealed by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(4), eff. May 20, 1977.

(f) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200, and his commercial fishing license is subject to revocation for one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 382, ch. 190, § 5(4), eff. May 20, 1977.]

§ 136.046. Other Water: Fishing Methods

(a) No person may place or use a seine, net, or other device for catching fish in any of the bays, streams, bayous, or canals of Chambers County not covered by Sections 136.042, 136.043, and 136.044 of this code except:

- (1) an ordinary pole and line;
- (2) a casting rod and reel;
- (3) artificial bait;
- (4) a trotline;
- (5) a setline;
- (6) a flounder gig and light; and
- (7) a cast net or minnow seine not more than 20 feet long and used only for catching bait.

(b) Repealed by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(5), eff. May 20, 1977.

(c) The identification of a boat, vehicle, seine, or net from or by which a violation of this section occurs is prima facie evidence against the owner of the boat, vehicle, net, or seine, or against the party last in charge of the boat.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100. On a second or subsequent conviction, the person is punishable by a fine of not less than \$100 nor more than \$200 and his commercial fishing license is subject to forfeiture for a period of one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 382, ch. 190, § 5(5), eff. May 20, 1977.]

§ 136.047. Commission May Close Certain Water

(a) The commission may close tidal water in Chambers County for the use of nets, seines, spears, gigs, lights, and other devices for catching fish except a hook and line or cast net or minnow seine not more than 20 feet in length when the commission finds that the closing is best for the protection and increase of fish life or to prevent its destruction.

(b) The commission shall give notice of the closing at least two weeks before the effective date of the closing. The notice must contain:

- (1) the reason for the closing;
- (2) a designation of the area to be closed;
- (3) the effective date and duration of the closing;
- (4) a statement that after the effective date of the closing it will be unlawful to drag a seine, set a net, or use a gig and light to catch fish in the described area.

(c) After an investigation and hearing, and on a finding that the closing of an area no longer promotes the conservation of fish, the commission may open the area to seining, netting, gigging, and other fishing.

(d) The department may seize seines used in violation of this section and hold them as evidence in the trial of a defendant, and no suit may be maintained against the department or an authorized employee for the seizure.

(e) This section does not apply to any of the water to which Sections 136.043, 136.044, and 136.045 apply. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 136.048. Nets and Trotlines: Use

[Text of section added effective October 1, 1978]

(a) In that portion of Galveston Bay or Trinity Bay in Chambers County where nets, seines, and saltwater trotlines are permitted, during the period beginning the Saturday of Memorial Day weekend through sunset on Labor Day, nets and saltwater trotlines may not be used from sunset Friday to sunset Sunday.

(b) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$200. On a second or subsequent conviction, the person is punishable by a fine of not less than \$200 nor more than \$500 and shall forfeit the license under which the person is fishing.

[Added by Acts 1977, 65th Leg., p. 724, ch. 270, § 9, eff. Oct. 1, 1978.]

CHAPTER 137. CHILDRESS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

137.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH [REPEALED]

137.011, 137.012. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 137.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Childress County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 137.002 to 137.010 reserved for expansion]

SUBCHAPTER B. FISH [REPEALED]

§§ 137.011, 137.012. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 138. CHEROKEE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

138.001. Regulatory Act: Applicability.

138.002. Lake Palestine.

SUBCHAPTER B. GAME ANIMALS

138.011. Deer.

138.012. Hunting Deer With Dogs: Evidence.

138.013. Squirrel.

SUBCHAPTER C. BIRDS

138.021. Turkey.

138.022. Quail.

SUBCHAPTER D. FISH

138.031. Fish Sale.

138.032. Nets and Seines.

138.033. Prohibited Methods of Fishing.

SUBCHAPTER E. FUR-BEARING ANIMALS [REPEALED]

138.041. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 138.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Cherokee County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 138.002. Lake Palestine

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to all of the water area of Lake Palestine located in Cherokee County. The provisions of this chapter do not apply to the water area of Lake Palestine in Cherokee County, except as specifically noted.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 138.003 to 138.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 138.011. Deer

(a) No person may hunt wild deer north of U. S. Highway 84 in Cherokee County except during the open season for the taking of deer beginning on November 16 and extending through November 30 of each year.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1223, ch. 456, § 24, eff. Sept. 1, 1975.]

§ 138.012. Hunting Deer With Dogs: Evidence

Possession of a high-powered rifle or a shotgun with buckshot while in control of a dog, or while accompanying a person in control of a dog, in any area in Cherokee County where deer are known to range is prima facie evidence of a violation of Section 63.010 of this code, relating to hunting deer with dogs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 138.013. Squirrel

(a) No person may hunt, take, or kill any squirrel in Cherokee County except during the period beginning October 1 and extending through December 31 of each year.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 138.014 to 138.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 138.021. Turkey

(a) No person may hunt wild turkey in Cherokee County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$300. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 138.022. Quail

(a) No person may hunt, take, or kill any wild quail in Cherokee County except during the period beginning on December 1 of one year and extending through February 15 of the following year.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each quail taken or killed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 138.023 to 138.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 138.031. Fish Sale

(a) No person may sell, offer for sale, or possess for the purpose of sale any fish, except bait fish, caught or taken from the public fresh water of Cherokee County, including that portion of Lake Palestine located within the county, or from the portion of the Angelina River that is the boundary line between Cherokee and Nacogdoches counties north of Texas Highway 21.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 214, ch. 105, § 7, eff. Sept. 1, 1977.]

§ 138.032. Nets and Seines

(a) No person may place, use, or catch fish with any setnet or dragnet or seine in the public fresh water of Cherokee County, or in the water of the Neches River within the boundaries of Cherokee County, except during the months of June, July, August, September, October, November, December, and January.

(b) This section does not prohibit the use of minnow seines as provided by general law.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 138.033. Prohibited Methods of Fishing

(a) This section applies to the Angelina River and Mud Creek in Cherokee County.

(b) No person may catch or attempt to catch fish by placing any lime, poison, drug, dynamite, nitroglycerin, giant powder, or any other explosive or substance harmful to fish in the water of the river or creek.

(c) No person may catch or attempt to catch fish by the aid of what is commonly known as "telephoning," or by using any other electricity-producing apparatus designed for shocking fish. Possession of any such equipment in a boat or along the bank or shore of the river or creek is prima facie evidence of a violation of this section.

(d) A person who violates this section is guilty of a misdemeanor and on first conviction is punishable by a fine of not less than \$300 nor more than \$750. On second conviction of a violation of this section, a person is punishable by a fine of not less than \$500 nor more than \$1,000 and by confinement in the county jail for not less than 30 days nor more than six months. On a third or subsequent conviction of a violation of this section, a person is punishable by a fine of not less than \$1,000 nor more than \$2,000 and by confinement in the county jail for not less than six months nor more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 138.034 to 138.040 reserved for expansion]

SUBCHAPTER E. FUR-BEARING ANIMALS
[REPEALED]

§ 138.041. Repealed by Acts 1977, 65th Leg. p. 86, ch. 42, § 1, eff. April 5, 1977

CHAPTER 139. CLAY COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
139.001. Regulatory Act: Applicability.

SUBCHAPTER B. LAKE ARROWHEAD

139.011. Fish Sale.
139.012. Injuring Fish.
139.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 139.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Clay County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 139.002 to 139.010 reserved for expansion]

SUBCHAPTER B. LAKE ARROWHEAD

§ 139.011. Fish Sale

(a) No person may barter, sell, offer for barter or sale, or buy any bass, perch, crappie, or catfish or any other fish except minnows taken from Lake Arrowhead in Clay County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50. Each fish sold or bought in violation of this section is a separate offense.

(c) A person alleged to have violated this section may be prosecuted in the county where the fish are caught, where he is found with them in possession, or where the fish are sold, bartered, offered for sale or barter, or bought.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 139.012. Injuring Fish

(a) No person may injure or destroy fish by the use of dynamite, powder, other explosive, or poison in the water of Lake Arrowhead in Clay County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$1,000 and may be confined in the county jail for not more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 139.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to the water of Lake Arrowhead in Clay County any bass, crappie, white perch, sunfish, drum, catfish, or other edible fish or minnows and leave the fish to die without any intention to eat the fish or use the minnows for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$1 nor more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 140. COCHRAN COUNTY

§ 140.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Cochran County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 141. COKE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

141.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

141.011. Fish Sale.

141.012. Repealed.

141.013. Trespass.

141.014. Penalty.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 141.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Coke County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 141.002 to 141.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 141.011. Fish Sale

No person may sell, buy, offer to sell or buy, take, or possess for commercial purposes fish, except bait fish, taken from the water of Sweetwater Oak Creek Lake in Coke County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 215, ch. 105, § 8, eff. Sept. 1, 1977.]

§ 141.012. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 141.013. Trespass

This subchapter does not license, permit, or authorize any person to go on the land of another person to catch fish or minnows without the consent of the owner of the land or water. In any prosecution for a violation of this subchapter, the burden to prove consent of the owner of the land is on the alleged trespasser.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 141.014. Penalty

A person who violates a provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$100. Each

fish taken or possessed in violation of this subchapter constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 142. COLEMAN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

142.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

142.011. Fish Sale.

142.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 142.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Coleman County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 142.002 to 142.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 142.011. Fish Sale

(a) No person may sell or offer for sale any bass or crappie (white perch) caught, trapped, or ensnared in the water of Coleman County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 142.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Coleman County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention of eating the fish or using it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 143. COLLIN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

143.001. Regulatory Act: Applicability.

SUBCHAPTER B. MINNOWS

143.011. Repealed.

SUBCHAPTER C. LAKE LAVON

143.021. Fish Sale.

143.022. Harmful Refuse.

143.023. Discharge of Firearm.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 143.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Collin County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 143.002 to 143.010 reserved for expansion]

SUBCHAPTER B. MINNOWS

§ 143.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

[Sections 143.012 to 143.020 reserved for expansion]

SUBCHAPTER C. LAKE LAVON

§ 143.021. Fish Sale

(a) No person may sell, barter, offer to sell or barter, take, or possess fish, except bait fish, taken from the water of Lake Lavon in Collin County for commercial purposes.

(b) A person violating this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each fish taken or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 215, ch. 105, § 9, eff. Sept. 1, 1977.]

§ 143.022. Harmful Refuse

(a) No person may throw, leave, or cause to be thrown or left any wastepaper, glass, metal, tin can, refuse, garbage, waste, discarded or soiled personal property, or any other noxious or poisonous substance in the water of or in close proximity to Lake Lavon in Collin County if the substance is detrimental to fish or persons fishing in Lake Lavon.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 143.023. Discharge of Firearm

(a) Except as provided in Subsections (b) and (c) of this section, no person may shoot, fire, or discharge any firearm in, on, along, or across Lake Lavon in Collin County.

(b) This section does not apply to peace officers, game wardens, or other representatives of the department in the lawful discharge of their duties.

(c) This section does not apply to a person hunting with a shotgun during an open season or when it is lawful to hunt in or on Lake Lavon.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200 plus costs, or confinement in the county jail for not more than one year, or both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 144. COLLINGSWORTH COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

144.001. Regulatory Act: Applicability.

SUBCHAPTER B. BIRDS

144.011. Quail.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 144.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Collingsworth County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 144.002 to 144.010 reserved for expansion]

SUBCHAPTER B. BIRDS

§ 144.011. Quail

(a) No person may hunt quail in Collingsworth County except during the open season, which is December 1 through January 31, both dates inclusive.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each bird taken in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 145. COLORADO COUNTY

§ 145.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Colorado County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 146. COMAL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

146.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

146.011. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 146.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Comal County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 146.002 to 146.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 146.011. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Comal County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 147. COMANCHE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

147.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

147.011. Fish Sale.

147.012. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 147.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Comanche County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 147.002 to 147.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 147.011. Fish Sale

(a) No person may sell or offer for sale any bass, white perch, crappie, channel catfish, or catfish caught, trapped, or ensnared in the water of Comanche County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 147.012. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 148. CONCHO COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

148.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

148.011. Fish Sale.

148.012. Leaving Fish to Die.

148.013. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 148.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Concho County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 148.002 to 148.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 148.011. Fish Sale

(a) No person may sell or offer for sale any bass, white perch, crappie, or catfish caught, trapped, or ensnared in the streams of Concho County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 148.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Concho County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention to eat the fish or use the fish for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 148.013. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 149. COOKE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

149.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

149.011. Fish Sale.

149.012. Lake Texoma: Fish Sale.

149.013. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 149.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Cooke County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 149.002 to 149.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 149.011. Fish Sale

(a) No person may take or possess for the purpose of sale any fish, except bait fish, from the fresh water in Cooke County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine not to exceed \$100. Each act of taking, and each fish taken or possessed, in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 215, ch. 105, § 10, eff. Sept. 1, 1977.]

§ 149.012. Lake Texoma: Fish Sale

A person may buy or sell any sucker, buffalo, carp, shad, or gar taken from Lake Texoma in Cooke County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 149.013. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 61.010.

CHAPTER 150. CORYELL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

150.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

150.011. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 150.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Coryell County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 150.002 to 150.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 150.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 151. COTTLE COUNTY

Section

151.001. Regulatory Act: Applicability.

151.002. Regulatory Act: Special Quail Season.

§ 151.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Cottle County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 151.002. Regulatory Act: Special Quail Season

The proclamations of the commission under the Uniform Wildlife Regulatory Act (Chapter 61 of this code) shall provide for an open season for the hunting of wild quail of all varieties in Cottle County beginning on December 1 of one year and extending through January 31 of the following year.

[Acts 1975, 64th Leg., p. 1214, ch. 456, § 14, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 34, ch. 17, § 1, eff. Aug. 29, 1977.]

CHAPTER 152. CRANE COUNTY

§ 152.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Crane County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 153. CROSBY COUNTY

§ 153.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Crosby County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 154. CROCKETT COUNTY

§ 154.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Crockett County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 155. CULBERSON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

155.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

155.011. Regulatory Act: Exemption.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 155.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Culberson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 155.002 to 155.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 155.011. Regulatory Act: Exemption

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to fish in Culberson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 156. DALLAM COUNTY

§ 156.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Dallam County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 157. DALLAS COUNTY

§ 157.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Dallas County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 158. DAWSON COUNTY

§ 158.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Dawson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 159. DEAF SMITH COUNTY

§ 159.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Deaf Smith County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 160. DELTA COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

160.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

160.011. Deer.

160.012. Squirrels.

SUBCHAPTER C. BIRDS

160.021. Turkey.

160.022. Quail

SUBCHAPTER D. FISH

160.031. Nets and Seines.

SUBCHAPTER E. FUR-BEARING ANIMALS

160.041. Hunting Mink With Dogs.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 160.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Delta County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 160.002 to 160.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 160.011. Deer

(a) No person may hunt deer in Delta County except during the open season beginning on November 22 and extending through December 1.

(b) During the open season, no person may take, kill, or have in his possession a deer other than a buck with pronged horn. No person may take or kill more than one buck deer in one season.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 160.012. Squirrels

(a) No person may hunt squirrel in Delta County except during the open seasons beginning on May 1 and extending through July 31, and beginning on October 1 and extending through December 31. During the open seasons no person may kill, take, or have in his possession more than eight squirrels a day.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each squirrel killed, taken, or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 160.013 to 160.020 reserved for expansion]

SUBCHAPTER C. BIRDS**§ 160.021. Turkey.**

(a) No person may hunt wild turkey in Delta County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200 or confinement in the county jail for not less than 1 day nor more than 30 days, or both. Each turkey killed or possessed in violation of this section constitutes a separate offense and shall be seized and disposed of as provided in Section 12.110 of this code. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 160.022. Quail

(a) No person may hunt wild quail in Delta County except during the open season beginning on December 1 and extending through January 16. During the open season, no person may hunt wild quail in Delta County on Sunday.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 160.023 to 160.030 reserved for expansion]

SUBCHAPTER D. FISH**§ 160.031. Nets and Seines**

No person may take or catch catfish, perch, buffalo fish, or drum in Delta County by hand or with a seine or net having meshes one inch square, except during the open season.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 160.032 to 160.040 reserved for expansion]

SUBCHAPTER E. FUR-BEARING ANIMALS**§ 160.041. Hunting Mink With Dogs**

A person may hunt, take, or kill or attempt to hunt, take, or kill wild mink in Delta County with dogs. A person may have in his possession a mink pelt while hunting with dogs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 161. DENTON COUNTY**§ 161.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Denton County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 162. DEWITT COUNTY**§ 162.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in DeWitt County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 163. DICKENS COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT [NEW]**

Section
163.001. Regulatory Act: Applicability.

SUBCHAPTER B. BIRDS [NEW]

163.011. Quail Season.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT [NEW]**§ 163.001. Regulatory Act: Applicability**

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Dickens County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 34, ch. 17, § 3, eff. Aug. 29, 1977.]

SUBCHAPTER B. BIRDS [NEW]**§ 163.011. Quail Season**

(a) No person may hunt quail in Dickens County except during the open season.

(b) The open season for quail in Dickens County begins on December 1 of one year and extends through January 31 of the following year.

(c) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Added by Acts 1977, 65th Leg., p. 34, ch. 17, § 3, eff. Aug. 29, 1977.]

CHAPTER 164. DIMMIT COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

164.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

164.011. Fish Sale.

164.012. Leaving Fish to Die.

164.013. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 164.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Dimmit County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 164.002 to 164.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 164.011. Fish Sale

(a) No person may sell or offer for sale any bass, white perch, crappie, or catfish caught, trapped, or ensnared in the streams of Dimmit County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 164.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit upon the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Dimmit County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die, unless the person intends to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. The allowing of each fish

to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 164.013. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 165. DONLEY COUNTY

§ 165.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Donley County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 166. DUVAL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

166.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

166.011. Regulatory Act: Exclusion.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 166.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Duval County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 166.002 to 166.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 166.011. Regulatory Act: Exclusion

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to deer without antlers in Duval County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 167. EASTLAND COUNTY

§ 167.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Eastland County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 168. ECTOR COUNTY**§ 168.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Ector County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 169. EDWARDS COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT****Section**

- 169.001. Regulatory Act: Applicability.
169.002. Mandatory Proclamation.

SUBCHAPTER B. FISH

- 169.011. Fish Sale.
169.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 169.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Edwards County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 169.002. Mandatory Proclamation

(a) The proclamations of the commission under the Uniform Wildlife Regulatory Act (Chapter 61 of this code) shall prohibit the hunting of doe deer in Edwards County.

(b) This section expires January 1, 1977.

[Acts 1975, 64th Leg., p. 1222, ch. 456, § 22, eff. Sept. 1, 1975.]

[Sections 169.003 to 169.010 reserved for expansion]

SUBCHAPTER B. FISH**§ 169.011. Fish Sale**

(a) No person may take, offer, or possess, for the purpose of sale, any bass, crappie, perch, or bream in Edwards County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 169.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Edwards County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 170. ELLIS COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT****Section**

- 170.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

- 170.011. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 170.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Ellis County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 170.002 to 170.010 reserved for expansion]

SUBCHAPTER B. FISH**§ 170.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977**

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 171. EL PASO COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT****Section**

- 171.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

- 171.011. Regulatory Act: Exemption.
171.012. Method of Taking Fish.
171.013. Fish Limit.
171.014. Importation and Sale of Black Bass.
171.015. Importation Tags.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 171.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in El Paso County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 171.002 to 171.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 171.011. **Regulatory Act: Exemption**

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to fish in El Paso County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 171.012. **Method of Taking Fish**

(a) No person may use a method or device to catch fish other than a hook and line, pole and line, or trotline or setline in El Paso County.

(b) No person may use a minnows seine longer than 10 feet or a seine with meshes larger than three-eighths of an inch square to catch bait in El Paso County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each fish taken in violation of this chapter constitutes a separate offense. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 171.013. **Fish Limit**

(a) Except as provided in Subsection (b) of this section, no person may catch or possess more than 10 fish in one day or more than 30 fish in one week in El Paso County.

(b) No person may catch or possess more than 20 perch in one day or more than 60 perch in one week in El Paso County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 171.014. **Importation and Sale of Black Bass**

(a) Black bass imported from another country may be sold in El Paso County if:

(1) the fish were caught in inland water of a foreign country which is not international water of the United States and the foreign country;

(2) the country from which the fish were imported permits the taking of the fish for sale; and

(3) an importation tag is attached to the gill, dorsal fin, or tail of each black bass sold.

(b) A person who sells or attempts to sell a black bass in El Paso County which does not have properly attached an importation tag is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 171.015. **Importation Tags**

(a) A licensed customhouse broker who wishes to handle the importation of black bass for sale in El Paso County shall notify the commission. The commission shall assign the broker a permanent record number and provide the number of metal importation tags requested by the broker.

(b) The cost of the importation tags shall be paid by the broker, and each tag shall contain the permanent record number of the broker and a separate number to identify the tag.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 172. ERATH COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
172.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

172.011. Fish Sale.
172.012. Minnow Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 172.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Erath County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 172.002 to 172.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 172.011. Fish Sale

(a) No person may barter, buy, or sell or offer to barter or sell any bass, crappie, perch, channel or Opelousas catfish, or any other fish, except bait fish, taken from the Bosque River or its tributaries in Erath County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50. Each fish bartered, bought, or sold or offered for barter or sale constitutes a separate offense. A person who violates this section may be prosecuted in the county where the offense is committed, where he is found with the fish in his possession, or where the fish are sold or offered for sale.

(c) It is the duty of the district judge of the judicial district in Erath County to give a special charge on this law to the grand juries of Erath County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 215, ch. 105, § 11, eff. Sept. 1, 1977.]

§ 172.012. Minnow Sale

In Erath County a person may raise and propagate minnows on his own premises or on premises under his control for personal use or for commercial purposes, and for sale inside or outside the county, at any time.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 173. FALLS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

173.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

173.011. Instruments to Call or Attract Animals.

SUBCHAPTER C. FISH

173.021. Fish Sale.

173.022. Minnow Transport.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 173.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Falls County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 173.002 to 173.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 173.011. Instruments to Call or Attract Animals

(a) No person may use any device or instrument used to call or attract animals to aid in the hunting of any wild animal on state-owned land in Falls County.

(b) The Commissioners Court of Falls County may extend the prohibition expressed in Subsection (a) to any privately owned land in Falls County, any designated portion or section of the county, or to all of the county. The commissioners court shall notify the Texas Parks and Wildlife Commission of its desire to broaden the coverage of Subsection (a) of this section. After receiving a return from the commission, the commissioners court shall specify what land or portion of the county is added to the coverage of Subsection (a) of this section on forms prescribed by the Texas Parks and Wildlife Commission. The court shall return the forms to the commission, properly attested to as the official act of the Commissioners Court of Falls County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 173.012 to 173.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 173.021. Fish Sale

(a) No person may barter, buy, or sell or offer to barter or sell any bass, crappie, perch, catfish, or any other fish, except bait fish, taken from the water of the Brazos River in Falls County or from the water within one mile from the mouth of any tributary of the Brazos River in Falls County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$1 nor more than \$25.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 215, ch. 105, § 12, eff. Sept. 1, 1977.]

§ 173.022. Minnow Transport

(a) No person may transport at any one time beyond the borders of Falls County more than 125 minnows taken from any stream, pond, lake, or lagoon in Falls County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 174. FANNIN COUNTY

§ 174.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Fannin County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 175. FAYETTE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

175.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

175.011. Minnow Transport and Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 175.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Fayette County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 175.002 to 175.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 175.011. Minnow Transport and Sale

(a) No person may transport any minnows taken from the water of Fayette County out of the county for the purpose of sale, nor transport more than 200 minnows out of the county for any purpose.

(b) Possession of more than 200 minnows is prima facie evidence of a violation of this section.

(c) This section does not apply to the transportation of minnows by the state and federal fish hatcheries in Fayette County.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 176. FISHER COUNTY

§ 176.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Fisher County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 177. FLOYD COUNTY

§ 177.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Floyd County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 178. FOARD COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

178.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

178.011. Deer.

SUBCHAPTER C. BIRDS

178.021. Turkey.

178.022. Quail.

SUBCHAPTER D. FISH

178.031. Minnow Transport.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 178.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Foard County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 178.002 to 178.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 178.011. Deer

(a) No person may hunt deer in Foard County except during the open season between November 30 and December 15, both dates inclusive.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 178.012 to 178.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 178.021. Turkey

(a) No person may hunt wild turkey in Foard County except during the open season between November 30 and December 15, both dates inclusive.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 178.022. Quail

(a) No person may hunt quail in Foard County except during the open season between December 1 and January 31, both dates inclusive. No person may kill more than 12 quail in any one day in Foard County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 178.023 to 178.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 178.031. Minnow Transport

(a) No person may transport into another county any minnows caught, seined, or taken from the water of Foard County, except that a person may transport into another county no more than 150 minnows for personal use or any minnows raised in a minnow hatchery in this state.

(b) For the purpose of this section, a "minnow hatchery" is a pond or series of ponds situated wholly on private, enclosed property and not connected with nor a part of any stream, and used either in whole or in part for the propagation of minnows.

(c) Possession of more than 500 minnows by any person at one time is prima facie evidence of a violation of this section.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 179. FORT BEND COUNTY

§ 179.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Fort Bend County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 180. FRANKLIN COUNTY

§ 180.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Franklin County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 181. FREESTONE COUNTY

§ 181.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Freestone County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 182. FRIO COUNTY

§ 182.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Frio County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 183. GAINES COUNTY

§ 183.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Gaines County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 184. GALVESTON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

184.001. Regulatory Act: Applicability.

184.002. Regulatory Act: Red Drum.

SUBCHAPTER B. BIRDS

184.011. Turkey.

SUBCHAPTER C. FISH

184.021. Galveston Bay: Seines.

184.022. Other Water: Net and Seines.

184.023. Seining Near Cities Prohibited.

184.024. Commission May Close Certain Water.

184.025. Nets and Trotlines: Use [NEW].

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 184.001. **Regulatory Act: Applicability**

[Text of section effective until October 1, 1978]

The Uniform Wildlife Regulatory Act does not apply to wildlife resources in Galveston County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[For text of section effective October 1, 1978, see § 184.001, post]

§ 184.001. **Regulatory Act: Applicability**

[Text of section effective October 1, 1978]

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Galveston County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 724, ch. 270, § 10, eff. Oct. 1, 1978.]

[For text of section effective until October 1, 1978, see § 184.001, ante]

§ 184.002. **Regulatory Act: Red Drum**

[Text of section added effective October 1, 1978]

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to red drum in Galveston County.

[Added by Acts 1977, 65th Leg., p. 724, ch. 270, § 10, eff. Oct. 1, 1978.]

[Sections 184.003 to 184.010 reserved for expansion]

SUBCHAPTER B. BIRDS

§ 184.011. **Turkey**

(a) No person may hunt wild turkey in Galveston County except during the open season beginning on November 16 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 184.012 to 184.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 184.021. **Galveston Bay: Seines**

(a) Except as provided in Subsection (b) of this section, it is lawful to use strike nets, gill nets, trammel nets, and shrimp trawls for the purpose of taking fish in the water of East Galveston Bay in Galveston County during the period beginning on

August 15 of one year and extending through May 15 of the following year.

(b) No person may use a strike net, gill net, trammel net, or shrimp trawl for the purpose of taking fish in any of the following water of Galveston County at any time:

- (1) Swan Lake;
- (2) Moses Lake;
- (3) Clear Lake;
- (4) Dickinson Bayou or Bay west of a line from Miller's Point to April Fool Point;
- (5) water lying northwest of a line from Kemah in Galveston County to Mesquite Knoll in Chambers County; and

(6) water of Galveston Bay lying east of a line from the extreme western point of Smith's Point in Chambers County to the west bank of Siever's Cut where East Bay intersects with the north bank of the Intracoastal Canal on Bolivar Peninsula in Galveston County at Siever's Fish Camp, which cut is between Elm Grove Point and Baffle Point, both points being on the north shore of Bolivar Peninsula.

(c) No person operating under the authority of Subsection (a) of this section may use a strike net, gill net, trammel net, or shrimp trawl for catching fish if the meshes are less than one and one-half inches from knot to knot.

(d), (e) Repealed by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(6), eff. May 20, 1977.

(f) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200, and his commercial fishing license is subject to revocation for one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 382, ch. 190, § 5(6), eff. May 20, 1977.]

§ 184.022. **Other Water: Net and Seines**

(a) No person may place or use a seine, net, or other device for catching fish, except an ordinary pole and line, casting rod and reel, artificial bait, trotline, setline, flounder gig and light, or cast net or minnow seine of not more than 20 feet long for catching bait only, in any of the bays, streams, bayous, or canals of Galveston County not covered by Section 184.021 of this code, or in San Luis Pass in Galveston County.

(b) Repealed by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(7), eff. May 20, 1977.

(c) The identification of a boat, vehicle, seine, or net from or by which a violation of this section occurred is prima facie evidence against the owner of the boat, vehicle, net, or seine or against the person last in charge of the boat.

(d) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$100. On a second or subsequent conviction, the person is punishable by a fine of not less than \$100 nor more than \$200, and his commercial fishing license is subject to forfeiture for a period of one year. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 382, ch. 190, § 5(7), eff. May 20, 1977.]

§ 184.023. Seining Near Cities Prohibited

(a) No person may attempt to take any fish, shrimp, green turtle, loggerhead, or terrapin by the use of a seine, drag, fyke, setnet, trammel net, trap, dam, or weir from a bay or other navigable water in Galveston County within one mile of the limits of a city.

(b) In this section, "city" means any community having 100 or more families within an area of one square mile.

(c) A city shall set out and maintain buoys, stakes, or other markers showing the limits within which Subsection (a) of this section applies.

(d) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. In a prosecution under this section, identification of the boat from which a violation occurred, if any, is prima facie evidence against the owner, lessee, person in charge, or master of the boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 184.024. Commission May Close Certain Water

(a) The commission may close tidal water in Galveston County for the use of nets, seines, spears, gigs, lights, and other devices for catching fish except a hook and line or cast net or minnow seine not more than 20 feet in length when the commission finds that the closing is best for the protection and increase of fish life or to prevent their destruction.

(b) The commission shall give notice of the closing at least two weeks before the effective date of the closing. The notice must contain:

- (1) the reason for the closing;
- (2) a designation of the area to be closed;
- (3) the effective date and duration of the closing;
- (4) a statement that after the effective date of the closing it will be unlawful to drag a seine, set a net, or use a gig and light to catch fish in the described area.

(c) After an investigation and hearing, and on a finding that the closing of an area no longer promotes the conservation of fish, the commission may

open the area to seining, netting, gigging, and other fishing.

(d) The department may seize seines used in violation of this section and hold them as evidence in the trial of a defendant, and no suit may be maintained against the department or an authorized employee for the seizure.

(e) This section does not apply to any of the water to which Sections 184.021, 184.022, and 184.023 apply. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 184.025. Nets and Trotlines: Use

(a) In that portion of Galveston Bay or Trinity Bay in Galveston County where nets, seines, and saltwater trotlines are permitted, during that period beginning the Saturday of Memorial Day weekend through sunset on Labor Day, nets and saltwater trotlines may not be used from sunset Friday to sunset Sunday.

(b) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$200. On a second or subsequent conviction, the person is punishable by a fine of not less than \$200 nor more than \$500 and shall forfeit the license under which the person is fishing.

[Added by Acts 1977, 65th Leg., p. 724, ch. 270, § 11, eff. Sept. 1, 1977.]

CHAPTER 185. GARZA COUNTY

§ 185.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Garza County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 186. GILLESPIE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
186.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

186.011. Definitions.
186.012. Open Archery Season.
186.013. Prohibited Archery Equipment.
186.014. Deer Permits.
186.015. Limit and Possession of Deer.
186.016. Penalty.
186.017. Possession of Firearms.

SUBCHAPTER C. FISH

Section

- 186.021. Fish Sale.
- 186.022. Repealed.
- 186.023. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 186.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Gillespie County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 186.002 to 186.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 186.011. Definitions

As used in this subchapter:

- (1) "Buck deer" means a deer that has a hardened antler protruding through the skin.
- (2) "Antlerless deer" is any deer other than a buck deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 186.012. Open Archery Season

(a) The open archery season in Gillespie County begins on October 1 and extends through October 31 each year.

(b) During the open archery season a person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, and collared peccary (javelina) by means of bows and arrows. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 186.013. Prohibited Archery Equipment

No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, and collared peccary (javelina) by means of:

- (1) a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards;
- (2) arrows that are not equipped with broadhead hunting points at least seven-eighths of an inch in width and not more than one and one-half inches in width;
- (3) arrows that do not have on them in a nonwater-soluble medium the name and address of the user; or
- (4) poisoned, drugged, or explosive arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 186.014. Deer Permits

(a) At least 15 days prior to the opening date of the open archery season, a landowner or lessee in Gillespie County who desires to permit the hunting of deer on his land with bows and arrows during the open archery season may apply to the department for antlerless deer permits.

(b) The department shall issue to each applicant the number of antlerless deer permits consistent with sound wildlife management practices and consistent with any law authorizing the department to regulate the taking of antlerless deer.

(c) Landowners or lessees receiving antlerless deer permits shall return the fully completed stubs from used permits and all unused permits and stubs to the issuing officer not later than January 10 of the year following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 186.015. Limit and Possession of Deer

(a) No person may take or kill more than one antlerless deer with bow and arrow during the open archery season in Gillespie County.

(b) No person may possess an antlerless deer in Gillespie County unless he has in his possession an antlerless deer permit on which appears the date of the kill, the hunter's name, and the signature of the owner or agent on whose tract the deer was killed.

(c) No person may possess the carcass of any deer in Gillespie County which does not have attached to it a tag issued to him on his valid hunting license unless the carcass has been finally processed.

(d) In Gillespie County no person may attach the bonus deer tag from a valid hunting license to a deer other than an antlerless deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 186.016. Penalty

A person who violates Section 186.012 through Section 186.015 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 186.017. Possession of Firearms

(a) No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) during the open archery season in Gillespie County while having any type of firearm or crossbow on his person or in his possession and simultaneously possessing a bow and arrow in an automobile or in a hunting camp.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

[Sections 186.018 to 186.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 186.021. Fish Sale

(a) No person may catch or possess for the purpose of sale any catfish, perch, crappie, bream, or bass in Gillespie County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 186.022. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 186.023. Leaving Fish to Die

(a) No person may knowingly place, throw, deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Gillespie County any catfish, perch, crappie, white perch, bass, trout, or other edible fish, and leave the fish to die without any intention of eating the fish or using them for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 187. GLASSCOCK COUNTY

§ 187.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Glasscock County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 188. GOLIAD COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

188.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

188.011. Squirrel.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 188.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Goliad County except for deer, quail, turkey, and alligators.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 188.002 to 188.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 188.011. Squirrel

Squirrel may be killed at any time in Goliad County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 189. GONZALES COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

189.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

189.011. Fishing Methods.

189.012. Fish Sale.

189.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 189.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Gonzales County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 189.002 to 189.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 189.011. Fishing Methods

(a) No person may catch any fish from the public water of Gonzales County by any means other than an ordinary hook and line or artificial bait or trotline not more than 300 feet in length, but a net or seine not more than 20 feet in length may be used to take minnows or perch for bait only.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 189.012. Fish Sale

(a) No person may sell, offer for sale, or possess for the purpose of sale any fish, except minnows and perch used for bait, taken from the public water of Gonzales County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 189.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to the water of Gonzales County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 190. GRAY COUNTY

§ 190.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Gray County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 191. GRAYSON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section 191.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

191.011. Repealed. 191.012. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 191.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Grayson County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 191.002 to 191.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 191.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking bait fish, see, now, § 66.010.

§ 191.012. Fish Sale

(a) Except as provided in Subsection (b) of this section, no person may catch fish from the fresh water of Grayson County for the purpose of sale or possess for the purpose of sale fish caught from the fresh water of Grayson County.

(b) A person may sell or buy bait fish, sucker, buffalo fish, carp, shad, and gar caught from the fresh water of Grayson County, including Lake Texoma in Grayson County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10. Each fish caught or possessed for the purpose of sale constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 215, ch. 105, § 13, eff. Sept. 1, 1977.]

CHAPTER 192. GREGG COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section 192.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

192.011. Deer.

SUBCHAPTER C. BIRDS

192.021. Turkeys.

SUBCHAPTER D. FUR-BEARING ANIMALS

192.031. Hunting Mink With Dogs.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 192.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Gregg County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 192.002 to 192.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 192.011. Deer

(a) No person may take or kill any deer in Gregg County, except that a person may take or kill buck deer with pronged horns during the open season between November 15 and November 30, both dates inclusive.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$500 or by confinement in the county jail for not less than ten days nor more than six months, or both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 192.012 to 192.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 192.021. Turkeys

(a) No person may hunt any wild turkeys in Gregg County except during the open season beginning on November 16 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 192.022 to 192.030 reserved for expansion]

SUBCHAPTER D. FUR-BEARING ANIMALS

§ 192.031. Hunting Mink With Dogs

(a) No person may hunt wild mink in Gregg County with dogs.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each mink found in possession in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 193. GRIMES COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT [NEW]

Section

193.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS [NEW]

193.011. Deer Season.

193.012. Deer: Bag Limits.

Section

193.013. Deer: Weapons.

193.014. Penalty.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT [NEW]

§ 193.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources other than deer, of Grimes County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1742, ch. 694, § 1, eff. Aug. 29, 1977.]

[Sections 193.002 to 193.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS [NEW]

§ 193.011. Deer Season

(a) No person may hunt deer in Grimes County except during the open season for deer.

(b) The open season for deer in Grimes County begins on the Saturday nearest to November 15 and extends through December 31 of each year.

[Added by Acts 1977, 65th Leg., p. 1742, ch. 694, § 1, eff. Aug. 29, 1977.]

§ 193.012. Deer: Bag Limits

(a) No person may take more than two buck deer during an open season in Grimes County.

(b) No person may hunt spike or antlerless deer in Grimes County.

(c) In this section:

(1) "Buck deer" means a deer having a forked antler.

(2) "Spike deer" and "antlerless deer" include all deer other than buck deer.

[Added by Acts 1977, 65th Leg., p. 1742, ch. 694, § 1, eff. Aug. 29, 1977.]

§ 193.013. Deer: Weapons

No person may use a bow and arrow or a muzzle-loading firearm in hunting deer in Grimes County or possess a bow and arrow or a muzzle-loading weapon while hunting deer in Grimes County.

[Added by Acts 1977, 65th Leg., p. 1742, ch. 694, § 1, eff. Aug. 29, 1977.]

§ 193.014. Penalty

A person who violates a provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Added by Acts 1977, 65th Leg., p. 1743, ch. 694, § 1, eff. Aug. 29, 1977.]

CHAPTER 194. GUADALUPE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

194.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

194.011. Fish Sale.

194.012. Explosives.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 194.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Guadalupe County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 194.002 to 194.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 194.011. Fish Sale

(a) No person may barter, buy, or sell, or offer to barter or sell, any bass, crappie, perch, catfish, or any other fish, except bait fish, taken from the fresh water of Guadalupe County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 215, ch. 105, § 14, eff. Sept. 1, 1977.]

§ 194.012. Explosives

(a) No person may destroy fish by using any dynamite, powder, or any other explosive in any freshwater stream in Guadalupe County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$1,000 or by confinement in the county jail for no more than one year, or both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 195. HALE COUNTY

§ 195.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hale County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 196. HALL COUNTY

§ 196.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hall County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 197. HAMILTON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

197.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

197.011. Fish Sale.

197.012. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 197.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hamilton County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 197.002 to 197.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 197.011. Fish Sale

(a) No person may barter, buy, or sell or offer to barter or sell any bass, crappie, perch, channel or Opelousas catfish, or any other fish, except bait fish, taken from the Bosque River or its tributaries in Hamilton County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50. Each fish bartered, bought, or sold or offered for barter or sale constitutes a separate offense. A person who violates this section may be prosecuted in the county where the offense is committed, where he is found with the fish in his possession, or where the fish are sold or offered for sale.

(c) It is the duty of the district judge of the judicial district in Hamilton County to give a special charge on this law to the grand juries of Hamilton County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 215, ch. 105, § 15, eff. Sept. 1, 1977.]

§ 197.012. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 198. HANSFORD COUNTY**§ 198.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hansford County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 199. HARDEMAN COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

199.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

199.011. Repealed.

SUBCHAPTER C. BIRDS

199.021. Quail.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 199.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hardeman County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 199.002 to 199.010 reserved for expansion]

SUBCHAPTER B. FISH**§ 199.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977**

Sale, transportation, and taking of bait fish, see, now, § 66.010.

SUBCHAPTER C. BIRDS**§ 199.021. Quail**

The proclamations of the commission under the Uniform Wildlife Regulatory Act (Chapter 61 of this code) shall provide for an open season for the hunting of quail in Hardeman County beginning on December 1 of one year and extending through January 31 of the following year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 200. HARDIN COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

200.001. Regulatory Act: Applicability.

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

200.011. Hunting With Dogs.

SUBCHAPTER C. GAME ANIMALS

200.021. Hunting Deer With Dogs.

200.022. Possession of Deer.

SUBCHAPTER D. FUR-BEARING ANIMALS

200.031. Attracting Foxes With Calling Devices.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 200.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hardin County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 200.002 to 200.010 reserved for expansion]

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING**§ 200.011. Hunting With Dogs**

A person may use dogs to hunt game birds and game animals in Hardin County, but only during the open season for the game bird or game animal. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 200.012 to 200.020 reserved for expansion]

SUBCHAPTER C. GAME ANIMALS**§ 200.021. Hunting Deer With Dogs**

(a) No person may allow or permit a dog under his control to hunt, chase, or molest any wild deer in Hardin County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200 and by confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 200.022. Possession of Deer

(a) No person may possess the freshly killed carcass of a wild deer, or part of one, in Hardin County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200 and by confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 200.023 to 200.030 reserved for expansion]

SUBCHAPTER D. FUR-BEARING ANIMALS

§ 200.031. Attracting Foxes With Calling Devices

(a) No person may use any horn, recording, or other device to call or attract a wild fox in Hardin County, except that a person may use the devices for scientific research or in making wildlife movies after obtaining a permit to use them from the Parks and Wildlife Department.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 201. HARRIS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

201.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

- 201.011. Regulatory Act: Saltwater Marine Life Excluded.
- 201.012. Seining Near Cities Prohibited.
- 201.013. Galveston Bay: Nets and Seines.
- 201.014. Other Water: Nets and Seines.
- 201.015. Commission May Close Certain Water.
- 201.016. Nets and Trotlines: Use [NEW].
- 201.016. Crab Traps and Pots; Certain Bays [NEW].

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 201.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Harris County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 201.002 to 201.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 201.011. Regulatory Act: Saltwater Marine Life Excluded

[Text of section effective until October 1, 1978]

In Harris County, saltwater species of marine life are not wildlife resources under the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[For text of section effective October 1, 1978, see § 201.011, post]

§ 201.011. Regulatory Act: Marine Life Excluded

[Text of section effective October 1, 1978]

In Harris County, saltwater species of marine life, except red drum, are not wildlife resources under the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 725, ch. 270, § 12, eff. Oct. 1, 1978.]

For text of section effective until October 1, 1978, see § 201.011, ante

§ 201.012. Seining Near Cities Prohibited

(a) No person may attempt to take any fish, shrimp, green turtle, loggerhead, or terrapin by the use of a seine, drag, fyke, setnet, trammel net, trap, dam, or weir from a bay or other navigable water in Harris County within one mile of the limits of a city.

(b) In this section, "city" means any community having 100 or more families within an area of one square mile.

(c) A city shall set out and maintain buoys, stakes, or other markers showing the limits within which Subsection (a) of this section applies.

(d) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. In a prosecution under this section, identification of the boat from which a violation occurred, if any, is prima facie evidence against the owner, lessee, person in charge, or master of the boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 201.013. Galveston Bay: Nets and Seines

(a) No person may possess, use, or place in or on that portion of Galveston Bay lying in Harris County a setnet, gill net, trap, or other similar device for the catching of fish.

(b) A person may possess and use in the water described in Subsection (a) of this section a trammel net not exceeding 1,200 feet in length and having

mesh of not less than three and one-half inches when stretched.

(c) This section does not prohibit the possession of a device the use of which is prohibited in the water described in Subsection (a) of this section when the device is on board a vessel in port or in a channel while under way to a place where the use of the device is not prohibited.

(d), (e) Repealed by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(8), eff. May 20, 1977.

(f) A person who violates this section is guilty of a misdemeanor and on a first conviction shall be punished by a fine of not less than \$50 nor more than \$250. On a second or subsequent conviction, he may be punished by a fine of not less than \$50 nor more than \$250, and his commercial fishing license is subject to forfeiture.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 382, ch. 190, § 5(8), eff. May 20, 1977.]

§ 201.014. Other Water: Nets and Seines

(a) No person may place or use a seine, net, or other device for catching fish, except an ordinary pole and line, casting rod and reel, artificial bait, trotline, setline, flounder gig and light, or cast net or minnow seine of not more than 20 feet long for catching bait only, in any of the saltwater bays, streams, bayous, or canals of Harris County other than Galveston Bay.

(b) Repealed by Acts 1977, 65th Leg., p. 382, ch. 190, § 5(9), eff. May 20, 1977.

(c) The identification of a boat, vehicle, net, or seine from or by which a violation of this section occurred is prima facie evidence against the owner of the boat, vehicle, net, or seine or against the person last in charge of the boat.

(d) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$100. On a second or subsequent conviction, the person is punishable by a fine of not less than \$100 nor more than \$200 and his commercial fishing license is subject to forfeiture for a period of one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 382, ch. 190, § 5(9), eff. May 20, 1977.]

§ 201.015. Commission May Close Certain Water

(a) The commission may close tidal water in Harris County for the use of nets, seines, spears, gigs, lights, and other devices for catching fish except a hook and line or cast net or minnow seine not more than 20 feet in length when the commission finds that the closing is best for the protection and increase of fish life or to prevent their destruction.

(b) The commission shall give notice of the closing at least two weeks before the effective date of the closing. The notice must contain:

- (1) the reason for the closing;
- (2) a designation of the area to be closed;
- (3) the effective date and duration of the closing;

(4) a statement that after the effective date of the closing it will be unlawful to drag a seine, set a net, or use a gig and light to catch fish in the described area.

(c) After an investigation and hearing, and on a finding that the closing of an area no longer promotes the conservation of fish, the commission may open the area to seining, netting, gigging, and other fishing.

(d) The department may seize seines used in violation of this section and hold them as evidence in the trial of a defendant and no suit may be maintained against the department or an authorized employee for the seizure.

(e) This section does not apply to any of the water to which Sections 201.012, 201.013, and 201.014 apply. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 201.016. Nets and Trotlines: Use

[Text as added by Acts 1977, 65th Leg., p. 725, ch. 270, § 13]

(a) No person may use a net, seine, or trotline within a saltwater bay or lake in Harris County:

- (1) during the period beginning on Saturday of Memorial Day weekend and extending through sunset on Labor Day; and
- (2) during the period beginning at sunset on Friday and extending through sunset on Sunday of each week.

(b) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$200. On a second or subsequent conviction, the person is punishable by a fine of not less than \$200 nor more than \$500 and shall forfeit the license under which the person is fishing.

[Added by Acts 1977, 65th Leg., p. 725, ch. 270, § 13, eff. Sept. 1, 1977.]

For text as added by Acts 1977, 65th Leg., p. 1258, ch. 484, § 5, see Section 201.016, post.

§ 201.016. Crab Traps and Pots; Certain Bays

[Text as added by Acts 1977, 65th Leg., p. 1258, ch. 484, § 5]

(a) This section applies only to the water of Burnett Bay, Crystal Bay, Scott Bay, and Black Duck Bay in Harris County.

(b) No person may possess, use, or place more than three crab traps, crab pots, or other similar devices used for the catching of crabs on or in the water described in Subsection (a) of this section. This prohibition does not include crab lines, hooks or lines, or trotlines normally employed for the catching of crabs.

(c) It is an affirmative defense to a prosecution under this section that the person possessed the trap, pot, or device prohibited by Subsection (b) of this section on board a vessel while en route to water where the use of the trap, pot, or device is not prohibited and that the trap, pot, or other device was not used for the purpose of catching crabs in the water to which this section applies.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

(e) Peace officers and other authorized employees of the department may seize crab traps, crab pots, and other devices used in violation of this section. Items seized under this section shall be held for evidence and may be destroyed or disposed of as required by law if used in violation of this section. No suit may be maintained against an officer or an authorized employee of the department for the seizure of items as authorized by this section.

[Added by Acts 1977, 65th Leg., p. 1258, ch. 484, § 5, eff. Sept. 1, 1977.]

For text as added by Acts 1977, 65th Leg., p. 725, ch. 270, § 13, see Section 201.016, ante.

CHAPTER 202. HARRISON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

202.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

202.011. Hunting Deer With Dogs.

SUBCHAPTER C. FISH

202.021. Fish Sale.

SUBCHAPTER D. CADDO LAKE

202.031. Firing Weapons.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 202.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Harrison County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 202.002 to 202.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 202.011. Hunting Deer With Dogs

No person may pursue or take deer with dogs in Harrison County except in that portion of the county south of Interstate Highway 20 and east of State Highway 43.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 202.012 to 202.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 202.021. Fish Sale

(a) No person may buy or sell, offer to buy or sell, possess for sale, or carry, transport, or ship for sale, barter, or exchange any white bass or striped bass (barfish) in Harrison County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of no more than \$100. Each sale, shipment, or other act in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 202.022 to 202.030 reserved for expansion]

SUBCHAPTER D. CADDO LAKE

§ 202.031. Firing Weapons

(a) No person may shoot a pistol or rifle in, on, along, or across Caddo Lake in Harrison County.

(b) This section does not apply to peace officers, game management officers, or representatives of the Parks and Wildlife Commission in the discharge of their official duties, nor does it prevent a person from hunting with a shotgun during an open season or when it is lawful to hunt in or upon Caddo Lake in Harrison County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

(d) Venue for prosecutions for violations of this section is in Harrison or Marion counties. Prosecutions may be brought and maintained in either county without regard to the county where the offense was committed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 203. HARTLEY COUNTY**§ 203.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hartley County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 204. HASKELL COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

204.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

204.011. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 204.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Haskell County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 204.002 to 204.010 reserved for expansion]

SUBCHAPTER B. FISH**§ 204.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977**

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 205. HAYS COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

205.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

205.011. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 205.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hays County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 205.002 to 205.010 reserved for expansion]

SUBCHAPTER B. FISH**§ 205.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977**

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 206. HEMPHILL COUNTY**§ 206.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hemphill County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 207. HENDERSON COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

207.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

207.011. Cedar Creek Reservoir: Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 207.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Henderson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 207.002 to 207.010 reserved for expansion]

SUBCHAPTER B. FISH**§ 207.011. Cedar Creek Reservoir: Fish Sale**

(a) Except as provided by Subsection (b) of this section no person may sell or offer to sell any fish, except bait fish, taken from that portion of the Joe B. Hogsett Reservoir known as the Cedar Creek Reservoir situated in Henderson County.

(b) This section does not prohibit the selling of rough fish taken by seine or net under contract with the Parks and Wildlife Department as provided by general law.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 216, ch. 105, § 16, eff. Sept. 1, 1977.]

CHAPTER 208. HIDALGO COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

208.001. Regulatory Act: Applicability.

SUBCHAPTER B. BIRDS

208.011. Pheasants.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 208.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hidalgo County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 208.002 to 208.010 reserved for expansion]

SUBCHAPTER B. BIRDS

§ 208.011. Pheasants

(a) No person may hunt wild pheasants in Hidalgo County except during the open season, which is the months of October, November, December, January, February, and March. During the open season wild pheasants may be hunted in Hidalgo County only on enclosed tracts of land consisting of not less than 250 acres that have been stocked with wild pheasants raised by a licensed game breeder in this state.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each pheasant taken or killed in violation of this section constitutes a separate offense.

(c) This section does not permit the hunting of pheasants on private land without consent of the person owning or having control of the land. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 209. HILL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

209.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

209.011. Fish Sale.

209.012. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 209.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hill County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 209.002 to 209.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 209.011. Fish Sale

(a) No person may offer, expose, or possess for sale or sell any fish caught or taken from the Brazos River, Lake Whitney, or their tributaries in Hill County except as authorized by the Parks and Wildlife Department.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Possession of each fish taken in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 209.012. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 210. HOCKLEY COUNTY

§ 210.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hockley County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 211. HOOD COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

211.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

211.011. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT

§ 211.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hood County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 211.002 to 211.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 211.011. **Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977**

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 212. HOPKINS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT

Section

212.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

212.011. Deer.

212.012. Squirrel.

SUBCHAPTER C. BIRDS

212.021. Turkey.

212.022. Quail.

SUBCHAPTER D. FUR-BEARING ANIMALS

212.031. Hunting Mink With Dogs.

SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT

§ 212.001. **Regulatory Act: Applicability**

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Hopkins County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 212.002 to 212.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 212.011. **Deer**

(a) No person may hunt deer in Hopkins County except during the open season beginning on November 22 and extending through December 1.

(b) During the open season, no person may take, kill, or have in his possession a deer other than a buck with pronged horn. No person may take or kill more than one buck deer in one season.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 212.012. **Squirrel**

(a) No person may hunt squirrel in Hopkins County except during the open seasons beginning on May 1 and extending through July 31, and beginning on October 1 and extending through December 31. During the open seasons no person may kill, take, or have in his possession more than eight squirrels a day.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each squirrel killed, taken, or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 212.013 to 212.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 212.021. **Turkey**

(a) No person may hunt any wild turkey in Hopkins County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200 or confinement in the county jail for not less than 1 day nor more than 30 days, or both. Each turkey killed or possessed in violation of this section constitutes a separate offense and shall be seized and disposed of as provided in Section 12.110 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 212.022. **Quail**

(a) No person may hunt wild quail in Hopkins County except during the open season beginning on December 1 and extending through January 31. During the open season, no person may hunt wild quail in Hopkins County on Sunday.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 212.023 to 212.030 reserved for expansion]

SUBCHAPTER D. FUR-BEARING ANIMALS

§ 212.031. **Hunting Mink With Dogs**

A person may hunt wild mink in Hopkins County with dogs. A person may have in his possession a mink pelt while hunting with dogs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 213. HOUSTON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

213.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

213.011. Deer.

213.012. Special Archery Season [NEW].

SUBCHAPTER C. FISH

213.021. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 213.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Houston County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 213.002 to 213.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 213.011. Deer

(a) No person may hunt wild deer in Houston County except during the open season beginning on November 16 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each deer taken or killed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 213.012. Special Archery Season

The commission shall provide for an archery season for the taking of deer in Houston County beginning on October 1 and extending through October 31 of each year.

[Added by Acts 1977, 65th Leg., p. 1258, ch. 484, § 4(b), eff. Sept. 1, 1977.]

[Sections 213.013 to 213.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 213.021. Fish Sale

(a) No person may sell, offer for sale, or possess for sale any fish, except bait fish, caught or taken from the public fresh water of Houston County, except fish taken from those parts of the Trinity and Neches rivers which are in Houston County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 216, ch. 105, § 17, eff. Sept. 1, 1977.]

CHAPTER 214. HOWARD COUNTY

§ 214.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Howard County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 215. HUDSPETH COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

215.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

215.011. Regulatory Act: Exemption.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 215.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hudspeth County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 215.002 to 215.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 215.011. Regulatory Act: Exemption

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to fish in Hudspeth County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 216. HUNT COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

216.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

216.011. Fish Sale.

216.012. Sale of Fish From Lake Tawakoni.

216.013. Leaving Fish to Die.

SUBCHAPTER C. SABINE RIVER

Section

216.021. Sabine River: Navigability.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 216.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hunt County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 216.002 to 216.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 216.011. Fish Sale

(a) No person may sell or offer for sale any bass, white perch, crappie, or catfish caught in the streams of Hunt County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 216.012. Sale of Fish From Lake Tawakoni

(a) Except as provided in this section, no person may sell or offer to sell any fish, except bait fish, taken from Lake Tawakoni in Hunt County.

(b) This section does not prohibit the sale of rough fish taken by net or seine under contract with the department as provided in this code.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 216, ch. 105, § 18, eff. Sept. 1, 1977.]

§ 216.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Hunt County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention to eat the fish or use them for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 216.014 to 216.020 reserved for expansion]

SUBCHAPTER C. SABINE RIVER

§ 216.021. Sabine River: Navigability

(a) That part of the Sabine River located between its source and its juncture with the east boundary line of Hunt County is not a navigable stream for the purpose of hunting and fishing rights on and along the stream. This section does not divest the state of whatever title it may have to the bed or water of the stream.

(b) Article 5302, Revised Civil Statutes of Texas, 1925, does not apply to that portion of the Sabine River described in Subsection (a) of this section. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 217. HUTCHINSON COUNTY

§ 217.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Hutchinson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 218. IRION COUNTY

§ 218.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Irion County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 219. JACK COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

219.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

219.011. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 219.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Jack County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 219.002 to 219.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 219.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 220. JACKSON COUNTY

§ 220.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Jackson County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 221. JASPER COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

221.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

- 221.011. Hunting With Dogs.
- 221.012. Hunting Deer With Dogs.
- 221.013. Possession of Deer.

SUBCHAPTER C. FISH

221.021. Fish Sale.

SUBCHAPTER D. FUR-BEARING ANIMALS

- 221.031. Regulatory Act: Exclusion.
- 221.032. Calling Devices.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 221.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Jasper County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 221.002 to 221.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 221.011. Hunting With Dogs

A person may use dogs to hunt game birds and game animals in Jasper County only during the open season for the game bird or game animal. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 221.012. Hunting Deer With Dogs

(a) No person may knowingly allow a dog under his control to hunt wild deer in Jasper County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200 and by confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 221.013. Possession of Deer

(a) No person may possess the freshly killed carcass of a wild deer in Jasper County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200 and confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 221.014 to 221.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 221.021. Fish Sale

(a) No person may sell, offer for sale, or possess for sale any black bass, trout, white perch, or catfish of less than 18 inches in length taken from the water of the Sabine, Attoyoc, Angelina, and Neches rivers or any of their tributaries or lakes through which the flood streams of the rivers or their tributaries flow in Jasper County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$500, or confinement in the county jail for not less than 10 days nor more than 30 days, or both. Each fish sold in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 221.022 to 221.030 reserved for expansion]

SUBCHAPTER D. FUR-BEARING ANIMALS

§ 221.031. Regulatory Act: Exclusion

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to fox in Jasper County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 221.032. Calling Devices

(a) No person may use a horn, recording, or other device to call or attract wild fox in Jasper County unless he has obtained a permit from the department allowing him to use the devices for scientific research or making wildlife movies.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 222. JEFF DAVIS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

222.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

222.011. Regulatory Act: Exemption.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 222.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Jeff Davis County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 222.002 to 222.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 222.011. Regulatory Act: Exemption

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to fish in Jeff Davis County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 223. JEFFERSON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

223.001. Regulatory Act: Applicability.

SUBCHAPTER B. SHRIMP

223.011. Regulatory Act: Exclusion.

223.012. Shrimp Regulations.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 223.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Jefferson County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 223.002 to 223.010 reserved for expansion]

SUBCHAPTER B. SHRIMP

§ 223.011. Regulatory Act: Exclusion

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to shrimp in Jefferson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 223.012. Shrimp Regulations

(a) The commission may regulate the taking of shrimp from the coastal water of Jefferson County to provide for the most profitable and equitable harvest of shrimp from year to year and to conserve and protect the shrimp resources of Jefferson County from depletion and waste.

(b) The commission may make regulations to carry out the policy of this section including regulating:

- (1) the size of shrimp that may be taken;
- (2) open and closed shrimp seasons;
- (3) the means of taking shrimp;
- (4) the size and type of boats and equipment that may be used for taking shrimp;
- (5) the length and mesh size of nets and trawls and their spreading devices; and
- (6) the possession, transportation, sale, and other handling of shrimp in the coastal water of Jefferson County.

(c) The commission, by regulation adopted in accordance with this section, may provide for the licensing of all persons taking, selling, or handling shrimp in Jefferson County and may license boats and equipment used for the taking, selling, or handling of shrimp in Jefferson County. The commission may adopt the licensing provisions of the Texas Shrimp Conservation Act (Chapter 77 of this code).

(d) The commission shall conduct continuous research, investigations, and studies of the shrimp resources in Jefferson County in the same manner as required by Sections 77.004, 77.005, and 77.006 of this code. Based on the information obtained and after hearings, the commission shall promulgate the regulations authorized by this section. The hearings, the

methods of adoption of the regulations, the effective date of the regulations, and the procedure for appeal shall be governed by the provisions of Chapter 125, Acts of the 52nd Legislature, Regular Session, 1951, as amended.

(e) "Coastal water" is defined by Section 77.001(1) of this code.

(f) A person who violates a regulation of the commission adopted under this section shall be punished as provided in Section 77.020 of this code. The commission has all powers of enforcement granted to it under Chapter 77 of this code for the enforcement of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 224. JIM HOGG COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

224.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

224.011. Deer Season.

224.012. Collared Peccary.

SUBCHAPTER C. BIRDS

224.021. Quail Season.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 224.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Jim Hogg County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 224.002 to 224.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 224.011. Deer Season

(a) No person may hunt deer in Jim Hogg County except during the open season beginning on the second Saturday in November and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 224.012. Collared Peccary

(a) Collared peccary (javelina) may be hunted at any time in Jim Hogg County.

(b) No person may sell, offer for sale, or take or possess for the purpose of barter or sale any collared peccary (javelina) or any part of a collared peccary (javelina).

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each collared peccary (javelina) or part of a collared peccary (javelina) possessed for sale, sold, or offered for sale in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 224.013 to 224.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 224.021. Quail Season

(a) No person may hunt wild quail in Jim Hogg County except during the open season beginning on November 15 of one year and extending through January 31 of the following year.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each quail taken or killed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1825, ch. 733, § 1, eff. Aug. 29, 1977.]

CHAPTER 225. JIM WELLS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

225.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

225.011. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 225.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Jim Wells County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 225.002 to 225.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 225.011. Fish Sale

(a) No person may take for sale any fish, except bait fish, from Lake Corpus Christi formerly known as Lake Lovenskiold in Jim Wells County.

(b) No person may take for sale any fish from the water of the Nueces River in Jim Wells County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 216, ch. 105, § 19, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 1401, ch. 565, § 1, eff. Aug. 29, 1977.]

CHAPTER 226. JOHNSON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

226.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

226.011. Fish Sale.
226.012. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 226.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Johnson County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 226.002 to 226.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 226.011. Fish Sale

(a) No person may sell, offer for sale, or possess for sale any fish caught or taken from the Brazos River, Lake Whitney, or their tributaries in Johnson County except as authorized by the department.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each fish possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 226.012. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 227. JONES COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

227.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

227.011. Fish Sale.
227.012. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 227.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Jones County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 227.002 to 227.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 227.011. Fish Sale

(a) No person may catch fish, except bait fish, in the public water of Jones County for commercial purposes.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$250. Each day a person violates this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 216, ch. 105, § 20, eff. Sept. 1, 1977.]

§ 227.012. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 228. KARNES COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

228.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

228.011. Sale of Collared Peccary (Javelina).

SUBCHAPTER C. FISH

228.021. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 228.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Karnes County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 228.002 to 228.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 228.011. **Sale of Collared Peccary (Javelina)**

(a) No person may take, kill, or possess for the purpose of sale or sell or offer for sale any collared peccary (javelina) or any part of a collared peccary (javelina) in Karnes County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each collared peccary (javelina) or part of a collared peccary (javelina) taken, possessed, or offered for sale or sold in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 228.012 to 228.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 228.021. **Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977**

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 229. KAUFMAN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

229.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

229.011. Fish Sale.

229.012. Sale of Certain Fish.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 229.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Kaufman County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 229.002 to 229.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 229.011. **Fish Sale**

(a) No person may take or possess for sale, sell, or offer for sale any bass, trout, crappie, white perch, bream or other perch or channel catfish measuring less than 12 inches in length, taken from the fresh water of Kaufman County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 229.012. **Sale of Certain Fish**

(a) No person may sell or offer to sell any fish, except bait fish, taken from Lake Tawakoni in Kaufman County or from Joe B. Hogsett Reservoir (Cedar Creek Reservoir) in Kaufman County.

(b) This section does not prohibit the selling of rough fish taken by seine or net under contract with the department as provided in this code.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 216, ch. 105, § 21, eff. Sept. 1, 1977.]

CHAPTER 230. KENDALL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

230.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

230.011. Definitions.

230.012. Open Archery Season.

230.013. Prohibited Archery Equipment.

230.014. Deer Permits.

230.015. Limit and Possession of Deer.

230.016. Penalty.

230.017. Possession of Firearms.

230.018. Axis Deer Hunting.

SUBCHAPTER C. BIRDS

230.021. Turkey Gobblers.

SUBCHAPTER D. FISH

230.031. Setlines.

230.032. Balcones Creek.

230.033. Penalty.

230.034. Fish Sale.

SUBCHAPTER E. SPECIAL REGULATORY PROVISIONS

230.041. Regulatory Authority.

230.042. Definitions.

Section

- 230.043. Investigations.
- 230.044. Open Seasons.
- 230.045. Consent of Landowner.
- 230.046. Regulations.
- 230.047. Amendments and Revocation.
- 230.048. Regulations for Antlerless Deer.
- 230.049. Antlerless Deer Permits.
- 230.050. Adoption of Regulations.
- 230.051. Approval of Commissioners Court.
- 230.052. Effective Date and Duration of Regulations.
- 230.053. Copies of Regulations.
- 230.054. Penalty.

**SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT**

§ 230.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Kendall County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 230.002 to 230.010 reserved for expansion]

**SUBCHAPTER B. PROVISIONS GENERALLY
APPLICABLE TO HUNTING**

§ 230.011. Definitions

As used in this subchapter:

- (1) "Buck deer" means a deer that has a hardened antler protruding through the skin.
- (2) "Antlerless deer" is any deer other than a buck deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.012. Open Archery Season

(a) The open archery season in Kendall County begins on October 1 and extends through October 31 each year.

(b) During the open archery season, a person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers, or bearded hens and collared peccary (javelina) by means of bows and arrows.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 230.013. Prohibited Archery Equipment

No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) in Kendall County by means of:

- (1) a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards;
- (2) arrows that are not equipped with broadhead hunting points at least seven-eighths of an

inch in width and not more than one and one-half inches in width;

(3) arrows that do not have on them in a nonwater-soluble medium the name and address of the user; or

(4) poisoned, drugged, or explosive arrows.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 230.014. Deer Permits

(a) At least 15 days prior to the opening date of the open archery season, a landowner or lessee in Kendall County who desires to permit the hunting of deer on his land with bows and arrows during the open archery season may apply to the department for antlerless deer permits.

(b) The department shall issue to each applicant the number of antlerless deer permits consistent with sound wildlife management practices and consistent with any law authorizing the department to regulate the taking of antlerless deer.

(c) Landowners or lessees receiving antlerless deer permits shall return the fully completed stubs from used permits and all unused permits and stubs to the issuing officer not later than January 10 of the year following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.015. Limit and Possession of Deer

(a) No person may take or kill more than one antlerless deer with a bow and arrow during the open archery season in Kendall County.

(b) No person may possess an antlerless deer in Kendall County unless he has in his possession an antlerless deer permit on which appears the date of the kill, the hunter's name, and the signature of the owner or agent on whose tract the deer was killed.

(c) No person may possess the carcass of any deer in Kendall County that does not have attached to it a tag issued to him on his valid hunting license unless the carcass has been finally processed.

(d) In Kendall County no person may attach the bonus deer tag from a valid hunting license to a deer other than an antlerless deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.016. Penalty

A person who violates Sections 230.012 through Section 230.015 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.017. Possession of Firearms

(a) No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) during the open archery season in Kendall County while having any type of firearm or crossbow on his person or in his possession and simultaneously possessing a bow and arrow in an automobile or in a hunting camp.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 230.018. Axis Deer Hunting

(a) No person may hunt axis deer by any means in Kendall County outside of property enclosed by a deer-proof fence.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200. Each axis deer taken or killed in violation of this section constitutes a separate offense. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 230.019 to 230.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 230.021. Turkey Gobblers

(a) No person may take or attempt to take more than two turkey gobblers during the open season in Kendall County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each turkey gobbler taken in violation of this section constitutes a separate offense. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 230.022 to 230.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 230.031. Setlines

No person may catch fish in Kendall County with a trotline or setline having more than 25 hooks or having hooks spaced less than four feet apart. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.032. Balcones Creek

No person may catch fish in Kendall County from February 1 to May 1 in that portion of Balcones Creek which forms the boundary between Bexar and Kendall counties.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.033. Penalty

A person who violates Section 230.031 or 230.032 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.034. Fish Sale

(a) No person may take, offer, or possess for sale any catfish, perch, crappie, bream, or bass in Kendall County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 230.035 to 230.040 reserved for expansion]

SUBCHAPTER E. SPECIAL REGULATORY PROVISIONS

§ 230.041. Regulatory Authority

(a) The Parks and Wildlife Commission has regulatory authority over the wildlife resources in Kendall County as provided in this subchapter.

(b) All general laws relating to Kendall County and the provisions of this chapter remain applicable until superseded or suspended by regulation of the commission issued under this subchapter.

(c) On the expiration of any regulation issued by the commission under this subchapter, or on the expiration of this subchapter, the general law or provision of this subchapter superseded or suspended by a regulation shall apply.

(d) This subchapter expires on December 31, 1983. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1791, ch. 719, § 1, eff. Aug. 29, 1977.]

§ 230.042. Definitions

In this subchapter:

(1) "Depletion" means the reduction of a species below immediate recuperative potentials by any deleterious cause or causes.

(2) "Waste" means supply of a species or sex of a species sufficient that a seasonal harvest of the species will not prevent or, in the case of

overpopulation, that will aid in the reestablishment of normal numbers of the species.

(3) "Wildlife resources" means all game birds, game animals, fur-bearing animals, collared peccary (javelina), and all freshwater fish.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.043. Investigations

The commission shall conduct investigations on the wildlife resources in Kendall County as provided in Section 61.051 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.044. Open Seasons

The commission shall provide open seasons for the hunting and catching of wildlife resources in Kendall County if the investigations and findings of fact reveal that it is safe to provide an open season.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.045. Consent of Landowner

No person may hunt or catch wildlife resources in Kendall County by any means during an open season established by the commission unless the owner of the land or water, or his agent, has given his consent.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.046. Regulations

(a) The regulation of the taking of wildlife resources in Kendall County under this subchapter shall be by regulation issued by the commission.

(b) A regulation of the commission authorizing the hunting or catching of wildlife resources in Kendall County must specifically provide for:

- (1) the species, quantity, age or size, and sex of the wildlife resource authorized to be taken;
- (2) the means or method that may be used to take the wildlife resource; and
- (3) the area or portion of the county where the wildlife resource may be taken.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.047. Amendments and Revocation

(a) If the commission finds that there is a danger of depletion or waste of wildlife resources in Kendall County, it shall amend or revoke its regulations to prevent the depletion or waste and to provide the people the most equitable and reasonable privilege to hunt wildlife resources in Kendall County.

(b) The commission may amend or revoke its regulations in accordance with this subchapter at any time it finds the facts warrant a change.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.048. Regulations for Antlerless Deer

A regulation of the commission authorizing the taking of antlerless deer is not effective for a tract of land unless the owner or other person in charge of the land agrees in writing to the regulation and to the number of antlerless deer authorized to be taken.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.049. Antlerless Deer Permits

(a) No person may hunt antlerless deer in Kendall County without first having obtained an antlerless deer permit issued by the commission on a form provided by the commission under rules established by the commission.

(b) No person may sell any permit received from the commission for the hunting and taking of antlerless deer if:

(1) payment for the permit is contingent on the purchaser killing and taking the antlerless deer; or

(2) retention of the purchase price by the seller is contingent on the purchaser killing and taking the antlerless deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.050. Adoption of Regulations

Regulations governing the hunting or catching of wildlife resources in Kendall County shall be adopted by the commission after notice and hearing as provided in Sections 61.101, 61.102, and 61.103 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.051. Approval of Commissioners Court

(a) The Commissioners Court of Kendall County shall approve or disapprove of a regulation of the commission, in whole or in part, at the first regular meeting occurring more than five days after notification of the adoption by the commission.

(b) If the commissioners court disapproves a regulation, the taking of the wildlife resource in Kendall County is governed by the appropriate general law or provision of this chapter.

(c) After disapproval of a regulation, no public hearing on a similar proposed regulation may be held within six months of the disapproval unless the commissioners court certifies to the commission that there has occurred a material change in the surrounding circumstances which requires a public hearing before the end of the six-month period.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.052. Effective Date and Duration of Regulations

(a) Except as provided in Subsection (b) of this section, a regulation takes effect within 15 days after the day the regulation was approved by the commissioners court.

(b) If the commission finds that there is an immediate danger of depletion in any area of Kendall County as to a species because of an act of God, it may declare a state of emergency, and a regulation issued under the state of emergency takes effect on approval of the commissioners court.

(c) A regulation of the commission continues in effect until it expires of its own terms or until it is amended or repealed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.053. Copies of Regulations

On approval of a regulation by the Commissioners Court of Kendall County, the commission shall file, copy, and circulate the regulation as provided in Section 61.105 of this code.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 230.054. Penalty

A person who violates a provision of this subchapter or a regulation issued under this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each wildlife resource taken in violation of this subchapter or a regulation issued under this subchapter constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 231. KENEDY COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

231.001. Regulatory Act: Applicability

SUBCHAPTER B. ANIMALS

231.011. Precinct No. 1: Deer and Javelina.

SUBCHAPTER C. BIRDS

231.021. Precinct No. 1: Turkey.

231.022. Quail.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 231.001. Regulatory Act: Applicability

(a) The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the coastal water of

Kenedy County with respect to fish, aquatic life, and marine animals except shrimp and oysters.

(b) Except as provided in Subsection (a) of this section, the Uniform Wildlife Act (Chapter 61 of this code) does not apply to wildlife resources in Kenedy County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 231.002 to 231.010 reserved for expansion]

SUBCHAPTER B. ANIMALS

§ 231.011. Precinct No. 1: Deer and Javelina

(a) No person may hunt deer or javelina (collared peccary) in justice precinct No. 1 in Kenedy County except during the open season beginning on November 15 and extending through December 1.

(b) No person may take more than one buck deer or more than one javelina (collared peccary) in precinct No. 1 in Kenedy County during a year.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 231.012 to 231.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 231.021. Precinct No. 1: Turkey

(a) No person may hunt wild turkey gobbler in justice precinct No. 1 in Kenedy County except during the open season beginning on November 15 and extending through December 1.

(b) No person may take more than one wild turkey gobbler in precinct No. 1 in Kenedy County during a year.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 231.022. Quail

(a) No person may hunt wild quail in Kenedy County except during the open season beginning on December 1 of one year and extending through January 31 of the following year.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each quail taken in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 232. KENT COUNTY**§ 232.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Kent County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 233. KERR COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

233.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

233.011. Collared Peccary (Javelina) Sale.

SUBCHAPTER C. FISH

233.021. Injuring Fish.

233.022. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 233.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Kerr County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 233.002 to 233.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS**§ 233.011. Collared Peccary (Javelina) Sale**

(a) No person may take or possess for barter or sale, sell, or offer for sale any collared peccary (javelina), or any part of one, in Kerr County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each collared peccary (javelina), or part of one, taken, possessed, sold, or offered for sale in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 233.012 to 233.020 reserved for expansion]

SUBCHAPTER C. FISH**§ 233.021. Injuring Fish**

(a) No person may destroy fish in any freshwater stream in Kerr County by the use of dynamite, powder, or other explosives.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$1,000 and may be confined in the county jail for not more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 233.022. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit upon the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Kerr County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 234. KIMBLE COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

234.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

234.011. Doe Archery Season.

SUBCHAPTER C. FISH

234.021. Fish Sale.

234.022. Repealed.

234.023. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 234.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Kimble County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 234.002 to 234.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 234.011. Doe Archery Season

In Kimble County, does may be taken by longbow and arrow during the open season for buck deer. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 234.012 to 234.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 234.021. Fish Sale

(a) No person may offer, take, or possess for sale any catfish, perch, crappie, bream, or bass taken from the water of Kimble County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 234.022. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 234.023. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit upon the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Kimble County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 235. KING COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section 235.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

235.011. Repealed.

SUBCHAPTER C. BIRDS [NEW]

235.021. Quail Season.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 235.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in King County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 235.002 to 235.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 235.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

SUBCHAPTER C. BIRDS [NEW]

§ 235.021. Quail Season

(a) No person may hunt quail in King County except during the open season.

(b) The open season for quail in King County begins on December 1 of one year and extends through January 31 of the following year.

(c) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1977, 65th Leg., p. 34, ch. 17, § 2, eff. Aug. 29, 1977.]

CHAPTER 236. KINNEY COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section 236.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

236.011. Fish Sale. 236.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 236.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Kinney County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 236.002 to 236.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 236.011. Fish Sale

(a) No person may sell or offer for sale any bass, white perch, crappie, or catfish caught in the streams of Kinney County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 236.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Kinney County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 237. KLEBERG COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

237.001. Regulatory Act: Applicability.

SUBCHAPTER B. ANIMALS

237.011. Javelina.

SUBCHAPTER C. BIRDS

237.021. Quail.

237.022. Audubon Society Land.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 237.001. Regulatory Act: Applicability

(a) The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the coastal water of Kleberg County with respect to fish, aquatic life, and marine animals except shrimp and oysters.

(b) Except as provided in Subsection (a) of this section, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to wildlife resources in Kleberg County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 237.002 to 237.010 reserved for expansion]

SUBCHAPTER B. ANIMALS

§ 237.011. Javelina

(a) This section applies to the following land in Kleberg County:

All lands within the Kleberg Town and Improvement Company's Subdivision (except those lands lying within the confines of the City of Kingsville, the town of Ricardo, and the United States Naval Auxiliary Air Station);

All lands lying within King Addition, except farm lots one, three, and the West one-half and the Northeast one-fourth of lot five; and

All lands lying within King Addition No. 3, King Addition No. 4, and King Addition No. 2.

(b) There is no closed season during which javelina may not be hunted in the area described in Subsection (a) of this section.

(c) No person may take or possess for sale, sell, barter, or offer for sale in the area described in Subsection (a) of this section a javelina or a part of a javelina.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each javelina taken, possessed, sold, or offered for sale in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 237.012 to 237.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 237.021. Quail

(a) No person may hunt wild quail in Kleberg County except during the open season beginning on December 1 of one year and extending through January 31 of the following year.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each quail taken in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 237.022. Audubon Society Land

(a) This section applies to North Bird Island and South Bird Island and the flats, reefs, and shallow water near those islands in Kleberg County during the period that the National Association of the Audubon Societies is the lessee of those islands.

(b) No person, other than an agent, representative, or employee of the National Association of

Audubon Societies or an officer of this state or the United States, may enter on the land without the knowledge or consent of the association for the purpose of hunting a bird or for the purpose of taking or destroying a bird egg or nest.

(c) No person may hunt or molest a bird on the described land whether the person is on or off the described land.

(d) No person may discharge a firearm or explosive on or above the described land.

(e) No person may land, tie, or anchor a fishing boat in the described land.

(f) This section does not prohibit an agent, representative, or employee of the association from:

(1) hunting birds known to be a prey on other birds or eggs; or

(2) taking birds and eggs for propagation, conservation, or scientific purposes.

(g) This section does not prohibit a person from taking refuge on the described land because of storms.

(h) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$500 or by confinement in jail for not less than 10 days nor more than 6 months, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 238. KNOX COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

238.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

238.011. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 238.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Knox County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 238.002 to 238.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 238.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 239. LAMAR COUNTY

§ 239.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Lamar County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 240. LAMB COUNTY

§ 240.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Lamb County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 241. LAMPASAS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

241.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

241.011. Fish Sale.

241.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 241.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Lampasas County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 241.002 to 241.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 241.011. Fish Sale

(a) No person may sell or offer for sale any bass, white perch, crappie, or catfish caught in the streams of Lampasas County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 241.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Lampasas County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention of eating the fish or using it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 242. LA SALLE COUNTY

SUBCHAPTER A. APPLICABILITY TO UNIFORM WILDLIFE REGULATORY ACT

Section

242.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

242.011. Deer Season.

242.012. Collared Peccary (Javelina).

SUBCHAPTER C. BIRDS

242.021. Turkey.

242.022. Quail.

242.023. Pheasant.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 242.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in La Salle County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 242.002 to 242.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 242.011. Deer Season

(a) No person may hunt buck deer in La Salle County except during the open season beginning on the Saturday nearest November 15 of one year and extending through the first Sunday in January of the following year, unless the first Sunday in January is later than January 4, in which case the season extends through January 1.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each

deer killed, taken, or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 567, ch. 201, § 1, eff. Sept. 1, 1977.]

Section 2 of the 1977 amendatory act amended § 242.012(a); § 3 amended § 242.021(a); § 4 amended § 242.022(a); § 5 thereof provided: "This Act takes effect September 1, 1977."

§ 242.012. Collared Peccary (Javelina)

(a) No person may hunt collared peccary (javelina) in La Salle County except during the open season beginning on November 1 and extending through the first Sunday in January of the following year, unless the first Sunday in January is later than January 4, in which case the season extends through January 1.

(b) No person may take or possess collared peccary (javelina) or any part of a collared peccary (javelina) for barter or sale or barter or sell collared peccary (javelina) in La Salle County.

(c) No person may take more than two collared peccary (javelina) in one open season.

(d) This section does not apply to collared peccary (javelina) or their hides imported from another state or country.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each collared peccary (javelina) taken, possessed, sold, offered for sale, or possessed for sale in violation of this section is a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 567, ch. 201, § 2, eff. Sept. 1, 1977.]

[Sections 242.013 to 242.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 242.021. Turkey

(a) No person may hunt turkey in La Salle County except during the open season beginning on November 1 and extending through the first Sunday in January of the following year, unless the first Sunday in January is later than January 4, in which case the season extends through January 1.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each turkey killed, taken, or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 567, ch. 201, § 3, eff. Sept. 1, 1977.]

§ 242.022. Quail

(a) No person may hunt quail in La Salle County except during the open season beginning on November 1 and extending through the first Sunday in January of the following year, unless the first Sunday in January is later than January 4, in which case the season extends through January 1.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each quail taken, killed, or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 567, ch. 201, § 4, eff. Sept. 1, 1977.]

§ 242.023. Pheasant

Wild pheasant of all varieties may be hunted at any time in La Salle County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 243. LAVACA COUNTY

§ 243.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Lavaca County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 244. LEE COUNTY

§ 244.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Lee County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 245. LEON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

245.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

245.011. Deer.

245.012. Squirrel.

SUBCHAPTER C. BIRDS

245.021. Quail.

245.022. Turkey.

SUBCHAPTER D. FISH

Section

245.031. Fish Limit.

SUBCHAPTER E. FUR-BEARING ANIMALS

245.041. Calling Devices.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 245.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Leon County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 245.002 to 245.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 245.011. Deer

(a) No person may hunt deer in Leon County except during the open season beginning on the Saturday nearest to November 15 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 245.012. Squirrel

(a) No person may hunt or possess squirrel in Leon County except during the open seasons beginning on May 16th and extending through July 31, and beginning on October 1 and extending through December 31.

(b) No person may take, kill, or possess more than 5 squirrels in one day or more than 15 squirrels in one calendar week during the open seasons in Leon County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 245.013 to 245.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 245.021. Quail

(a) No person may hunt wild quail in Leon County except during the open season beginning on December 15 of one year and extending through the last day of February the following year.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each quail taken or killed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 245.022. Turkey

(a) No person may hunt turkey in Leon County at any time.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 245.023 to 245.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 245.031. Fish Limit

There is no daily catch or retention limit on crap-pie or white perch in Leon County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 245.032 to 245.040 reserved for expansion]

SUBCHAPTER E. FUR-BEARING ANIMALS

§ 245.041. Calling Devices

(a) No person may use any horn, recording, or other device to call or attract wild fox in Leon County unless he has obtained a permit from the department for the use of the device for scientific research or making wildlife movies.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 246. LIBERTY COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

246.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

246.011. Hunting With Certain Weapons.

246.012. Discharge of Firearms.

246.013. Penalty.

SUBCHAPTER C. GAME ANIMALS

Section

246.021. Squirrel Transport.

SUBCHAPTER D. FUR-BEARING ANIMALS

246.031. Calling Devices.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 246.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Liberty County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 246.002 to 246.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 246.011. Hunting With Certain Weapons

(a) No person may hunt with a shotgun using a shell containing larger than Number Four squirrel shot or with a rifle larger than a rimfire 22-caliber rifle in an area of Liberty County where deer roam unless it is the open season for taking deer in Liberty County.

(b) Possession of a shotgun and shell containing larger than Number Four squirrel shot or a rifle larger than a rimfire 22-caliber rifle in, through, or at woods where deer roam in Liberty County is prima facie evidence of a violation of this section.

(c) This section does not apply to peace officers or representatives of the commission in the lawful discharge of their official duties.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 246.012. Discharge of Firearms

(a) Except as provided in Subsection (b) of this section, no person may shoot a pistol or rifle in, on, along, and across the water of the Trinity River or Wallisville Reservoir in Liberty County.

(b) This section does not apply to peace officers or representatives of the department in the lawful discharge of their duties or to a person hunting migratory waterfowl during an open season in and on the Trinity River and Wallisville Reservoir.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 246.013. Penalty

A person who violates a provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 246.014 to 246.020 reserved for expansion]

SUBCHAPTER C. GAME ANIMALS

§ 246.021. Squirrel Transport

(a) No person may ship or cause to be shipped, receive for the purpose of transportation, transport, or carry beyond the limits of Liberty County wild squirrels.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 246.022 to 246.030 reserved for expansion]

SUBCHAPTER D. FUR-BEARING ANIMALS

§ 246.031. Calling Devices

(a) No person may use any horn, recording, or other device to call or attract wild fox in Liberty County unless he has first obtained a permit from the department to use the devices for making wildlife movies or scientific research.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 247. LIMESTONE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

247.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

247.011. Calling Devices.

SUBCHAPTER C. GAME ANIMALS

247.021. Squirrel.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 247.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Limestone County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 247.002 to 247.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 247.011. Calling Devices

(a) No person may use any type of squealer, call, or other device or instrument used to call or attract animals to aid in the hunting of any wild animal on state-owned land in Limestone County.

(b) The Commissioners Court of Limestone County may extend the prohibition set out in Subsection (a) of this section to any privately owned land in Limestone County or to all or part of Limestone County. The commissioners court must notify the commission of their intent to broaden the prohibition. On receipt of a return from the commission, the commissioners court shall specify the land to which the prohibition is to be applied on forms prescribed by the commission. The forms shall be returned to the commission and be properly attested to as the official act of the Commissioners Court of Limestone County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 247.012 to 247.020 reserved for expansion]

SUBCHAPTER C. GAME ANIMALS

§ 247.021. Squirrel

(a) No person may hunt squirrel in Limestone County except during the open seasons beginning on May 1 and extending through July 31 and beginning on October 1 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 248. LIPSCOMB COUNTY

§ 248.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Lipscomb County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 249. LIVE OAK COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

249.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

249.011. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 249.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Live Oak County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 249.002 to 249.010 reserved for expansion]

SUBCHAPTER B. FISH**§ 249.011. Fish Sale**

(a) No person may take for sale any fish, except bait fish, from the water of Lake Corpus Christi in Live Oak County, the Nueces River between Calallen Dam and the west boundary of Live Oak County, and the tributaries of the Nueces River in Live Oak County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 216, ch. 105, § 22, eff. Sept. 1, 1977.]

CHAPTER 250. LLANO COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

250.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

- 250.011. Definitions.
- 250.012. Open Archery Season.
- 250.013. Prohibited Archery Equipment.
- 250.014. Deer Permits.
- 250.015. Limit and Possession of Deer.
- 250.016. Penalty.
- 250.017. Possession of Firearms.

SUBCHAPTER C. FISH

- 250.021. Fish Sale.
- 250.022. Injuring Fish.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 250.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Llano County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 250.002 to 250.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING**§ 250.011. Definitions**

In this subchapter:

- (1) "Buck deer" means a deer that has a hardened antler protruding through the skin.
- (2) "Antlerless deer" is any deer other than a buck deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 250.012. Open Archery Season

(a) The open archery season in Llano County begins on October 1 and extends through October 31 each year.

(b) During the open archery season a person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, and collared peccary (javelina) by means of bows and arrows. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 250.013. Prohibited Archery Equipment

No person may hunt wild buck deer, wild bear, wild antlerless deer, wild turkey gobblers or bearded hens, and collared peccary (javelina) in Llano County by means of:

- (1) a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards;
- (2) arrows that are not equipped with broadhead hunting points at least seven-eighths of an inch in width and not more than one and one-half inches in width;
- (3) arrows that do not have on them in a nonwater-soluble medium the name and address of the user; or

(4) poisoned, drugged, or explosive arrows. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 250.014. Deer Permits

(a) At least 15 days prior to the opening date of the open archery season, a landowner or lessee in Llano County who desires to permit the hunting of deer on his land with bows and arrows during the open archery season may apply to the department for antlerless deer permits.

(b) The department shall issue to each applicant the number of antlerless deer permits consistent with sound wildlife management practices and consistent with any law authorizing the department to regulate the taking of antlerless deer.

(c) Landowners or lessees receiving antlerless deer permits shall return the fully completed stubs from the used permits and all unused permits and stubs to the issuing officer not later than January 10 of the year following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 250.015. Limit and Possession of Deer

(a) No person may take or kill more than one antlerless deer with bow and arrow during the open archery season in Llano County.

(b) No person may possess an antlerless deer in Llano County unless he has in his possession an antlerless deer permit on which appears the date of the kill, the hunter's name, and the signature of the owner or agent on whose tract the deer was killed.

(c) No person may possess the carcass of any deer in Llano County if it does not have attached to it a tag issued to him on his valid hunting license unless the carcass has been finally processed.

(d) In Llano County no person may attach the bonus deer tag from a valid hunting license to a deer other than an antlerless deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 250.016. Penalty

A person who violates Section 250.012 through Section 250.015 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 250.017. Possession of Firearms

(a) No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) during the open archery season while having any type of firearm or crossbow on his person or in his possession and simultaneously possessing a bow and arrow in an automobile or in a hunting camp in Llano County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

[Sections 250.018 to 250.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 250.021. Fish Sale

(a) No person may take, offer, or possess for sale any catfish, perch, crappie, bream, or bass from the water of Llano County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 250.022. Injuring Fish

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Llano County any catfish, perch, crappie, white perch, bass, trout, or other edible fish, and leave the fish to die without any intention of eating the fish or using it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 251. LOVING COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
251.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

251.011. Fish Sale.
251.012. Fishing Methods.
251.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 251.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Loving County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 251.002 to 251.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 251.011. Fish Sale

(a) No person may sell or offer for sale any bass, white perch, crappie, or catfish caught in the streams of Loving County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 251.012. Fishing Methods

(a) Except as provided in Subsection (b) of this section, no person may take or catch any fish in the freshwater rivers, creeks, lakes, bayous, pools, or lagoons of Loving County by any means other than an ordinary hook and line, trotline, or artificial bait, and no person may place in that water any seine, net or other device, or trap for taking or catching fish.

(b) A person may use a minnow seine not more than 20 feet long to catch minnows for bait.

(c) In seining for bait as permitted by this section, all minnows more than three inches long shall be returned to the water at once while alive.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 251.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit upon the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Loving County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 252. LUBBOCK COUNTY

§ 252.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Lubbock County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 253. LYNN COUNTY

§ 253.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Lynn County.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 254. McCULLOCH COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

254.001. Regulatory Act: Applicability.

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

- 254.011. Definitions.
- 254.012. Open Archery Season.
- 254.013. Prohibited Archery Equipment.
- 254.014. Deer Permits.
- 254.015. Limit and Possession of Deer.
- 254.016. Penalty.
- 254.017. Possession of Firearms.

SUBCHAPTER C. FISH

- 254.021. Fish Sale.
- 254.022. Leaving Fish to Die.
- 254.023, 254.024. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 254.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in McCulloch County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 254.002 to 254.010 reserved for expansion]

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

§ 254.011. Definitions

In this subchapter:

- (1) "Buck deer" means a deer that has a hardened antler protruding through the skin.
- (2) "Antlerless deer" is any deer other than a buck deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 254.012. Open Archery Season

(a) The open archery season in McCulloch County begins on October 1 and extends through October 31 each year.

(b) During the open archery season a person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers, or bearded hens and collared peccary (javelina) by means of bows and arrows. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 254.013. Prohibited Archery Equipment

No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) in McCulloch County by means of:

(1) a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards;

(2) arrows that are not equipped with broadhead hunting points at least seven-eighths of an inch in width and not more than one and one-half inches in width;

(3) arrows that do not have on them in a nonwater-soluble medium the name and address of the user; or

(4) poisoned, drugged, or explosive arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 254.014. Deer Permits

(a) At least 15 days prior to the opening date of the open archery season, a landowner or lessee in McCulloch County who desires to permit the hunting of deer on his land with bows and arrows during the open archery season may apply to the department for antlerless deer permits.

(b) The department shall issue to each applicant the number of antlerless deer permits consistent with sound wildlife management practices and consistent with any law authorizing the department to regulate the taking of antlerless deer.

(c) Landowners or lessees receiving antlerless deer permits shall return the fully completed stubs from used permits and all unused permits and stubs to the issuing officer not later than January 10 of the year following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 254.015. Limit and Possession of Deer

(a) No person may take or kill more than one antlerless deer with bow and arrow during the open archery season.

(b) No person may possess an antlerless deer in McCulloch County unless he has in his possession an antlerless deer permit on which appears the date of the kill, the hunter's name, and the signature of the owner or agent on whose tract the deer was killed.

(c) No person may possess the carcass of any deer in McCulloch County that does not have attached to it a tag issued to him on his valid hunting license unless the carcass has been finally processed.

(d) In McCulloch County no person may attach the bonus deer tag from a valid hunting license to a deer other than an antlerless deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 254.016. Penalty

A person who violates Section 254.012 through Section 254.015 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 254.017. Possession of Firearms

(a) No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) during the open archery season in McCulloch County while having any type of firearm or crossbow on his person or in his possession and simultaneously possessing a bow and arrow in an automobile or in a hunting camp.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

[Sections 254.018 to 254.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 254.021. Fish Sale

(a) No person may sell or offer to sell any bass, white perch, crappie, or catfish caught in the streams of McCulloch County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 254.022. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit upon the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers,

pools or lagoons, or tanks, in McCulloch County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§§ 254.023, 254.024. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 255. McLENNAN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

255.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

255.011. Fish Sale.

255.012. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 255.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in McLennan County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 255.002 to 255.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 255.011. Fish Sale

(a) No person may buy, barter, or sell or offer to barter or sell any bass, crappie, perch, channel or Opelousas catfish, or any other fish, except bait fish, taken from Lake Waco, the Bosque River, or their tributaries in McLennan County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50. Each fish bought, sold, bartered or offered for sale or barter in violation of this section constitutes a separate offense. A person may be prosecuted for a violation of this section in the county where the offense is committed, where he is found possessing the fish, or where the fish are sold or offered for sale.

(c) It is the duty of the district judge of the judicial district in McLennan County to give a special charge on this law to the grand juries of McLennan County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 216, ch. 105, § 23, eff. Sept. 1, 1977.]

§ 255.012. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 256. McMULLEN COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

256.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

256.011. Deer.

256.012. Collared Peccary (Javelina).

SUBCHAPTER C. BIRDS

256.021. Turkeys.

256.022. Quail.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 256.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in McMullen County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 256.002 to 256.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 256.011. Deer

A person may hunt deer in McMullen County during the open season beginning on November 1 and extending through December 15.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 256.012. Collared Peccary (Javelina)

(a) This section applies to all collared peccary (javelina) and their hides except those imported from another state or foreign country.

(b) No person may hunt collared peccary (javelina) in McMullen County except during the open season beginning on November 1 and extending through December 15.

(c) No person may take in one season in McMullen County more than two collared peccary (javelina).

(d) No person may take or possess for barter or sale, or offer for sale, or sell collared peccary (javelina), or part of one, in McMullen County at any time.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each collared peccary (javelina) taken or possessed, or offered or possessed for sale, or sold in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 256.013 to 256.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 256.021. Turkeys

A person may hunt wild turkeys in McMullen County during the open season beginning on November 1 and extending through December 15.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 256.022. Quail

A person may hunt quail in McMullen County during the open season beginning on October 15 and extending through December 15.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1212, ch. 456, § 12, eff. Sept. 1, 1975.]

CHAPTER 257. MADISON COUNTY

§ 257.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Madison County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 258. MARION COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

258.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

258.011. Shooting Pistols on Caddo Lake.

SUBCHAPTER C. ANIMALS

258.021. Deer.
258.022. Squirrel.
258.023. Coypu.

SUBCHAPTER D. BIRDS

Section

258.031. Quail.
258.032. Blinds.
258.033. Turkey.

SUBCHAPTER E. FISH

258.041. Fishing Methods.
258.042. Fish Size and Retention Limits.
258.043. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 258.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Marion County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 258.002 to 258.110 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 258.011. Shooting Pistols on Caddo Lake

(a) No person may shoot a pistol in, on, along, or across Caddo Lake in Marion County.

(b) This section does not apply to peace officers or employees of the department engaged in official duties, nor does this section prohibit hunting with a shotgun during an open season.

(c) Peace officers and authorized employees of the department may inspect boats and other watercraft for violations of this section without a warrant.

(d) A prosecution for a violation of this section may be maintained in Marion or Harrison County without regard to where the offense occurred.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 258.012 to 258.020 reserved for expansion]

SUBCHAPTER C. ANIMALS

§ 258.021. Deer

(a) No person may hunt deer in Marion County except during the open seasons beginning on November 16 and extending through November 21 and beginning on December 26 and extending through December 31.

(b) No person may take more than two buck deer with pronged antlers during a calendar year in Marion County.

(c) No person may hunt deer in Marion County during the period between sunset and sunrise.

(d) No person may hunt deer on the land of another without the permission of the owner or lessee.

(e) No person may hunt deer in Marion County by a method other than with a rifle or shotgun capable of being fired from the shoulder, and no person may hunt deer in Marion County with:

- (1) .22 caliber rimfire ammunition; or
- (2) a .22 caliber rifle, jet gun, or rocket gun.

(f) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$500, or by confinement in jail for not less than 10 days nor more than three months, or by both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 258.022. Squirrel

(a) No person may take or kill squirrel in Marion County except during the open season during the months of October, November, and December.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$1 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 258.023. Coypu

Coypu (nutria) may be hunted at any time in Marion County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 258.024 to 258.030 reserved for expansion]

SUBCHAPTER D. BIRDS

§ 258.031. Quail

(a) No person may hunt quail in Marion County except during the open season beginning on December 1 of one year and extending through February 15 of the following year.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each bird taken or killed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 258.032. Blinds

(a) No person may construct a blind to be leased for the hunting of waterfowl in Marion County without first having obtained from the department a permit.

(b) No person may lease a blind to be used in Marion County for the hunting of waterfowl without first having obtained from the department a permit for each blind.

(c) The department shall issue the permits required by this section for an annual fee of \$5 for each blind leased.

(d) No person may construct or use a blind in Marion County for the hunting of waterfowl if the blind is nearer than 300 yards to another blind used for the hunting of waterfowl. This section applies to any blind whether leased or used privately.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.

(f) In a prosecution for using a blind nearer than 300 yards of another blind, it is an affirmative defense that the blind being used by the accused was located, built, and ready for use before the other blind was constructed.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 258.033. Turkey

(a) No person may hunt or kill wild turkey in Marion County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

(c) This section expires on September 1, 1980. [Acts 1975, 64th Leg., p. 1223, ch. 456, § 25, eff. Sept. 1, 1975.]

[Sections 258.034 to 258.040 reserved for expansion]

SUBCHAPTER E. FISH

§ 258.041. Fishing Methods

(a) No person may catch fish in Marion County except by the following methods:

(1) ordinary hook, rod and reel, set hook and line, trotline, or artificial bait;

(2) for minnows for bait only, a minnow seine not more than 20 feet long;

(3) for buffalo fish, gar, catfish, shad, and bowfin or grindle during any month of the year except February, March, April, and May, a hoop net, setnet, or trammel net the meshes of which are not less than three and one-half inches square; and

(4) for buffalo fish, gar, catfish, shad, and bowfin or grindle in Caddo Lake, a gig.

(b) No person using a net authorized by Subdivision (2) or (3) of Subsection (a) of this section may fail to return to the water any fish taken with the

net that are not authorized to be caught with the net being used. No person may possess a fish not authorized to be taken with a net while the person is using a net.

(c) Nets, the use of which are not authorized by this section in Marion County, are a public nuisance, and peace officers and enforcement officers of the department are to destroy them. No suit may be maintained against an officer or employee of the department for carrying out the provisions of this subsection.

(d) A person who violated this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 258.042. Fish Size and Retention Limits

(a) No person may catch and keep a catfish from the water of Caddo Lake in Marion County if the fish is shorter than eight inches.

(b) No person may catch and keep more than 25 catfish from Caddo Lake in Marion County during one day.

(c) There is no daily limit or possession limit on crappie in Marion County.

(d) No person may possess or catch and keep in one day more than 25 white bass or striped bass in Marion County.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50, unless the person violates Subsection (d) of this section, in which case he is punishable by a fine of not less than \$100. Each fish taken in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 258.043. Fish Sale

(a) No person may possess for sale, sell, buy, offer to sell or buy, transport or ship for the purpose of sale, or barter a white bass or a striped bass in Marion County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$100. Each fish sale or shipment in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 259. MARTIN COUNTY

§ 259.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Martin County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 260. MASON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
260.001. Regulatory Act: Applicability.

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

- 260.011. Definitions.
- 260.012. Open Archery Season.
- 260.013. Prohibited Archery Equipment.
- 260.014. Deer Permits.
- 260.015. Limit and Possession of Deer.
- 260.016. Penalty.
- 260.017. Possession of Firearms.

SUBCHAPTER C. FISH

- 260.021. Fish Sale.
- 260.022. Leaving Fish to Die.
- 260.023. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 260.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Mason County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 260.002 to 260.010 reserved for expansion]

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

§ 260.011. Definitions

In this subchapter:

- (1) "Buck deer" means a deer that has a hardened antler protruding through the skin.
- (2) "Antlerless deer" is any deer other than a buck deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 260.012. Open Archery Season

(a) The open archery season in Mason County begins on October 1 and extends through October 31 each year.

(b) During the open archery season, a person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, and collared peccary (javelina) by means of bows and arrows. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 260.013. Prohibited Archery Equipment

No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) in Mason County by means of:

(1) a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards;

(2) arrows that are not equipped with broadhead hunting points at least seven-eighths of an inch in width and not more than one and one-half inches in width;

(3) arrows that do not have on them in a nonwater-soluble medium the name and address of the user; or

(4) poisoned, drugged, or explosive arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 260.014. Deer Permits

(a) At least 15 days prior to the opening date of the open archery season, a landowner or lessee in Mason County who desires to permit the hunting of deer on his land with bows and arrows during the open archery season may apply to the department for antlerless deer permits.

(b) The department shall issue to each applicant the number of antlerless deer permits consistent with sound wildlife management practices and consistent with any law authorizing the department to regulate the taking of antlerless deer.

(c) Landowners or lessees receiving antlerless deer permits shall return the fully completed stubs from used permits and all unused permits and stubs to the issuing officer not later than January 10 of the year following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 260.015. Limit and Possession of Deer

(a) No person may take or kill more than one antlerless deer with bow and arrow during the open archery season.

(b) No person may possess an antlerless deer in Mason County unless he has in his possession an antlerless deer permit on which appears the date of the kill, the hunter's name, and the signature of the owner or agent on whose tract the deer was killed.

(c) No person may possess the carcass of any deer in Mason County that does not have attached to it a tag issued to him on his valid hunting license unless the carcass has been finally processed.

(d) In Mason County no person may attach the bonus deer tag from a valid hunting license to a deer other than an antlerless deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 260.016. Penalty

A person who violates Section 260.012 through Section 260.015 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 260.017. Possession of Firearms

(a) No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) during the open archery season in Mason County while having any type of firearm or crossbow on his person or in his possession and simultaneously possessing a bow and arrow in an automobile or in a hunting camp.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

[Sections 260.018 to 260.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 260.021. Fish Sale

(a) No person may take for sale, offer for sale, or possess for sale any catfish, perch, crappie, bream, or bass in Mason County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 260.022. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Mason County any catfish, perch, crappie, white perch, bass, trout, or other edible fish, and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 260.023. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 261. MATAGORDA COUNTY

Section

261.001. Regulatory Act: Applicability.

261.002. Regulatory Act: Shrimp Excluded.

§ 261.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Matagorda County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 261.002. Regulatory Act: Shrimp Excluded

In Matagorda County shrimp are not wildlife resources under the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 262. MAVERICK COUNTY

§ 262.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Maverick County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 263. MEDINA COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

263.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

263.011. Fish Sale.

263.012. Injuring Fish.

263.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 263.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Medina County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 263.002 to 263.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 263.011. Fish Sale

(a) No person may barter, sell, or offer for barter or sale any bass, perch, crappie, or catfish taken from the freshwater streams of Medina County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 263.012. Injuring Fish

(a) No person may use dynamite, powder, or other explosive in the freshwater streams of Medina County resulting in the destruction of fish.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$1,000 and confinement in the county jail for not more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 263.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Medina County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention of eating the fish or using it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 264. MENARD COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

264.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

- 264.011. Fish Sale.
 264.012. Repealed.
 264.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 264.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Menard County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 264.002 to 264.010 reserved for expansion]

SUBCHAPTER B. FISH**§ 264.011. Fish Sale**

(a) No person may take, offer, or possess for the purpose of sale any catfish, perch, crappie, bream, or bass in Menard County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 264.012. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 264.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Menard County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention of eating the fish or using it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 265. MIDLAND COUNTY**§ 265.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Midland County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 266. MILAM COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

266.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

266.011. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 266.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Milam County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 266.002 to 266.010 reserved for expansion]

SUBCHAPTER B. FISH**§ 266.011. Fish Sale**

(a) No person may barter, sell, offer for barter or sale, buy, or possess after purchase any fish taken from the water of Milam County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 267. MILLS COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

267.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

- 267.011. Fish Sale.
 267.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 267.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Mills County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 267.002 to 267.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 267.011. **Fish Sale**

(a) No person may sell or offer for sale any bass, white perch, crappie, or catfish caught in the streams of Mills County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 267.012. **Leaving Fish to Die**

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, lagoons, or tanks, in Mills County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without any intention to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 268. MITCHELL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
268.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

268.011. Fish Sale: Lake Colorado City.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 268.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Mitchell County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 268.002 to 268.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 268.011. **Fish Sale: Lake Colorado City**

(a) No person may catch fish, except bait fish, from Lake Colorado City in Mitchell County for the purpose of sale.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 217, ch. 105, § 24, eff. Sept. 1, 1977.]

CHAPTER 269. MONTAGUE COUNTY

§ 269.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Montague County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 270. MONTGOMERY COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
270.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

270.011. Squirrel Sale.

SUBCHAPTER C. FISH

270.021. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 270.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Montgomery County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 270.002 to 270.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 270.011. **Squirrel Sale**

(a) No person may sell, offer for sale, or ship for sale any squirrel in Montgomery County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 270.012 to 270.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 270.021. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 271. MOORE COUNTY

§ 271.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Moore County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 272. MORRIS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

272.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

- 272.011. Deer Season.
- 272.012. Deer Limit.
- 272.013. Methods of Hunting Deer.
- 272.014. Permission of Owner.
- 272.015. Penalty.
- 272.016. Squirrel.
- 272.017. Special Archery Season [NEW].

SUBCHAPTER C. BIRDS

272.021. Quail.

SUBCHAPTER D. FISH

272.031. Nets.

SUBCHAPTER E. FUR-BEARING ANIMALS

272.041. Coypu.

SUBCHAPTER F. LAKE TEXARKANA AND DAINGERFIELD LAKE

272.051. Discharge of Firearms.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 272.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Morris County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 272.002 to 272.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 272.011. Deer Season

No person may hunt deer in Morris County except during the open seasons beginning on November 16 and extending through November 22 and beginning on December 25 and extending through December 31.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 272.012. Deer Limit

In Morris County, no person may take or kill more than one deer during an open season or take, kill, or possess any deer except a buck deer with a pronged horn of three points or more.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 272.013. Methods of Hunting Deer

(a) No person may use .22 caliber rimfire ammunition in hunting deer in Morris County.

(b) No person may hunt wild deer in Morris County with a .22 caliber rifle.

(c) No person may hunt wild deer in Morris County by any means other than a rifle, except a .22 caliber rifle, or a shotgun capable of being fired from the shoulder or bows and arrows conforming to the specifications described in Section 62.055 of this code.

(d) No person may use a dog to hunt deer or allow a dog to run, trail, or pursue a deer in Morris County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 272.014. Permission of Owner

No person may hunt deer on the land of another in Morris County without the permission of the owner or lessee of the land.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 272.015. Penalty

A person who violates Sections 272.011 through 272.014 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each deer taken, killed, or possessed in violation of these sections constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 272.016. Squirrel

(a) No person may hunt squirrel in Morris County except during the open season beginning on October 1 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 272.017. Special Archery Season

A person may hunt wild deer in Morris County with bow and arrow during the open season beginning on October 1 and extending through October 31.

[Added by Acts 1977, 65th Leg., p. 1790, ch. 718, § 1, eff. Aug. 29, 1977.]

[Sections 272.018 to 272.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 272.021. Quail

(a) No person may hunt wild quail in Morris County except during the open season beginning on December 1 of one year and extending through February 15 of the following year.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each bird taken or killed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 272.022 to 272.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 272.031. Nets

(a) Except as provided in Subsections (b), (c), and (d) of this section, a person may use a seine or net with meshes of not less than three inches to catch fish from the water of Morris County.

(b) No person may use nets of any type in Daingerfield State Park Lake or Ellison Creek Reservoir (Lone Star Lake) in Morris County.

(c) No person may use a setnet or seine to catch white perch, crappie, or bass of any kind in Morris County.

(d) A person may use a minnow seine not more than 20 feet long to catch minnows for bait in Morris County.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 272.032 to 272.040 reserved for expansion]

SUBCHAPTER E. FUR-BEARING ANIMALS

§ 272.041. Coypu

A person may take or kill coypu (nutria) at any time in Morris County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 272.042 to 272.050 reserved for expansion]

SUBCHAPTER F. LAKE TEXARKANA AND DAINGERFIELD LAKE

§ 272.051. Discharge of Firearms

(a) Except as provided in Subsection (b) of this section, no person may shoot a pistol or rifle in, on, along, or across Daingerfield Lake or Lake Texarkana in Morris County.

(b) This section does not apply to peace officers, game wardens, or agents of the department in the lawful exercise of their duty or to persons hunting with a shotgun during an open season in or on Daingerfield Lake or Lake Texarkana.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 273. MOTLEY COUNTY

§ 273.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Motley County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 274. NACOGDOCHES COUNTY

§ 274.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Nacogdoches County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 275. NAVARRO COUNTY

§ 275.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Navarro County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 276. NEWTON COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

276.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

276.011. Hunting With Dogs.

276.012. Hunting Deer With Dogs.

276.013. Possession of Deer.

SUBCHAPTER C. FISH

276.021. Fish Sale.

SUBCHAPTER D. FUR-BEARING ANIMALS

276.031. Regulatory Act: Exclusion.

276.032. Calling Devices.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 276.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Newton County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 276.002 to 276.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING**§ 276.011. Hunting With Dogs**

A person may use dogs to hunt game birds and game animals in Newton County only during the open season for the game bird or game animal. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 276.012. Hunting Deer With Dogs

(a) No person may knowingly allow a dog under his control to hunt wild deer in Newton County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200 and by confinement in the county jail for not less than 3 days nor more than 30 days. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 276.013. Possession of Deer

(a) No person may possess the freshly killed carcass of a wild deer in Newton County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200 and imprisonment in the county jail for not less than three days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 276.014 to 276.020 reserved for expansion]

SUBCHAPTER C. FISH**§ 276.021. Fish Sale**

(a) No person may sell, offer for sale, or possess for sale any black bass, trout, white perch, or catfish of less than 18 inches in length taken from the water of the Sabine, Attoyoc, Angelina, and Neches rivers or any of their tributaries or lakes through which the flood streams of the rivers or their tributaries flow in Newton County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$500, or imprisonment in the county jail for not less than 10 days nor more than 30 days, or both. Each fish sold in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 276.022 to 276.030 reserved for expansion]

SUBCHAPTER D. FUR-BEARING ANIMALS**§ 276.031. Regulatory Act: Exclusion**

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to fox in Newton County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 276.032. Calling Devices

(a) No person may use a horn, recording, or other device to call or attract wild fox in Newton County unless he has obtained a permit from the department allowing him to use the device for scientific research or making wildlife movies.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 277. NOLAN COUNTY

§ 277.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Nolan County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 278. NUECES COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

278.001. Regulatory Act: Applicability.

SUBCHAPTER B. SHRIMP

278.011. Nets and Seines.

SUBCHAPTER C. FISH [NEW]

278.021. Fish Sale: Nueces River [NEW].

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 278.001. Regulatory Act: Applicability

(a) The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the coastal water of Nueces County with respect to fish, aquatic life, and marine animals, except shrimp and oysters.

(b) Except as provided in Subsection (a), the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to wildlife resources in Nueces County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 278.002 to 278.010 reserved for expansion]

SUBCHAPTER B. SHRIMP

§ 278.011. Nets and Seines

(a) No person may use for the purpose of catching shrimp a net or seine, except a cast net or minnow seine not more than 20 feet in length for catching bait only, in the water of the Gulf of Mexico within one mile of the Horace Caldwell pier located on Mustang Island and the Bob Hall pier located on Padre Island in Nueces County or within 1,000 feet of the shoreline of Padre Island in Nueces County.

(b) A person who violates this section is guilty of a misdemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$100, and on a second or subsequent conviction is punishable by a fine of not less than \$100 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

SUBCHAPTER C. FISH [NEW]

§ 278.021. Fish Sale: Nueces River

(a) No person may take for sale any fish from the portion of the Nueces River in Nueces County west and north of the Calallen Dam or from a tributary of the Nueces River in Nueces County the confluence of which with the Nueces River is west and north of the Calallen Dam.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. [Added by Acts 1977, 65th Leg., p. 1401, ch. 565, § 2, eff. Aug. 29, 1977.]

CHAPTER 279. OCHILTREE COUNTY

§ 279.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Ochiltree County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 280. OLDHAM COUNTY

§ 280.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Oldham County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 281. ORANGE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

281.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

281.011. Hunting With Dogs.

SUBCHAPTER C. SHRIMP

281.021. Regulatory Act: Shrimp Excluded.

281.022. Shrimp Regulations.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 281.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Orange County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 281.002 to 281.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY
APPLICABLE TO HUNTING

§ 281.011. **Hunting With Dogs**

(a) In Orange County a person may use dogs in hunting game animals (including deer) and game birds during the open season when the animal may be hunted.

(b) In Orange County no person may allow or permit a dog under his control to hunt or molest a wild deer except during the open deer season.

(c) No person in Orange County may possess the freshly killed carcass or a part of the carcass of a wild deer except during the open deer season.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200 and by confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 281.012 to 281.020 reserved for expansion]

SUBCHAPTER C. SHRIMP

§ 281.021. **Regulatory Act: Shrimp Excluded**

In Orange County shrimp are not wildlife resources under the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 281.022. **Shrimp Regulations**

(a) The commission may regulate the taking of shrimp from the coastal water of Orange County to provide for the most profitable and equitable harvest of shrimp from year to year and to conserve and protect the shrimp resources of Orange County from depletion and waste.

(b) The commission may make regulations to carry out the policy of this section including regulating:

- (1) the size of shrimp that may be taken;
- (2) open and closed shrimp seasons;
- (3) the means of taking shrimp;
- (4) the size and type of boats and equipment that may be used for taking shrimp;
- (5) the length and mesh size of net and trawls and their spreading devices; and
- (6) the possession, transportation, sale, and other handling of shrimp in the coastal water of Orange County.

(c) The commission by regulation adopted in accordance with this section may provide for the li-

censing of all persons taking, selling, or handling shrimp in Orange County and may license boats and equipment used for the taking, selling, or handling of shrimp in Orange County. The commission may adopt the licensing provisions of the Texas Shrimp Conservation Act (Chapter 77 of this code).

(d) The commission shall conduct continuous research, investigations, and studies of the shrimp resources in Orange County in the same manner as required by Sections 77.004, 77.005, and 77.006 of this code. Based on the information obtained, and after hearings, the commission shall promulgate the regulations authorized by this section. The hearings, the method of adoption of the regulations, the effective date of the regulations, and the procedure for appeal shall be governed by the provisions of Chapter 125, Acts of the 52nd Legislature, Regular Session, 1951, as amended.

(e) "Coastal water" is defined by Section 77.001(1) of this code.

(f) A person who violates a regulation of the commission adopted under this section shall be punished as provided in Section 77.020 of this code. The commission has all powers of enforcement granted to it under Chapter 77 of this code for the enforcement of this section.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 282. PALO PINTO COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT

Section
282.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

282.011. Possum Kingdom Lake: Fish Sale.
282.012. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT

§ 282.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Palo Pinto County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 282.002 to 282.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 282.011. Possum Kingdom Lake: Fish Sale

(a) No person may barter or sell, offer to barter or sell, or buy any fish taken from Possum Kingdom Lake or any of its backwater in Palo Pinto County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 282.012. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 283. PANOLA COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

283.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

283.011. Hunting Deer With Dogs.

SUBCHAPTER C. MURVAUL LAKE

283.021. Camping.

283.022. Firearms.

283.023. Certain Water Sports on Lake Murvaul.

283.024. Penalty.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 283.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Panola County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 283.002 to 283.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 283.011. Hunting Deer With Dogs

Except as prohibited by the commission under the Uniform Wildlife Regulatory Act (Chapter 61 of this code), it is lawful to hunt or trail buck deer in Panola County with dogs. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 283.012 to 283.020 reserved for expansion]

SUBCHAPTER C. MURVAUL LAKE

§ 283.021. Camping

No person may camp on the shores of Murvaul Lake in Panola County on land owned by the Panola County Fresh Water Supply District Number 1 except at places designated as campsites by the Board of Supervisors of the Panola County Fresh Water Supply District Number 1.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 283.022. Firearms

(a) Except as provided by Subsection (b) of this section, no person may possess for shooting a rifle or pistol of any kind on or over the water of Murvaul Lake in Panola County.

(b) This section does not apply to a peace officer or game management officer of this state or to a regular employee of the Panola County Fresh Water Supply District Number 1.

(c) Possession of a rifle or pistol of any kind within 500 feet from the water of Murvaul Lake is prima facie evidence of a violation of this section. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 283.023. Certain Water Sports on Lake Murvaul

No person may swim, bathe, wade, or water ski in or on Lake Murvaul except within areas designated by the Board of Supervisors of the Panola County Fresh Water Supply District No. 1 as areas for swimming, bathing, wading, or water skiing. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 283.024. Penalty

A person who violates a provision of this subchapter is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200 and costs. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 284. PARKER COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

284.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

284.011. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT

§ 284.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Parker County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 284.002 to 284.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 284.011. **Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977**

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 285. PARMER COUNTY

§ 285.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Parmer County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 286. PECOS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT

Section

286.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

286.011. Regulatory Act: Exception.

286.012. Fishing Methods.

286.013. Fish Sale.

286.014. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM
WILDLIFE REGULATORY ACT

§ 286.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Pecos County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 286.002 to 286.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 286.011. **Regulatory Act: Exception**

In Pecos County fish are not "wildlife resources" as that term is used in the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 286.012. **Fishing Methods**

(a) No person may catch fish in the freshwater rivers, creeks, lakes, bayous, pools, or lagoons of Pecos County by any means other than ordinary hook and line, trotline, or artificial bait.

(b) Except as provided in Subsection (c) of this section, no person may place in the water described in this section any seine, net or other device, or trap for taking or catching fish.

(c) A person may use a minnow seine not more than 20 feet long for the purpose of catching minnows for bait.

(d) In seining for bait as permitted in Subsection (c) of this section, all minnows more than three inches long shall be returned to the water at once while alive.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 286.013. **Fish Sale**

(a) No person may sell or offer to sell any bass, white perch, crappie, or catfish caught in the streams of Pecos County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 286.014. **Leaving Fish to Die**

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Pecos County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 287. POLK COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

287.001. Regulatory Act: Applicability.

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

287.011. Hunting With Dogs.

SUBCHAPTER C. GAME ANIMALS

287.021. Hunting Deer With Dogs.
287.022. Possession of Deer.

SUBCHAPTER D. FISH

287.031. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 287.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Polk County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 287.002 to 287.010 reserved for expansion]

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

§ 287.011. Hunting With Dogs

A person may use dogs to hunt game birds or game animals in Polk County only during the open season for the game bird or game animal. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 287.012 to 287.020 reserved for expansion]

SUBCHAPTER C. GAME ANIMALS

§ 287.021. Hunting Deer With Dogs

(a) No person may knowingly allow or permit a dog under his control to hunt any wild deer in Polk County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200 and by confinement in the county jail for not less than 3 days nor more than 30 days. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 287.022. Possession of Deer

(a) No person may possess the freshly killed carcass of a wild deer, or part of one, in Polk County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200 and by confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 287.023 to 287.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 287.031. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 288. POTTER COUNTY

§ 288.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Potter County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 289. PRESIDIO COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

289.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

289.011. Regulatory Act: Exception.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 289.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Presidio County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 289.002 to 289.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 289.011. Regulatory Act: Exception

In Presidio County fish are not "wildlife resources" as that term is used in the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 290. RAINS COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

- 290.001. Regulatory Act: Applicability.
290.002. Regulatory Act: Lake Tawakoni.

SUBCHAPTER B. BIRDS

- 290.011. Quail.

SUBCHAPTER C. FISH

- 290.021. Lake Tawakoni: Fish Sale.
290.022. Leaving Fish to Die.

SUBCHAPTER D. FUR-BEARING ANIMALS

- 290.031. Hunting Mink With Dogs.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 290.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Rains County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 290.002. Regulatory Act: Lake Tawakoni

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in the water area of Lake Tawakoni in Rains County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 290.003 to 290.010 reserved for expansion]

SUBCHAPTER B. BIRDS**§ 290.011. Quail**

(a) No person may hunt wild quail in Rains County except during the open season beginning on December 1 of one year and extending through January 16 of the following year. During the open season no person may hunt wild quail in Rains County except on Mondays, Wednesdays, and Saturdays. If any Monday or Wednesday during the open season is a legal holiday, then a person may hunt quail on the next day after the legal holiday.

(b) No person may kill more than 12 quail in one day or more than 36 quail during any seven-day period. No person may possess more than 36 quail at one time.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each quail killed or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 290.012 to 290.020 reserved for expansion]

SUBCHAPTER C. FISH**§ 290.021. Lake Tawakoni: Fish Sale**

(a) No person may sell any fish, except bait fish, taken from that part of the water area of Lake Tawakoni located in Rains County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 217, ch. 105, § 25, eff. Sept. 1, 1977.]

§ 290.022. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit upon the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Rains County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 290.023 to 290.030 reserved for expansion]

SUBCHAPTER D. FUR-BEARING ANIMALS**§ 290.031. Hunting Mink With Dogs**

A person may hunt wild mink in Rains County with dogs. A person may have in his possession a mink pelt while hunting with dogs.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 291. RANDALL COUNTY**§ 291.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Randall County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 292. REAGAN COUNTY**§ 292.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Reagan County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 293. REAL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

293.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

293.011. Fish Sale.
293.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 293.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Real County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 293.002 to 293.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 293.011. Fish Sale

(a) No person may offer, possess, or take for sale any catfish, perch, crappie, bream, or bass in Real County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 293.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit upon the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Real County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 294. RED RIVER COUNTY

§ 294.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Red River County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 295. REEVES COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

295.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

295.011. Regulatory Act: Exception.
295.012. Fishing Methods.
295.013. Fish Sale.
295.014. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 295.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Reeves County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 295.002 to 295.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 295.011. Regulatory Act: Exception

In Reeves County, fish are not "wildlife resources" as that term is used in the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 295.012. Fishing Methods

(a) No person may catch fish in the freshwater rivers, creeks, lakes, bayous, pools, or lagoons of Reeves County by any means other than ordinary hook and line, trotline, or artificial bait.

(b) Except as provided in Subsection (c) of this section, no person may place in the water described in this section any seine, net or other device, or trap for catching fish.

(c) A person may use a minnow seine not more than 20 feet long for the purpose of catching minnows for bait.

(d) In seining for bait as permitted in Subsection (c) of this section, all minnows more than three inches long shall be returned to the water at once while alive.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 295.013. Fish Sale

(a) No person may sell or offer to sell any bass, white perch, crappie, or catfish caught in the streams of Reeves County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 295.014. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Reeves County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 296. REFUGIO COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT****Section**

296.001. Regulatory Act: Applicability.

SUBCHAPTER B. BIRDS

296.011. Quail.

SUBCHAPTER C. FISH

296.021. Fishing Methods: Guadalupe River.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 296.001. Regulatory Act: Applicability**

(a) The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the coastal water of Refugio County with respect to all fish, aquatic life, and marine animals except shrimp and oysters.

(b) Except as provided in Subsection (a) of this section, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to wildlife resources in Refugio County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 296.002 to 296.010 reserved for expansion]

SUBCHAPTER B. BIRDS**§ 296.011. Quail**

The open season for wild quail in Refugio County when it is lawful to hunt wild quail begins on November 15 in one year and extends through February 15 of the following year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 296.012 to 296.020 reserved for expansion]

SUBCHAPTER C. FISH**§ 296.021. Fishing Methods: Guadalupe River**

(a) No person may catch fish in the Guadalupe River in Refugio County except by:

(1) hook and line;

(2) trotline;

(3) flounder gig and light; and

(4) a cast net or minnow seine not exceeding 20 feet in length and used for catching bait only.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 297. ROBERTS COUNTY**§ 297.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Roberts County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 298. ROBERTSON COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT****Section**

298.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

298.011. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 298.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code)

applies to the wildlife resources in Robertson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 298.002 to 298.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 298.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 299. ROCKWALL COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

299.001. Regulatory Act: Applicability.

299.002. Repealed.

SUBCHAPTER B. FISH

299.011. Repealed.

299.012 to 299.021 [Blank].

299.022. Fish Sale.

299.023. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 299.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Rockwall County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 181, ch. 88, § 1, eff. April 29, 1977.]

§ 299.002. Repealed by Acts 1977, 65th Leg., p. 181, ch. 88, § 2, eff. April 29, 1977

[Sections 299.003 to 299.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 299.011. Repealed by Acts 1977, 65th Leg., p. 181, ch. 88, § 3, eff. as provided in § 61.004

§§ 299.012 to 299.021. [Blank]

§ 299.022. Fish Sale

(a) No person may take for sale or possess for sale any fish, except bait fish, from the fresh water of Rockwall County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$200. Each fish taken or

possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 217, ch. 105, § 26, eff. Sept. 1, 1977.]

§ 299.023. Repealed by Acts 1977, 65th Leg., p. 181, ch. 88, § 3, eff. as provided in § 61.004; Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 300. RUNNELS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

300.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

300.011. Fish Sale.

300.012. Leaving Fish to Die.

300.013. Repealed.

300.014. New Lake Winters; Fish Sale.

300.015. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 300.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Runnels County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 300.002 to 300.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 300.011. Fish Sale

(a) No person may sell or offer to sell any bass, white perch, crappie, or catfish caught in the streams of Runnels County.

(b) This section does not apply to New Lake Winters in Runnels County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 300.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit upon the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Runnels County any catfish, perch, crappie, white perch, bass, trout, or

other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 300.013. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 300.014. New Lake Winters; Fish Sale

(a) No person may buy, sell, offer to buy or sell, or take or possess for commercial purposes fish, except bait fish, from the water of New Lake Winters in Runnels County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each fish taken or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 217, ch. 105, § 27, eff. Sept. 1, 1977.]

§ 300.015. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 301. RUSK COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

301.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

301.011. Fish Sale.

301.012. Prohibited Methods of Fishing.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 301.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Rusk County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 301.002 to 301.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 301.011. Fish Sale

(a) No person may sell, offer for sale, or possess for sale any fish, except bait fish, caught from the public fresh water of Rusk County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 217, ch. 105, § 28, eff. Sept. 1, 1977.]

§ 301.012. Prohibited Methods of Fishing

(a) This section applies only to the Angelina River and Mud Creek in Rusk County.

(b) No person may place any lime, poison, drug, dynamite, nitroglycerin, giant powder, or other explosive or substance harmful to fish in the water of the Angelina River or Mud Creek to catch or attempt to catch fish.

(c) No person may catch fish by the aid of "telephoning" or by using any other electricity-producing apparatus designed to shock fish.

(d) Possession of equipment described in Subsection (c) of this section in a boat or along the bank or shore of the Angelina River or Mud Creek in Rusk County is prima facie evidence of a violation of this section.

(e) A person who violates this section is guilty of a misdemeanor and on first conviction is punishable by a fine of not less than \$300 nor more than \$750. A second conviction of a violation of this section is punishable by a fine of not less than \$500 nor more than \$1,000 and by confinement in the county jail for not less than 30 days nor more than six months. A third or subsequent conviction of a violation of this section is punishable by a fine of not less than \$1,000 nor more than \$2,000 and by confinement in the county jail for not less than six months nor more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 302. SABINE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

302.001. Regulatory Act: Applicability.

302.002. Regulatory Act: Certain Tract.

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

Section
302.011. Open Season for Game Birds and Game Animals.

SUBCHAPTER C. GAME ANIMALS

302.021. Hunting Deer With Dogs.
302.022. Squirrel Limit.

SUBCHAPTER D. BIRDS

302.031. Turkey.

SUBCHAPTER E. FISH

302.041. Regulatory Act: Applicability.
302.042. [Blank].
302.043. Fish Sale.
302.044. Sabine River: Fish Sale.

SUBCHAPTER F. FUR-BEARING ANIMALS

302.051. Methods of Taking Opossum, Bobcats, and Catamounts.
302.052. Attracting Foxes With Calling Devices.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 302.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Sabine County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 302.002. Regulatory Act: Certain Tract

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to all wildlife resources in that portion of the following described land which is located in Sabine County:

A tract of land containing approximately 10,-500 acres partly in Sabine County and partly in San Augustine County described as follows:

BEGINNING at the intersection of the north line of Farm to Market Highway 83 and the east line of Farm to Market Highway 1751;

THENCE in a northerly direction with the east line of Farm to Market Highway 1751, 34,300 feet to its point of intersection with the south line of the Armstead Chumney League;

THENCE easterly with the south line of the Armstead Chumney League 6,700 feet to the southeast corner of the Armstead Chumney League;

THENCE northerly with the east line of the Armstead Chumney League 1800 feet to the southwest corner of the Ben Clark Survey;

THENCE easterly with the south line of the Ben Clark Survey and easterly with the

north line of the Nicholas Coleman Survey, 3,000 feet to the Nicholas Coleman Survey's northeast corner;

THENCE southerly with the east line of the Nicholas Coleman Survey and the west line of the Hulda Hollien Survey, 1,800 feet to the northwest corner of the Southern Pine Lumber Company tract in the Hulda Hollien Survey;

THENCE easterly with the north line of the Southern Pine Lumber Company tract, 7,500 feet to the east line of the Hulda Hollien Survey;

THENCE southerly with the east line of the Hulda Hollien Survey, 1,600 feet to the westerly northeast corner of the J. C. Dickerson Survey;

THENCE westerly with the north line of the J. C. Dickerson Survey, 2,100 feet to its northwest corner;

THENCE southerly with the west line of the J. C. Dickerson Survey, 2,000 feet to its southwest corner;

THENCE easterly with the south line of the J. C. Dickerson Survey, 2,500 feet to the west line of the county road;

THENCE southerly with the west line of the County Road 28,100 feet to the north line of Farm to Market Highway 83;

THENCE westerly with the north line of Farm to Market Highway 83, 15,000 feet to the place of beginning.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 302.003 to 302.010 reserved for expansion]

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

§ 302.011. Open Season for Game Birds and Game Animals

(a) No person may hunt or possess a game bird or game animal in Sabine County except during the open season, which is the same as the open season provided from time to time for game birds and game animals in Jasper, Newton, and Tyler counties under the Uniform Wildlife Regulatory Act.

(b) This section does not apply to wild turkeys in Sabine County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 302.012 to 302.020 reserved for expansion]

SUBCHAPTER C. GAME ANIMALS

§ 302.021. **Hunting Deer With Dogs**

A person may hunt and trail wild buck deer in Sabine County with dogs during the open season for hunting deer in Sabine County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 302.022. **Squirrel Limit**

(a) During the open season for taking squirrel in Sabine County, no person may take, kill, or possess more than five squirrels in one day.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 302.023 to 302.030 reserved for expansion]

SUBCHAPTER D. BIRDS

§ 302.031. **Turkey**

(a) No person may take or kill or attempt to take or kill any wild turkey in Sabine County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$300.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 302.032 to 302.040 reserved for expansion]

SUBCHAPTER E. FISH

§ 302.041. **Regulatory Act: Applicability**

(a) The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in all of the water area of the Sam Rayburn Reservoir located in Sabine County and in all of the water area of Toledo Bend Reservoir located in Sabine County.

(b) In that part of the Sam Rayburn Reservoir located in Sabine County, only freshwater fish are included in the term "wildlife resources."

(c) In that part of Toledo Bend Reservoir located in Sabine County only fish are included in the term "wildlife resources."

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 302.042. [Blank]

§ 302.043. **Fish Sale**

(a) No person may offer or possess for sale or sell any fish, except bait fish, caught or taken from the public fresh water of Sabine County.

(b) This section does not apply to that part of the Sabine River (Toledo Bend Reservoir) in Sabine County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 217, ch. 105, § 29, eff. Sept. 1, 1977.]

§ 302.044. **Sabine River: Fish Sale**

(a) A person may sell fish, except bass and crappie, taken from that part of the Sabine River located in Sabine County.

(b) This section does not exempt a person from other laws regulating catching fish for commercial purposes.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 302.045 to 302.050 reserved for expansion]

SUBCHAPTER F. FUR-BEARING ANIMALS

§ 302.051. **Methods of Taking Opossum, Bobcats, and Catamounts**

A person may take opossum, bobcats, and catamounts in Sabine County with a steel trap or any other type of trap or snare.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 302.052. **Attracting Foxes With Calling Devices**

(a) No person may use any horn, recording, or other device to call or attract a wild fox in Sabine County, except that a person may use the devices for scientific research or in making wildlife movies after obtaining a permit from the department to use them.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 303. SAN AUGUSTINE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
303.001. Regulatory Act: Applicability.
303.002. Repealed.

SUBCHAPTER B. GAME ANIMALS [REPEALED]

Section
303.011 to 303.013. Repealed.

SUBCHAPTER C. BIRDS [REPEALED]

303.021 to 303.022. Repealed.

SUBCHAPTER D. FISH [REPEALED]

303.031. Repealed.

SUBCHAPTER E. FUR-BEARING ANIMALS [REPEALED]

303.041 to 303.042. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 303.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in San Augustine County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 564, ch. 199, § 1, eff. Aug. 29, 1977.]

§ 303.002. **Repealed by Acts 1977, 65th Leg., p. 564, ch. 199, § 2, eff. Aug. 29, 1977**

[Sections 303.003 to 303.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS [REPEALED]

§§ 303.011 to 303.013. **Repealed by Acts 1977, 65th Leg., p. 564, ch. 199, § 3, eff. Aug. 29, 1977**

[Sections 303.014 to 303.020 reserved for expansion]

SUBCHAPTER C. BIRDS [REPEALED]

§§ 303.021, 303.022. **Repealed by Acts 1977, 65th Leg., p. 564, ch. 199, § 3, eff. Aug. 29, 1977**

[Sections 303.023 to 303.030 reserved for expansion]

SUBCHAPTER D. FISH [REPEALED]

§ 303.031. **Repealed by Acts 1977, 65th Leg., p. 564, ch. 199, § 2, eff. Aug. 29, 1977**

[Sections 303.032 to 303.040 reserved for expansion]

SUBCHAPTER E. FUR-BEARING ANIMALS [REPEALED]

§§ 303.041, 303.042. **Repealed by Acts 1977, 65th Leg., p. 564, ch. 199, § 3, eff. Aug. 29, 1977**

CHAPTER 304. SAN JACINTO COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
304.001. Regulatory Act: Applicability.
304.002. Regulatory Act: Lake Livingston.

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

304.011. Hunting With Dogs.

SUBCHAPTER C. GAME ANIMALS

304.021. Hunting Deer With Dogs.
304.022. Possession of Deer.
304.023. Squirrels.

SUBCHAPTER D. BIRDS

304.031. Turkey.

SUBCHAPTER E. FUR-BEARING ANIMALS

304.041. Fox.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 304.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in San Jacinto County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 304.002. **Regulatory Act: Lake Livingston**

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to all of the public water area in San Jacinto County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1754, ch. 702, § 1, eff. Aug. 29, 1977.]

[Sections 304.003 to 304.010 reserved for expansion]

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

§ 304.011. **Hunting With Dogs**

A person may use dogs to hunt game birds and game animals in San Jacinto County during the open season for the game bird or game animal.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 304.012 to 304.020 reserved for expansion]

SUBCHAPTER C. GAME ANIMALS

§ 304.021. Hunting Deer With Dogs

(a) No person may allow or permit a dog under his control to hunt wild deer in San Jacinto County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200 and by confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 304.022. Possession of Deer

(a) No person may possess the freshly killed carcass of a wild deer, or part of one, in San Jacinto County except during the open season for deer.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200 and by confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 304.023. Squirrels

(a) No person may hunt squirrel in San Jacinto County except during the open season beginning on October 15 and extending through January 15.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each squirrel hunted in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 304.024 to 304.030 reserved for expansion]

SUBCHAPTER D. BIRDS

§ 304.031. Turkey

(a) No person may hunt wild turkey in San Jacinto County except during the open season beginning on November 16 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 304.032 to 304.040 reserved for expansion]

SUBCHAPTER E. FUR-BEARING ANIMALS

§ 304.041. Fox

(a) A person may hunt or trap wild fox at any time in San Jacinto County.

(b) The commissioners court in San Jacinto County may fix and pay, out of the general fund of the county, bounties on the destruction of wild fox in the county.

CHAPTER 305. SAN PATRICIO COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

305.001. Regulatory Act: Applicability.

SUBCHAPTER B. BIRDS

305.011. Regulatory Act: Quail Exempted.

305.012. Quail Season.

SUBCHAPTER C. FISH [NEW]

305.021. Fish Sale: Lake Corpus Christi and Nueces River.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 305.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in San Patricio County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 305.002 to 305.010 reserved for expansion]

SUBCHAPTER B. BIRDS

§ 305.011. Regulatory Act: Quail Exempted

In San Patricio County quail are not wildlife resources under the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 305.012. Quail Season

The open season when it is lawful to hunt wild quail of all varieties in San Patricio County begins on December 1 of one year and extends through January 31 of the following year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

SUBCHAPTER C. FISH [NEW]

§ 305.021. Fish Sale: Lake Corpus Christi and Nueces River

(a) No person may take for sale any fish from Lake Corpus Christi in San Patricio County.

(b) No person may take for sale any fish from the portion of the Nueces River in San Patricio County west and north of the Calallen Dam or from a tributary of the Nueces River in San Patricio County the confluence of which with the Nueces River is west and north of the Calallen Dam.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. [Added by Acts 1977, 65th Leg., p. 1401, ch. 565, § 3, eff. Aug. 29, 1977.]

CHAPTER 306. SAN SABA COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

306.001. Regulatory Act: Applicability.

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

- 306.011. Definitions.
- 306.012. Open Archery Season.
- 306.013. Prohibited Archery Equipment.
- 306.014. Deer Permits.
- 306.015. Limit and Possession of Deer.
- 306.016. Penalty.
- 306.017. Possession of Firearms.

SUBCHAPTER C. FISH

- 306.021. Fish Sale.
- 306.022. Leaving Fish to Die.
- 306.023, 306.024. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 306.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in San Saba County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 306.002 to 306.010 reserved for expansion]

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

§ 306.011. Definitions

In this subchapter:

- (1) "Buck deer" means a deer that has a hardened antler protruding through the skin.
- (2) "Antlerless deer" is any deer other than a buck deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 306.012. Open Archery Season

(a) The open archery season in San Saba County begins on October 1 and extends through October 31 each year.

(b) During the open archery season a person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, and collared peccary (javelina) by means of bows and arrows. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 306.013. Prohibited Archery Equipment

No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, and collared peccary (javelina) in San Saba County by means of:

- (1) a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards;
- (2) arrows that are not equipped with broadhead hunting points at least seven-eighths of an inch in width and not more than one and one-half inches in width;
- (3) arrows that do not have on them in a nonwater-soluble medium the name and address of the user; or
- (4) poisoned, drugged, or explosive arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 306.014. Deer Permits

(a) At least 15 days prior to the opening of the archery season, a landowner or lessee in San Saba County who desires to permit the hunting of deer on his land with bows and arrows during the open archery season may apply to the department for antlerless deer permits.

(b) The department shall issue to each applicant the number of antlerless deer permits consistent with sound wildlife management practices and consistent with any law authorizing the department to regulate the taking of antlerless deer.

(c) Landowners or lessees receiving antlerless deer permits shall return the fully completed stubs from the used permits and all unused permits and stubs to the issuing officer not later than January 10 of the year following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 306.015. Limit and Possession of Deer

(a) No person may take or kill more than one antlerless deer with bow and arrows during the open archery season in San Saba County.

(b) No person may possess an antlerless deer in San Saba County unless he has in his possession an antlerless deer permit on which appears the date of the kill, the hunter's name, and the signature of the owner or agent on whose tract the deer was killed.

(c) No person may possess the carcass of any deer in San Saba County if it does not have attached to it a tag issued to him on his valid hunting license unless the carcass has been finally processed.

(d) No person may attach the bonus deer tag from a valid hunting license to a deer other than an antlerless deer in San Saba County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 306.016. Penalty

A person who violates Section 306.012 through Section 306.015 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 306.017. Possession of Firearms

(a) No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) during the open archery season while having any type of firearm or crossbow on his person or in his possession and simultaneously possessing a bow and arrow in an automobile or in a hunting camp in San Saba County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

[Sections 306.018 to 306.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 306.021. Fish Sale

(a) No person may buy, barter, or sell or offer to barter or sell any bass, crappie, perch, catfish, or any other fish, except bait fish, taken from the fresh water in San Saba County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100.
[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 217, ch. 105, § 30, eff. Sept. 1, 1977.]

§ 306.022. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit upon the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in San Saba County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§§ 306.023, 306.024. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 307. SCHLEICHER COUNTY

§ 307.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Schleicher County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 308. SCURRY COUNTY

§ 308.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Scurry County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 309. SHACKELFORD COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
309.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

309.011. Fish Sale.
309.012. Hubbard Creek Lake: Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 309.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code)

applies to the wildlife resources in Shackelford County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 309.002 to 309.010 reserved for expansion]

SUBCHAPTER B. FISH.

§ 309.011. Fish Sale

(a) No person may take for commercial purposes any fish, except bait fish, from the public water of Shackelford County.

(b) This section does not apply to that portion of Hubbard Creek Lake located in Shackelford County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$250. Each day in which a person takes fish for commercial purposes from the public water of Shackelford County is a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 217, ch. 105, § 31, eff. Sept. 1, 1977.]

§ 309.012. Hubbard Creek Lake: Fish Sale

(a) Except as provided in Subsection (b) of this section, no person may catch for barter or sale, possess or transport for barter or sale, offer to barter or sell, or barter or sell any fish, except bait fish, taken from that part of Hubbard Creek Lake located in Shackelford County.

(b) A person may catch, possess, transport, barter, or sell fish from Hubbard Creek Lake under a contract with the department for removal of rough fish as provided in Section 66.113 of this code.

(c) Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(b), eff. Sept. 1, 1977.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each fish possessed or sold in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 217, ch. 105, §§ 32, 42(b), eff. Sept. 1, 1977.]

CHAPTER 310. SHELBY COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

310.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

310.011. Deer.

310.012. Hunting Deer With Dogs.

310.013. Squirrel.

SUBCHAPTER C. BIRDS

Section

310.021. Turkeys.

310.0211. Turkey [NEW].

310.022. Quail.

SUBCHAPTER D. FUR-BEARING ANIMALS

310.031. Methods of Taking Fur-Bearing Animals.

310.032. Fox.

310.033. Attracting Foxes With Calling Devices.

SUBCHAPTER E. FISH

310.041. Regulatory Act: Applicability.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 310.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Shelby County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 310.002 to 310.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 310.011. Deer

(a) Except as provided in Subsection (b) of this section, no person may take or kill any deer in Shelby County at any time.

(b) A person may take or kill buck deer in that portion of Shelby County lying east of U.S. Highway 96, leading from Carthage in Panola County, through Tenaha and Center in Shelby County, to San Augustine in San Augustine County, during the open seasons beginning on November 15 and extending through November 30, and beginning on December 26 and extending through December 31.

(c) For the purpose of this section, a "buck deer" is a deer with a hardened antler protruding through the skin.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$500, or by confinement in the county jail for not less than 10 days nor more than six months, or both.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 310.012. Hunting Deer With Dogs

(a) No person may use a dog to hunt any deer in that portion of Shelby County south and west of U.S. Highways 59 and 96, leading from Carthage in Panola County, through Tenaha and Center in Shelby County, to San Augustine in San Augustine County.

(b) A person owning or controlling a dog who permits the dog to run, trail, or pursue a deer is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 310.013. Squirrel

(a) No person may hunt squirrel in Shelby County except during the open season beginning on October 1 and extending through December 31.

(b) During the open season in Shelby County no person may take in one day or have in his possession at one time more than 10 squirrels.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each squirrel taken or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 310.014 to 310.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 310.021. Turkeys

(a) No person may hunt wild turkey in Shelby County except during the open season beginning on November 16 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 310.0211. Turkey

[Text of section effective until September 1, 1982]

(a) Section 310.021 of this code is suspended during the effective period of this section.

(b) No person may hunt turkey in Shelby County at any time.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

(d) This section expires on September 1, 1982.

[Added by Acts 1977, 65th Leg., p. 37, ch. 20, § 1, eff. Aug. 29, 1977.]

§ 310.022. Quail

(a) No person may take or kill quail in Shelby County except during the open season beginning on December 1 of one year and extending through January 31 of the next year.

(b) No person may kill more than 12 quail in one day, take more than 36 quail in one week, or possess more than 36 quail at one time during the open season in Shelby County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each bird taken or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 310.023 to 310.030 reserved for expansion]

SUBCHAPTER D. FUR-BEARING ANIMALS

§ 310.031. Methods of Taking Fur-Bearing Animals

(a) No person may trap any fur-bearing animal, or set any trap or deadfall for any fur-bearing animal in Shelby County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 310.032. Fox

(a) Except as provided in Subsections (b) and (c) of this section, no person may hunt wild fox in Shelby County.

(b) A person may kill wild fox caught destroying domestic fowl or other domestic stock.

(c) When the state health officer finds and declares that the health of the people of Shelby County is menaced by rabies caused by rabid foxes, a person may kill or destroy wild foxes until the state health officer declares that the danger from rabid foxes has passed.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 310.033. Attracting Foxes With Calling Devices

(a) No person may use any horn, recording, or other device to call or attract a wild fox in Shelby County, except that a person may use the devices for scientific research or in making wildlife movies after obtaining a permit to use them from the department.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 310.034 to 310.040 reserved for expansion]

SUBCHAPTER E. FISH

§ 310.041. **Regulatory Act: Applicability**

The provisions of the Uniform Wildlife Regulatory Act (Chapter 61 of this code) apply to fish in all of the water area of Toledo Bend Reservoir located in Shelby County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 311. SHERMAN COUNTY

§ 311.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Sherman County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 312. SMITH COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

312.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

- 312.011. Regulatory Authority: Deer.
- 312.012. Prohibited Weapons.
- 312.013. Squirrel.

SUBCHAPTER C. BIRDS

- 312.021. Regulatory Authority: Quail.
- 312.022. Daily Hunting Permitted.
- 312.023. Turkey.
- 312.024. Pheasant.

SUBCHAPTER D. FISH

312.031. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 312.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources in Smith County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 312.002 to 312.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 312.011. **Regulatory Authority: Deer**

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to deer in Smith County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 312.012. **Prohibited Weapons**

(a) In Smith County, no person may hunt using a shotgun shell containing larger than Number 4 shot, except during the open season for deer.

(b) In Smith County, no person may hunt with a high-powered rifle in an area where deer are known to roam, except during the open deer season.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each violation constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 312.013. **Squirrel**

(a) No person may hunt squirrel in Smith County except during the open season beginning on October 1 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each violation constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 312.014 to 312.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 312.021. **Regulatory Authority: Quail**

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to quail in Smith County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 312.022. **Daily Hunting Permitted**

A person in Smith County may hunt game birds each day of the week during the open seasons. This section does not apply to quail.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 312.023. **Turkey**

(a) No person may hunt turkey in Smith County except during the open season beginning on November 16 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 312.024. Pheasant

There is no closed season for the hunting of pheasant of all varieties in Smith County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 312.025 to 312.030 reserved for expansion]

SUBCHAPTER D. FISH**§ 312.031. Fish Sale**

(a) Except as provided in Subsection (b) of this section, no person may sell, offer for sale, or possess for the purpose of sale fish, except bait fish, caught from the public fresh water of Smith County.

(b) A person having a commercial fishing license may sell rough fish (drum, shad, carp, suckers, gar, and buffalo fish) caught from the Sabine River in Smith County.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 217, ch. 105, § 33, eff. Sept. 1, 1977.]

CHAPTER 313. SOMERVELL COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT****Section**

313.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

313.011. Repealed.
313.012. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 313.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Somervell County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 313.002 to 313.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 313.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 313.012. Fish Sale

(a) Except as authorized by the department, no person may sell, possess for sale, offer for sale, or expose for sale fish caught from the Brazos River or its tributaries or from Lake Whitney or its source streams in Somervell County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each fish possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 218, ch. 105, § 34, eff. Sept. 1, 1977.]

CHAPTER 314. STARR COUNTY**§ 314.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Starr County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 315. STEPHENS COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT****Section**

315.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

315.011. Repealed.
315.012. Fish Sale: Possum Kingdom Lake.
315.013. Fish Sale: Hubbard Creek Lake.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 315.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Stephens County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 315.002 to 315.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 315.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 315.012. Fish Sale: Possum Kingdom Lake

(a) No person may barter, sell, or buy or offer to barter or sell fish, except bait fish, caught from Possum Kingdom Lake or its backwater located in Stephens County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 218, ch. 105, § 35, eff. Sept. 1, 1977.]

§ 315.013. Fish Sale: Hubbard Creek Lake

(a) No person may catch, possess, or transport for the purpose of sale or sell or barter or offer to sell or barter fish, except bait fish, from Hubbard Creek Lake in Stephens County.

(b) This section does not apply to a person operating under contract with the department authorized by Section 66.113 of this code.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each fish possessed or sold in violation of this section constitutes a separate offense. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 218, ch. 105, § 36, eff. Sept. 1, 1977.]

CHAPTER 316. STERLING COUNTY

§ 316.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Sterling County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 317. STONEWALL COUNTY

§ 317.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Stonewall County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 318. SUTTON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

318.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

318.011. Fish Sale.

318.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 318.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Sutton County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 318.002 to 318.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 318.011. Fish Sale

(a) No person may catch or possess for the purpose of sale or offer for sale catfish, perch, crappie, bream, or bass in Sutton County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 318.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Sutton County any catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 319. SWISHER COUNTY

§ 319.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Swisher County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 320. TARRANT COUNTY

§ 320.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Tarrant County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 321. TAYLOR COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

321.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

321.011. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 321.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Taylor County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 321.002 to 321.010 reserved for expansion]

SUBCHAPTER B. FISH**§ 321.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977**

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 322. TERRELL COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

322.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

322.011. Regulatory Act: Exception.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 322.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Terrell County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 322.002 to 322.010 reserved for expansion]

SUBCHAPTER B. FISH**§ 322.011. Regulatory Act: Exception**

In Terrell County fish are not "wildlife resources" as that term is used in the Uniform Wildlife Regulatory Act (Chapter 61 of this code). [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 323. TERRY COUNTY**§ 323.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Terry County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 324. Throckmorton County**§ 324.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Throckmorton County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 325. TITUS COUNTY**§ 325.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Titus County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 326. TOM GREEN COUNTY**SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**

Section

326.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

326.011. Repealed.

326.012. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT**§ 326.001. Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Tom Green County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 326.002 to 326.010 reserved for expansion]

SUBCHAPTER B. FISH**§ 326.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977**

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 326.012. Fish Sale

(a) No person may purchase or sell or attempt to purchase or sell freshwater fish caught from the water of Tom Green County except bait fish, buffalo fish, carp, suckers, and garfish.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 218, ch. 105, § 37, eff. Sept. 1, 1977.]

CHAPTER 327. TRAVIS COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

327.001. Wildlife Act: Applicability.

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

- 327.011. Definitions.
- 327.012. Open Archery Season.
- 327.013. Prohibited Archery Equipment.
- 327.014. Deer Permits.
- 327.015. Limit and Possession of Deer.
- 327.016. Penalty.
- 327.017. Possession of Firearms.

SUBCHAPTER C. BIRDS

327.021. Release of Pheasants.

SUBCHAPTER D. FISH

- 327.031. Repealed.
- 327.032. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 327.001. Wildlife Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Travis County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 327.002 to 327.010 reserved for expansion]

SUBCHAPTER B. METHODS GENERALLY APPLICABLE TO HUNTING

§ 327.011. Definitions

In this subchapter:

- (1) "Buck deer" means a deer that has a hardened antler protruding through the skin.
- (2) "Antlerless deer" means a deer other than a buck deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 327.012. Open Archery Season

(a) The open archery season in Travis County begins on October 1 and extends through October 31 each year.

(b) During the open archery season, a person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, and collared peccary (javelina) by means of bows and arrows. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 327.013. Prohibited Archery Equipment

No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) in Travis County by means of:

- (1) a bow that is not capable of shooting a hunting arrow equipped with a broadhead hunting point for a distance of 130 yards;
- (2) arrows that are not equipped with broadhead hunting points at least seven-eighths of an inch in width and not more than one and one-half inches in width;
- (3) arrows that do not have on them in a nonwater-soluble medium the name and address of the user; or
- (4) poisoned, drugged, or explosive arrows.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

§ 327.014. Deer Permits

(a) At least 15 days before the opening date of the open archery season, a landowner or lessee in Travis County who desires to permit the hunting of deer on his land with bows and arrows during the open archery season may apply to the department for antlerless deer permits.

(b) The department shall issue to each applicant the number of antlerless deer permits consistent with sound wildlife management practices and consistent with any law authorizing the department to regulate that taking of antlerless deer.

(c) Landowners or lessees receiving antlerless deer permits shall return the fully completed stubs to the issuing officer not later than January 10 of the year following the date of issuance.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 327.015. Limit and Possession of Deer

(a) No person may take or kill more than one antlerless deer with bow and arrow during the open archery season.

(b) No person may possess an antlerless deer in Travis County unless he has in possession an antler-

less deer permit on which appears the date of the kill, the hunter's name, and the signature of the owner or agent on whose tract the deer was killed.

(c) No person may possess the carcass of a deer in Travis County that does not have attached to it a tag issued to the person on his valid hunting license unless the carcass has been finally processed.

(d) No person may attach the bonus deer tag from a valid hunting license to a deer other than an antlerless deer.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 327.016. Penalty

A person who violates Section 327.012 through Section 327.015 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 327.017. Possession of Firearms

(a) No person may hunt wild buck deer, wild antlerless deer, wild bear, wild turkey gobblers or bearded hens, or collared peccary (javelina) during the open archery season in Travis County while having any type of firearm or crossbow on his person or in his possession and simultaneously possessing a bow and arrow in an automobile or hunting camp.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1215, ch. 456, § 16, eff. Sept. 1, 1975.]

[Sections 327.018 to 327.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 327.021. Release of Pheasants

(a) A person may purchase wild pheasants legally propagated by a person holding a license under Chapter 45 of this code and may release the pheasants in Travis County for hunting or shooting purposes.

(b) The holder of a license issued under Chapter 45 of this code may release pheasants for hunting or shooting purposes in Travis County.

(c) At least 30 percent of the birds released on any premises for shooting purposes shall be released within five days before the opening of the controlled season, and the remainder of the birds may be released at any time during the controlled season.

(d) Birds released under this section must be in good health, be full-winged, and in condition to go wild.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 327.022 to 327.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 327.031. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 327.032. Fish Sale

(a) Except as provided in Subsection (b) of this section, no person may catch or possess for the purpose of sale or offer for sale fish, except bait fish, from the water of Travis County.

(b) This section does not apply to rough fish, including shad, carp, suckers, gar, buffalo fish, mullet, and needlefish, from the water of Travis County, but not including the water of the Colorado River Lakes.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. Each fish caught or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 218, ch. 105, § 38, eff. Sept. 1, 1977.]

CHAPTER 328. TRINITY COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
328.001. Regulatory Act: Applicability.

SUBCHAPTER B. GAME ANIMALS

328.011. Deer Season; Spike Deer.

SUBCHAPTER C. FISH

328.021. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 328.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Trinity County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 328.002 to 328.010 reserved for expansion]

SUBCHAPTER B. GAME ANIMALS

§ 328.011. Deer Season; Spike Deer

(a) No person may hunt deer in Trinity County except during the open season beginning on November 16 and extending through December 31 of each year and during an archery season provided for by the commission beginning on October 1 and extending through October 31 of each year.

(b) No person may take or kill a spike deer in Trinity County at any time.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each animal taken in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 574, ch. 207, § 1, eff. Aug. 29, 1977.]

[Sections 328.012 to 328.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 328.021. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 329. TYLER COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section 329.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

329.011. Hunting With Dogs.

SUBCHAPTER C. FUR-BEARING ANIMALS

329.021. Regulatory Act: Fox Excluded.

329.022. Fox: Calling Devices.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 329.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Tyler County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 329.002 to 329.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 329.011. Hunting With Dogs

(a) In Tyler County a person may use dogs in hunting game birds and game animals only during the open season for the game bird or game animal.

(b) In Tyler County no person may knowingly allow a dog under his control to hunt a wild deer except during the open deer season.

(c) Except during the open deer season, no person in Tyler County may possess the carcass or a part of the carcass of a wild deer freshly killed.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200 and by confinement in the county jail for not less than 3 days nor more than 30 days.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 329.012 to 329.020 reserved for expansion]

SUBCHAPTER C. FUR-BEARING ANIMALS

§ 329.021. Regulatory Act: Fox Excluded

In Tyler County fox are not included as wildlife resources under the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 329.022. Fox: Calling Devices

(a) No person may use a horn, recording, or other device to call or attract wild fox in Tyler County except that, with a permit obtained from the department a device may be used for scientific research or the making of wildlife movies.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 330. UPSHUR COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section 330.001. Regulatory Act: Applicability.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

330.011. Hunting Weapons.

SUBCHAPTER C. GAME ANIMALS

330.021. Deer.

330.022. Squirrels.

SUBCHAPTER D. BIRDS

Section

330.031. Quail.
330.032. Turkey.

SUBCHAPTER E. FISH

330.041. Suckerfish.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 330.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources of Upshur County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 330.002 to 330.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 330.011. Hunting Weapons

(a) No person may hunt with a rifle larger than .22 caliber or with a shotgun loaded with buckshot or a slug in an area of Upshur County where deer are known to range, except during the open deer season.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$20 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 330.012 to 330.020 reserved for expansion]

SUBCHAPTER C. GAME ANIMALS

§ 330.021. Deer

(a) No person may hunt or possess deer in Upshur County except during a 30-day open season beginning on the Saturday nearest November 15.

(b) No person in Upshur County may hunt a deer other than a buck deer.

(c) No person may kill or take more than one buck deer during the open season in Upshur County.

(d) A "buck deer" means a deer having a hardened antler protruding through the skin.

(e) A person who violates a provision of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. Each deer taken in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1763, ch. 711, § 1, eff. Aug. 29, 1977.]

§ 330.022. Squirrels

(a) No person may hunt wild red or fox squirrel or wild gray squirrel in Upshur County except during the open season beginning on October 1 and extending through December 31.

(b) No person may take or kill more than 10 squirrels in a day or more than 20 squirrels during the open season.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1763, ch. 711, § 2, eff. Aug. 29, 1977.]

[Sections 330.023 to 330.030 reserved for expansion]

SUBCHAPTER D. BIRDS

§ 330.031. Quail

(a) No person may hunt wild quail in Upshur County except during the open season beginning on December 1 of one year and extending through January 15 of the following year.

(b) Persons may hunt wild quail on every day of the week.

(c) No person may kill more than 12 quail in one day or more than 36 quail during any period of seven days. No person may possess at one time more than 36 quail.

(d) No person may hunt quail on the land of another without the oral consent of the owner or other person in charge of the land given in the presence of two witnesses or the written consent of the owner or other person in charge of the land.

(e) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each quail killed or possessed in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1763, ch. 711, § 3, eff. Aug. 29, 1977.]

§ 330.032. Turkey

(a) No person may hunt wild turkey in Upshur County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$300. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 330.033 to 330.040 reserved for expansion]

SUBCHAPTER E. FISH

§ 330.041. Suckerfish

A person may catch suckerfish in Gin and Glade creeks during February, March, and April with any kind of trammel net.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 331. UPTON COUNTY

§ 331.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Upton County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 332. UVALDE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

332.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

332.011. Repealed.

332.012. Fish Sale.

332.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 332.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Uvalde County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 332.002 to 332.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 332.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 332.012. Fish Sale

(a) No person may sell or offer for sale a bass, white perch, crappie, or catfish caught in the streams of Uvalde County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 332.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water in Uvalde County an edible fish and leave the fish to die without an intention to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 333. VAL VERDE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

333.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

333.011. Repealed.

333.012. Fish Sale.

333.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 333.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Val Verde County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 333.002 to 333.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 333.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 333.012. Fish Sale

(a) No person may sell or offer for sale a bass, white perch, crappie, or catfish caught in the streams of Val Verde County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 333.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water in Val Verde County an edible fish and leave the fish to die without an intention to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 334. VAN ZANDT COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

- 334.001. Regulatory Act: Applicability.
334.002. Regulatory Act: Lake Tawakoni.

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

- 334.011. Trapping Without Permission of Landowner.

SUBCHAPTER C. BIRDS

- 334.021. Quail.
334.022. Turkey.

SUBCHAPTER D. FISH

- 334.031. Fish Sale; Lake Tawakoni.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 334.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) does not apply to the wildlife resources of Van Zandt County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 334.002. Regulatory Act: Lake Tawakoni

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in all of the water area of Lake Tawakoni in Van Zandt County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 334.003 to 334.010 reserved for expansion]

SUBCHAPTER B. PROVISIONS GENERALLY APPLICABLE TO HUNTING

§ 334.011. Trapping Without Permission of Landowner

(a) No person in Van Zandt County may set a trap, snare, deadfall, or other device for the taking of a bird or animal protected by this code on the land of another person without first having received from the landowner or his authorized agent written permission for the taking. The permit must specify the period of time during which the taking is authorized and the methods of taking authorized.

(b) The evidence that a person was setting a device for the taking of a bird or animal on land of another person and that the person did not have in his possession the permit required by this section is prima facie evidence of a violation of this section.

(c) No person may use a forged or otherwise fraudulent permit in taking or attempting to take a bird or animal by a trap, snare, deadfall, or other device on the land of another.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 334.012 to 334.020 reserved for expansion]

SUBCHAPTER C. BIRDS

§ 334.021. Quail

(a) No person may hunt quail in Van Zandt County except during the open season beginning on December 1 of one year and extending through January 31 of the following year.

(b) No person may hunt quail on a Sunday in Van Zandt County.

(c) No person may hunt quail with a gun or a dog outside the county of his residence on the land of another person in Van Zandt County without first having received from the landowner or his agent in charge of the land written permission to hunt. The permission must give the time during which hunting is allowed. This subsection does not apply to a person hunting in the company of the landowner or agent.

(d) The evidence that a person was hunting quail with a gun or a dog on the private land of another outside the county of his residence without being in possession of the permit required by this section is prima facie evidence of a violation of this section.

(e) No person may use a forged or otherwise fraudulent permit to hunt quail with a gun or dog on the land of another in Van Zandt County.

(f) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 334.022. **Turkey**

(a) No person may hunt turkey in Van Zandt County except during the open season beginning on November 16 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 334.023 to 334.030 reserved for expansion]

SUBCHAPTER D. FISH

§ 334.031. **Fish Sale; Lake Tawakoni**

(a) No person may sell fish, except bait fish, caught from Lake Tawakoni in Van Zandt County except under a contract with the department for the taking of rough fish.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$50 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 218, ch. 105, § 39, eff. Sept. 1, 1977.]

CHAPTER 335. VICTORIA COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

335.001. Regulatory Act: Applicability.

SUBCHAPTER B. BIRDS

335.011. Quail.

SUBCHAPTER C. FISH

- 335.021. Regulatory Act: Marine Life Excluded.
- 335.022. Fishing Methods: Guadalupe River.
- 335.023. Seining Within One Mile of City.
- 335.024. Fishing Methods: Certain Water.
- 335.025. Commission May Close Certain Water.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 335.001. **Regulatory Act: Applicability**

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Victoria County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 335.002 to 335.010 reserved for expansion]

SUBCHAPTER B. BIRDS

§ 335.011. **Quail**

(a) In Victoria County, quail are not included as wildlife resources under the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

(b) The open season when it is lawful to hunt wild quail of all varieties in Victoria County begins on November 15 of one year and extends through February 15 of the following year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 335.012 to 335.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 335.021. **Regulatory Act: Marine Life Excluded**

[Text of section effective until October 1, 1978]

In Victoria County saltwater species of marine life are not wildlife resources under the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

For text of section effective October 1, 1978, see § 335.021, post.

§ 335.021. **Regulatory Act: Marine Life Excluded**

[Text of section effective October 1, 1978]

In Victoria County saltwater species of marine life, except red drum, are not wildlife resources under the Uniform Wildlife Regulatory Act (Chapter 61 of this code).

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 725, ch. 270, § 14, eff. Oct. 1, 1978.]

For text of section effective until October 1, 1978, see § 335.021, ante.

§ 335.022. **Fishing Methods: Guadalupe River**

(a) No person may catch fish from the Guadalupe River in Victoria County except by:

- (1) hook and line;
- (2) trotline;
- (3) flounder gig and light;
- (4) cast net or minnow seine not exceeding 20 feet in length to be used for catching bait only.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 335.023. Seining Within One Mile of City

(a) No person may catch fish, shrimp, green turtle, loggerhead, or terrapin by the use of a seine, drag, fyke, setnet, trammel net, trap, dam, or weir from a bay or other navigable water in Victoria County within one mile of a city.

(b) "City" means a community having 100 or more families within an area of one square mile.

(c) A city shall set out and maintain buoys, stakes, or other markers showing the limits within which Subsection (a) of this section applies.

(d) A person who violates Subsection (a) of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. The identification of a boat operating in violation of this section is prima facie evidence of a violation by the owner, lessee, person in charge, or master of the boat.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 335.024. Fishing Methods: Certain Water

(a) No person may catch fish from the water of Lavaca Bay, Banal Lake, Mesquite Creek, Placado Creek, Garcitas Creek, or Oyster Bayou in Victoria County except by:

- (1) hook and line;
- (2) rod and reel;
- (3) trotline;
- (4) flounder gig and light; or
- (5) cast net or minnow seine not exceeding 20 feet in length and for catching bait only.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 335.025. Commission May Close Certain Water

(a) The commission may close tidal water in Victoria County for the use of nets, seines, spears, gigs, lights, and other devices for catching fish except a hook and line or cast net or minnow seine not more than 20 feet in length when the commission finds that the closing is best for the protection and increase of fish life or to prevent their destruction.

(b) The commission shall give notice of the closing at least two weeks before the effective date of the closing. The notice must contain:

- (1) the reason for the closing;
- (2) a designation of the area to be closed;
- (3) the effective date and duration of the closing;
- (4) a statement that after the effective date of the closing it will be unlawful to drag a seine, set a net, or use a gig and light to catch fish in the described area.

(c) After an investigation and hearing, and on a finding that the closing of an area no longer promotes the conservation of fish, the commission may open the area to seining, netting, gigging, and other fishing.

(d) The department may seize seines used in violation of this section and hold them as evidence in the trial of a defendant and no suit may be maintained against the department or an authorized employee for the seizure.

(e) This section does not apply to any of the water to which Sections 335.023 and 335.024 apply.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 336. WALKER COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT.

Section

336.001. Regulatory Act: Applicability.

SUBCHAPTER B. FUR-BEARING ANIMALS

336.011. Fox Calling Devices.

SUBCHAPTER C. FISH

336.021. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 336.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Walker County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 336.002 to 336.010 reserved for expansion]

SUBCHAPTER B. FUR-BEARING ANIMALS

§ 336.011. Fox Calling Devices

(a) No person may use a horn, recording, or other device to call or attract fox in Walker County except that a person may use a calling device for scientific research or the making of wildlife movies if a permit is acquired from the department.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 336.012 to 336.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 336.021. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 337. WALLER COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

337.001. Regulatory Act: Applicability.

SUBCHAPTER B. ANIMALS

337.011. Squirrel.

SUBCHAPTER C. FISH

337.021. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 337.001. Regulatory Act: Applicability

The Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies only to the following wildlife resources in Waller County:

- (1) deer;
- (2) quail; and
- (3) turkey.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 337.002 to 337.010 reserved for expansion]

SUBCHAPTER B. ANIMALS

§ 337.011. Squirrel

(a) No person may hunt squirrel in Waller County except during the open seasons beginning on May 1 and extending through July 31 and beginning on October 1 and extending through December 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$50. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 337.012 to 337.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 337.021. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 338. WARD COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

338.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

338.011. Fish Sale.

338.012. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 338.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Ward County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 338.002 to 338.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 338.011. Fish Sale

(a) No person may sell or offer for sale a bass, white perch, crappie, or catfish caught in the streams of Ward County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 338.012. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water in Ward County an edible fish and leave the fish to die without an intention to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish left to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 339. WASHINGTON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

339.001. Regulatory Act: Applicability.

339.002. Repealed.

SUBCHAPTER B. ANIMALS

Section
339.011, 339.012. Repealed.

SUBCHAPTER C. FISH

339.021. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 339.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Washington County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1761, ch. 709, § 1, eff. Aug. 29, 1977.]

§ 339.002. Repealed by Acts 1977, 65th Leg., p. 1761, ch. 709, § 2, eff. Aug. 29, 1977

[Sections 339.003 to 339.010 reserved for expansion]

SUBCHAPTER B. ANIMALS

§§ 339.011, 339.012. Repealed by Acts 1977, 65th Leg., p. 1761, ch. 709, § 3, eff. Aug. 29, 1977

[Sections 339.013 to 339.020 reserved for expansion]

SUBCHAPTER C. FISH

§ 339.021. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 340. WEBB COUNTY

Section
340.001. Regulatory Act: Applicability.
340.002. Certain Methods of Taking Game Prohibited.

§ 340.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Webb County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 340.002. Certain Methods of Taking Game Prohibited

Sections 62.003, 62.005, and 66.004 of this code apply in Webb County and the provisions of those sections prevail over provisions of the Uniform Wildlife Regulatory Act (Chapter 61 of this code). [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 341. WHARTON COUNTY

§ 341.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Wharton County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 342. WHEELER COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
342.001. Regulatory Act: Applicability.

SUBCHAPTER B. BIRDS

342.011. Quail.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 342.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Wheeler County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 342.002 to 342.010 reserved for expansion]

SUBCHAPTER B. BIRDS

§ 342.011. Quail

(a) No person may hunt quail in Wheeler County except during the open season beginning on December 1 and extending through January 31.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100. Each bird taken in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 343. WICHITA COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section
343.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

343.011. Repealed.
343.012. Fish Sale.
343.013. Leaving Fish to Die.

Section

- 343.014. Injuring Fish.
- 343.015. Special Charge.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 343.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Wichita County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 343.002 to 343.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 343.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 343.012. Fish Sale

(a) No person may barter, sell, offer for barter or sale, or buy a bass, perch, crappie, catfish, or any other fish, except minnows, taken from the water located in the valley of the Big Wichita River from where the lower or diversion dam on the Big Wichita River is located, above the dam, up the valley of the Big Wichita River to the storage dam in Baylor County, and up the river valley from the dam as far as the water is impounded by the dam, or in any water in Lake Wichita in Wichita County, or in any water impounded by the dam across Holliday Creek forming Lake Wichita, or in any of the irrigation canals connected with Lake Kemp or the diversion dam, or in any of the water in laterals leading from the canals in Wichita County, or in the lateral, canal, or drainage ditch leading from the South Side Canal from Diversion Lake from a point in the South Side Canal in Section 16, of Denton County school lands, League No. 4, Wichita County, Texas, to Holliday Creek and thence down Holliday Creek to Lake Wichita in Wichita County, or in any of the water of Buffalo Creek Reservoir, Lake Iowa Park, or Old City Lake, located in Wichita County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50. Each fish sold or purchased in violation of this section constitutes a separate offense.

(c) A person alleged to have violated this section may be prosecuted in the county where the fish were caught, where he is found in possession of them, or where the fish were bartered or sold, or offered for sale or barter, or purchased.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 343.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the water described in Section 343.012(a) of this code, a bass, crappie, white perch, sunfish, drum, catfish, or other edible fish and leave the fish to die without an intent to eat the fish or leave any minnows without an intent to use them for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$1 nor more than \$25. Each fish allowed to die constitutes a separate offense. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 343.014. Injuring Fish

(a) No person may injure or destroy fish by using dynamite, powder, or other explosive or poison in any of the water described in Section 343.012(a) of this code.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$1,000 and by confinement in the county jail for not more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 343.015. Special Charge

District judges of the judicial districts of Wichita County shall give a special charge on Sections 343.012 through 343.014 of this code to the grand juries of Wichita County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 344. WILBARGER COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

- 344.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

- 344.011. Repealed.
- 344.012. Fish Sale.
- 344.013. Leaving Fish to Die.
- 344.014. Injuring Fish.
- 344.015. Special Charge.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 344.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Wilbarger County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 344.002 to 344.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 344.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 344.012. Fish Sale

(a) No person may barter, sell, offer for barter or sale, or buy a bass, perch, crappie, catfish, or any other fish, except minnows, taken from any water in laterals leading off from irrigation canals connected with Lake Kemp or Diversion Lake or from those irrigation canals in Wilbarger County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50. Each fish sold or purchased in violation of this section constitutes a separate offense.

(c) A person alleged to have violated this section may be prosecuted in a county where the fish were caught, where the person was in possession of them, or where the fish were sold, bartered, offered for sale or barter, or purchased.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 344.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the water described in Section 344.012(a) of this code, a bass, crappie, white perch, sunfish, drum, catfish, or other edible fish and leave the fish to die without an intent to eat the fish or leave any minnows without an intent to use them for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$1 nor more than \$25. Each fish allowed to die constitutes a separate offense. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 344.014. Injuring Fish

(a) No person may injure or destroy fish by using dynamite, powder, or other explosive or poison in any of the water described in Section 344.012(a) of this code.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$100 nor more than \$1,000 and by confinement in the county jail for not more than one year.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 344.015. Special Charge

District judges of the judicial districts of Wilbarger County shall give a special charge on Sections

344.012 through 344.014 of this code to the grand juries of Wilbarger County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 345. WILLACY COUNTY

§ 345.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Willacy County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 346. WILLIAMSON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

346.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

346.011. Repealed.

346.012. Fish Sale.

346.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 346.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Williamson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 346.002 to 346.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 346.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 346.012. Fish Sale

(a) No person may sell or offer to sell a bass, white perch, crappie, or catfish caught in the streams of Williamson County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 346.013. Leaving Fish to Die

(a) No person may knowingly place, throw, or deposit on the banks or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools, or lagoons, or tanks, in Williamson County a catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave the fish to die without an intent to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 347. WILSON COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

347.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

347.011. Fish Sale.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 347.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Wilson County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 347.002 to 347.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 347.011. Fish Sale

(a) No person may sell or barter or offer for sale or barter a bass, perch, crappie, or catfish caught from the fresh water of Wilson County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 348. WINKLER COUNTY

§ 348.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources of Winkler County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 252, ch. 118, § 1, eff. May 4, 1977.]

CHAPTER 349. WISE COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

349.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

349.011. Repealed.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 349.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Wise County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 349.002 to 349.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 349.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

CHAPTER 350. WOOD COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

350.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

350.011. Fish Sale.

350.012. Sale of White Perch and Crappie Outside County.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 350.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Wood County.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 350.002 to 350.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 350.011. Fish Sale

(a) No person may sell, offer for sale, or possess for sale fish, except bait fish, caught from the fresh water of Wood County.

(b) Licensed commercial fishermen may sell drum, shad, carp, suckers, gar, and buffalo fish caught from the Sabine River forming the boundary between Smith and Wood Counties.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$100. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 218, ch. 105, § 40, eff. Sept. 1, 1977.]

§ 350.012. Sale of White Perch and Crappie Outside County

(a) No operator or owner of a private fish hatchery in Wood County may sell white perch or crappie for the purpose of stocking water outside Wood County.

(b) The owner or operator of a fish hatchery in Wood County is not prohibited from selling fish for the purpose of stocking water in Wood County and the Commissioners Court of Wood County and any person may purchase white perch and crappie for that purpose from a private fish hatchery.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$25 nor more than \$200. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 351. YOAKUM COUNTY

§ 351.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Yoakum County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 352. YOUNG COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

352.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

352.011. Repealed.

352.012. Fish Sale.

352.013. Fish Sale: Possum Kingdom Lake.

352.014. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 352.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Young County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 352.002 to 352.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 352.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 352.012. Fish Sale

(a) No person may sell, barter, offer for sale or barter, or buy a bass, crappie, perch, catfish, or any other fish, except minnows, caught in Young County.

(b) Subsection (a) of this section does not apply to Lake Possum Kingdom or its backwater in Young County or to the Clear Fork of the Brazos River in Young County.

(c) A person alleged to have violated this section may be prosecuted in Young County, where the person was found to be in possession of the fish, or where the fish were sold or bought.

(d) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50. Each fish sold or bought in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 352.013. Fish Sale: Possum Kingdom Lake

(a) No person may sell, barter, offer for sale or barter, or buy fish, except bait fish, caught from Lake Possum Kingdom or its backwater.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$100.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 218, ch. 105, § 41, eff. Sept. 1, 1977.]

§ 352.014. Leaving Fish to Die

(a) No person may knowingly throw, place, or deposit on the banks or grounds within 500 feet of

any water to which Section 352.012 of this code applies a bass, crappie, white perch, bream, sunfish, drum, catfish, or other edible fish and leave it to die without an intent to eat the fish or to leave a minnow to die without an intent to use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$2 nor more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 353. ZAPATA COUNTY

§ 353.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Zapata County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

CHAPTER 354. ZAVALA COUNTY

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

Section

354.001. Regulatory Act: Applicability.

SUBCHAPTER B. FISH

354.011. Repealed.

354.012. Fish Sale.

354.013. Leaving Fish to Die.

SUBCHAPTER A. APPLICABILITY OF UNIFORM WILDLIFE REGULATORY ACT

§ 354.001. Regulatory Act: Applicability

Except as provided in this chapter, the Uniform Wildlife Regulatory Act (Chapter 61 of this code) applies to the wildlife resources in Zavala County. [Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

[Sections 354.002 to 354.010 reserved for expansion]

SUBCHAPTER B. FISH

§ 354.011. Repealed by Acts 1977, 65th Leg., p. 219, ch. 105, § 42(a), eff. Sept. 1, 1977

Sale, transportation, and taking of bait fish, see, now, § 66.010.

§ 354.012. Fish Sale

(a) No person may sell or offer to sell a bass, white perch, crappie, or catfish caught in the streams of Zavala County.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$5 nor more than \$50.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

§ 354.013. Leaving Fish to Die

(a) No person may throw, place, or deposit on the bank or grounds adjacent to any of the fresh water, creeks, lakes, bayous, rivers, pools or lagoons, or tanks, in Zavala County a catfish, perch, crappie, white perch, bass, trout, or other edible fish and leave it to die, without the person intending to eat the fish or use it for bait.

(b) A person who violates this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25. Each fish allowed to die in violation of this section constitutes a separate offense.

[Acts 1975, 64th Leg., p. 1405, ch. 545, § 1, eff. Sept. 1, 1975.]

DISPOSITION TABLE

Showing where provisions of former articles of the Penal Code of 1925 and Civil Statutes and the unclassified laws of the General and Special Laws of Texas are covered in the Parks and Wildlife Code.

Ann.P.C. Article	Parks & Wildlife Code Section	Ann.P.C. Article	Parks & Wildlife Code Section
871	—	879g—4	63.003
871a	1.011(a)		224.012
871b	43.061	879h	63.004
872	64.001		339.012
873	62.010	879h—1	62.053
873a	62.011	879h—1 note	62.051
874	64.002	879h—2	62.054
874a, § 1	43.071	879h—3	62.055
	43.072	879h—3a, § 1	43.201
	43.074		43.202
§ 2	43.073	§ 2	43.203
§ 3	43.072	§ 3	43.204
§ 4	43.074	§ 4	43.205
	43.075	879h—4	62.052
	43.078	879h—5	62.056
§ 5	43.076	879h—6	62.002
§ 6	43.077	879i	64.011
875	—	880	63.010
876	—		103.013
877	64.012	880a	—
878	—	880b	310.012
to	—	880c	272.013
879a—5	—		272.015
879a—6, § 1	43.011	880d, § 1	49.002
§ 2	43.012	§ 1(a)	49.003
§ 3	43.013		49.004
§ 4	43.014	§ 1(b)	49.005
§ 5	43.015	§ 1(c)	49.005
	43.016	§ 2(a)	49.003
879b	—		49.006
879c	64.013		49.007
879c—1	—	§ 2(b)	49.004
to	—		49.006
879f—5	—		49.007
879f—6, §§ 1, 2	64.015	§ 2(c)	49.006
§ 3	—	§ 3	49.008
879g	63.006		49.010
879g—1	—	§ 4	49.011
879g—2	63.003	§ 5	49.012
879g—2a	63.003		49.013
	224.012	§ 6(a)	49.014
879g—3	63.003		

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Ann.P.C. Article	Parks & Wildlife Code Section	Ann.P.C. Article	Parks & Wildlife Code Section
880d, § 6(b)	49.015	895c, § 1	42.002
§ 6(c)	49.016		42.009
§ 7	49.009		42.011
§ 8	49.001		42.012
§ 9	49.017	§ 2	42.005
881	63.002		to
	64.013		42.008
881a	---		42.011
881b, § 1	64.021		42.014
§ 2	64.021		to
	64.026		42.016
§ 3	64.026	§ 3	42.002
§ 4	---	§ 4	42.010
§ 5	64.022	§ 5	42.017
	64.023		42.022
§§ 6, 7	64.024	§ 6(a)	42.001
§ 8	64.025	§ 6(b)	42.018
882	62.001	§ 6(c)	42.019
882a	12.012	§ 6(d)	42.018
883	---	§ 6(e)	42.020
884	62.021	§ 6(f)	42.021
	62.024	§ 7	---
885	62.009	§ 8	42.003
	62.021		42.004
	62.024		42.010
886	---		42.013
887	62.004	§ 9	42.023
888, § (a)	43.151	§ 10	42.024
	43.152	§§ 11, 12	---
§ (b)	43.151	§ 13	42.025
§ (c)	43.153	895c-1, § (1)	50.001
	43.154	§ (2)	50.002
§§ (d), (e)	43.154	§ (3)	50.003
§ (f)	43.155	§ (4)	50.004
§ (g)	43.156	§ (5)	50.005
§ (h)	43.157	895d	12.112
888a	64.004	896	---
888b, § 1	43.251	897	12.104
§ 2	43.252		12.110
§ 3	43.253		62.007
§ 4	43.254	897a	12.109
§ 5	43.255	898	12.004
§ 6	43.256	899	---
§ 7	43.257	900	62.006
§ 8	43.258	901	62.003
§ 9	43.259	901 note	43.101
§ 10	43.260		to
§ 11	43.261		43.111
889	62.027	902	62.005
890	62.027	903	43.001
	62.028		to
891	64.003		43.005
892	63.001	904	---
893	---	904a	---
to	---	905	12.102
895b	---		---

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Ann.P.C. Article	Parks & Wildlife Code Section	Ann.P.C. Article	Parks & Wildlife Code Section
906	12.101	913a, § 6	68.004
	12.105	§ 7	68.005
907	62.008	§ 8	68.015
	62.021	§ 9(a)	68.006
	62.026	§ 9(b), (c)	43.024
908, § (a)	43.042	§ 9(d)	43.021
	43.045	§ 9(e)	43.026
§ (b)	43.041(1)	§ 9(f)	68.020
§ (c)	43.041(2)	§ 10	68.007
§ (d)	43.050	§ 11	68.008
§ (e)	43.053	§ 12	68.009
§ (f)	43.043	§ 13	68.010
§ (g)	43.044	§ 14	68.011
	43.047	§ 15	68.012
	43.048	§ 16	68.013
	43.049	§ 17	68.014
§ (h)	43.052	§ 18	68.018
§ (i)	43.051	§ 19(a), (b)	68.015
§ (j)	—	§ 19(c)	68.016
§ (k)	43.054	§ 20	68.020
§ (l)	43.055	§ 21(a), (b)	—
§ (m)	43.046	§ 21(c), (d)	68.017
909	62.029	§ 22	67.005
909a	—		68.021
909a—1	62.030	§ 23	68.019
909a—2, § 1	62.030	§ 24	68.018
§ 2	—	§§ 25, 26	—
910	63.008	913b	12.105
911	—	914	—
912	12.107	915	—
913, § 1	43.022	915a	12.111
	43.024	916	—
	43.025	917	81.005
§ 1A	43.022		81.301
	43.024		to
	43.025		81.307
	43.026	918	12.007
§ 2	43.023	919	12.103
	43.026	920	42.001
§ 3	43.027	921	—
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§ 4	43.029	923	—
§ 5	12.013	923a	62.025
§ 6	12.013	923b	—
	43.023	923b—1	—
§ 7	43.030	923c	131.011
913a, § 1	68.001		237.022
§ 2(a)	67.002	923d	62.007
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	67.004	§§ 2 to 5	63.007
§ 3	68.002	923(g)	63.009
§ 4	68.003	923g	—
§ 5	—	to	—
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Ann.P.C. Article	Parks & Wildlife Code Section	Ann.P.C. Article	Parks & Wildlife Code Section
923h	62.022	923qa—7, § 1	71.004
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	77.038		77.063
	77.039		77.066
	77.040	§ 8(a)	77.017
	77.041	§ 8(b)	—
§ 5(b)	77.031	§ 9	77.042
§ 5(c)	77.033	§ 10(a)	77.043
	77.038		77.044
	77.039	§ 10(b)	77.045
	77.040		77.046
	77.041	§ 11(a)	77.067
§ 5(d)	77.031		77.089
	77.033	§ 11(b)	77.048
	77.036	§ 11(c)	77.016
	77.037	§ 11(d)	77.067
	77.0371		77.068
§ 5(e)	77.032		77.069
§ 6(a)	77.081		77.089
§ 6(b)	77.082		77.090
§ 6(c)	77.088		77.099
§ 6(d)	77.083	§ 11(e)	—
§ 6(e)	77.084	§ 11A	77.018
§ 6(f)	77.085	§ 12(a)	—
	77.086	§ 12(b)	77.002
	77.087		77.003
	77.091	§ 13(a)	77.020
§ 6(g)	77.091	§ 13(aa)	77.025
	77.092	§ 13(b)	77.022
	77.093	§ 13(c)	77.021
§ 6(h)	77.034	§ 13(d)	77.023
	77.045	§ 13(e)	77.011
	77.094	§ 13(f)	77.024
	77.095	§ 13(g)	77.019
	77.096		77.047
	77.097	§ 13(h)	77.001
	77.098	§ 13(i)	77.025
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	77.038	4075b-1, § 1	77.068
	77.039	§ 2	—
	77.040	4075c, §§ 1, 2	—
	77.041	§ 3(a)	66.302
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	77.036	§ 4	66.303
	77.037	§ 5	66.304
	77.0371	§ 6	66.305
§ 7(c)	77.061	§ 7	66.306
	77.062	§ 8	66.303
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	77.065	4386b, § 1	11.031
	77.070	§ 2	11.032
	77.071	§ 3	11.033
§ 7(d)	77.064	§ 4	11.032
§ 7(e)	77.061	§ 5	—
§ 7(f)	77.063	§ 6	11.034
		§ 7	—

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4386b—3	11.040		21.023
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6067b, § 1	13.101		21.010
	13.102		21.011
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§ 2(2)	13.105	§ 9	21.101
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§ 3	13.109		21.108
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§ 5	13.110		21.019
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6067d	13.018	§ 9-C	21.106
6068	13.008		21.110
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6069a	13.014		21.103
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6070	13.007	6071a	—
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TITLE 1. INTRODUCTORY PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

§ 1.07. Definitions

(a) In this code:

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

(2) "Suspect" means a person whose criminal responsibility is in issue in a criminal action. Whenever the term "actor" is used in this code, it means "suspect".

[See Compact Edition, Volume 1 for text of (3) to (9)]

(9.1) "Corporation" includes nonprofit corporations, professional associations created pursuant to statute, and joint stock companies.

[See Compact Edition, Volume 1 for text of (10) to (b)]

[Amended by Acts 1975, 64th Leg., p. 912, ch. 342, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 2123, ch. 848, § 1, eff. Aug. 29, 1977.]

Saving provisions. Section 17 of the 1975 Act provided:

"(a) Except as provided in Subsections (b) and (c) of this section, this Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act's effective date is governed by the law existing before the effective date, which law is continued in effect for this purpose, as if this Act were not in force. For purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date.

"(b) Conduct constituting an offense under existing law that is repealed by this Act and that does not constitute an offense under this Act may not be prosecuted after the effective date of this Act. If, on the effective date of this Act, a criminal action is pending for conduct that was an offense under the laws repealed by this Act and that does not constitute an offense under this Act, the action is dismissed on the effective date of this Act. However, a conviction existing on the effective date of this Act for conduct constituting an offense under laws repealed by this Act is valid and unaffected by this Act. For purposes of this section, "conviction" means a finding of guilt in a court of competent jurisdiction, and it is of no consequence that the conviction is not final.

"(c) In a criminal action pending on or commenced on or after the effective date of this Act, for an offense committed before the effective date, the defendant, if adjudged guilty, shall be assessed punishment under this Act if he so elects by written motion filed with the trial court before the sentencing hearing begins."

CHAPTER 2. BURDEN OF PROOF

§ 2.05. Presumption

When this code or another penal law establishes a presumption with respect to any fact, it has the following consequences:

(1) if there is sufficient evidence of the facts that give rise to the presumption, the issue of the existence of the presumed fact must be submitted to the jury, unless the court is satisfied that the evidence as a whole clearly precludes a finding beyond a reasonable doubt of the presumed fact; and

(2) if the existence of the presumed fact is submitted to the jury, the court shall charge the jury, in terms of the presumption and the specific element to which it applies, as follows:

(A) that the facts giving rise to the presumption must be proven beyond a reasonable doubt;

(B) that if such facts are proven beyond a reasonable doubt the jury may find that the element of the offense sought to be presumed exists, but it is not bound to so find;

(C) that even though the jury may find the existence of such element, the state must prove beyond a reasonable doubt each of the other elements of the offense charged; and

(D) if the jury has a reasonable doubt as to the existence of a fact or facts giving rise to the presumption, the presumption fails and the jury shall not consider the presumption for any purpose.

[Amended by Acts 1975, 64th Leg., p. 912, ch. 342, § 2, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 2.06. Repealed by Acts 1975, 64th Leg., p. 918, ch. 342, § 16, eff. Sept. 1, 1975

For saving provisions see note set out under Section 1.07.

**TITLE 2. GENERAL PRINCIPLES OF
CRIMINAL RESPONSIBILITY**

CHAPTER 6. CULPABILITY GENERALLY

§ 6.01. Requirement of Voluntary Act or Omission

(a) A person commits an offense only if he voluntarily engages in conduct, including an act, an omission, or possession.

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

[Amended by Acts 1975, 64th Leg., p. 913, ch. 342, § 3, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

**CHAPTER 7. CRIMINAL RESPONSIBILITY
FOR CONDUCT OF ANOTHER**

**SUBCHAPTER B. CORPORATIONS
AND ASSOCIATIONS**

§ 7.22. Criminal Responsibility of Corporation or Association

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

(b) A corporation or association is criminally responsible for a felony offense only if its commission was authorized, requested, commanded, performed, or recklessly tolerated by:

(1) a majority of the governing board acting in behalf of the corporation or association; or

(2) a high managerial agent acting in behalf of the corporation or association and within the scope of his office or employment.

[Amended by Acts 1975, 64th Leg., p. 913, ch. 342, § 4, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 7.24. Defense to Criminal Responsibility of Corporation or Association

It is an affirmative defense to prosecution of a corporation or association under Section 7.22(a)(1) or (a)(2) of this code that the high managerial agent having supervisory responsibility over the subject matter of the offense employed due diligence to prevent its commission.

[Amended by Acts 1975, 64th Leg., p. 913, ch. 341, § 5, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

**CHAPTER 8. GENERAL DEFENSES TO
CRIMINAL RESPONSIBILITY**

§ 8.07. Age Affecting Criminal Responsibility

(a) A person may not be prosecuted for or convicted of any offense that he committed when younger than 15 years of age except:

(1) perjury and aggravated perjury when it appears by proof that he had sufficient discretion to understand the nature and obligation of an oath;

(2) a violation of a penal statute cognizable under Chapter 302, Acts of the 55th Legislature, Regular Session, 1957, as amended,¹ except conduct which violates the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (first or subsequent offense) or driving while under the influence of any narcotic drug or of any other drug to a degree which renders him incapable of safely driving a vehicle (first or subsequent offense); or

(3) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state.

(b) Unless the juvenile court waives jurisdiction and certifies the individual for criminal prosecution, a person may not be prosecuted for or convicted of any offense committed before reaching 17 years of age except:

(1) perjury and aggravated perjury when it appears by proof that he had sufficient discretion to understand the nature and obligation of an oath;

(2) a violation of a penal statute cognizable under Chapter 302, Acts of the 55th Legislature, Regular Session, 1957, as amended, except conduct which violates the laws of this state prohibiting driving while intoxicated or under the influence of intoxicating liquor (first or subsequent offense) or driving while under the influence of any narcotic drug or of any other drug to a degree which renders him incapable of safely driving a vehicle (first or subsequent offense); or

(3) a violation of a motor vehicle traffic ordinance of an incorporated city or town in this state.

(c) Unless the juvenile court waives jurisdiction and certifies the individual for criminal prosecution, a person who has been alleged in a petition for an adjudication hearing to have engaged in delinquent conduct or conduct indicating a need for supervision may not be prosecuted for or convicted of any offense alleged in the juvenile court petition or any offense within the knowledge of the juvenile court judge as evidenced by anything in the record of the juvenile court proceedings.

(d) No person may, in any case, be punished by death for an offense committed while he was younger than 17 years.

[Amended by Acts 1975, 64th Leg., p. 2158, ch. 693, § 24, eff. Sept. 1, 1975.]

¹ Civil Statutes, art. 6701A-4.

Acts 1975, 64th Leg., p. 912, ch. 342, § 16 and Acts 1975, 64th Leg., p. 2159, ch. 693, § 26 repealed Penal Code (1925), art. 30, as amended by Acts 1973, 63rd Leg., p. 1484, ch. 544, § 2.

For saving provisions see note set out under Section 1.07.

CHAPTER 9. JUSTIFICATION EXCLUDING CRIMINAL RESPONSIBILITY

SUBCHAPTER D. PROTECTION OF PROPERTY

§ 9.44. Use of Device to Protect Property

The justification afforded by Sections 9.41 and 9.43 of this code applies to the use of a device to protect land or tangible, movable property if:

(1) the device is not designed to cause, or known by the actor to create a substantial risk of causing, death or serious bodily injury; and

(2) use of the device is reasonable under all the circumstances as the actor reasonably believes them to be when he installs the device.

[Amended by Acts 1975, 64th Leg., p. 913, ch. 342, § 6, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

TITLE 3. PUNISHMENTS

CHAPTER 12. PUNISHMENTS

SUBCHAPTER E. CORPORATIONS AND ASSOCIATIONS

§ 12.51. Authorized Punishments for Corporations and Associations

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

(b) If a corporation or association is adjudged guilty of an offense that provides a penalty including imprisonment, or that provides no specific penalty, a court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed:

(1) \$20,000 if the offense is a felony of any category;

(2) \$10,000 if the offense is a Class A or Class B misdemeanor; or

(3) \$2,000 if the offense is a Class C misdemeanor.

(c) In lieu of the fines authorized by Subsections (a) and (b)(1) and (b)(2) of this section, if a court finds that the corporation or association gained money or property or caused personal injury, property damage, or other loss through the commission of a felony or Class A or Class B misdemeanor, the court may sentence the corporation or association to pay a fine in an amount fixed by the court, not to exceed double the amount gained or caused by the corporation to be lost, whichever is greater.

(d) In addition to any sentence that may be imposed by this section, a corporation that has been adjudged guilty of an offense may be ordered by the court to give notice of the conviction to any person the court deems appropriate.

[Amended by Acts 1977, 65th Leg., p. 1917, ch. 768, § 1, eff. June 16, 1977.]

TITLE 4. INCHOATE OFFENSES

CHAPTER 15. PREPARATORY OFFENSES

§ 15.01. Criminal Attempt

(a) A person commits an offense if, with specific intent to commit an offense, he does an act amounting to more than mere preparation that tends but fails to effect the commission of the offense intended.

(b) If a person attempts an offense that may be aggravated, his conduct constitutes an attempt to commit the aggravated offense if an element that aggravates the offense accompanies the attempt.

(c) It is no defense to prosecution for criminal attempt that the offense attempted was actually committed.

(d) An offense under this section is one category lower than the offense attempted, and if the offense attempted is a felony of the third degree, the offense is a Class A misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 478, ch. 203, § 4, eff. Sept. 1, 1975.]

Subsection 7(a) of the 1975 amendatory act provided:

"Sections 1, 2, and 4 of this Act apply only to offenses committed on or after the effective date of this Act, and except as provided in Subsections (b), (c), and (d) of this section, a criminal action for an offense committed before the effective date of this Act is governed by the law existing before the effective date, which law is continued in effect for this purpose as though this law were not in force."

CHAPTER 16. CRIMINAL INSTRUMENTS

§ 16.01. Unlawful Use of Criminal Instrument

(a) A person commits an offense if:

(1) he possesses a criminal instrument with intent to use it in the commission of an offense; or

(2) with knowledge of its character and with intent to use or aid or permit another to use in the commission of an offense, he manufactures, adapts, sells, installs, or sets up a criminal instrument.

(b) For the purpose of this section, "criminal instrument" means anything, the possession, manufacture, or sale of which is not otherwise an offense, that is specially designed, made, or adapted for use in the commission of an offense.

(c) An offense under Subsection (a)(1) of this section is one category lower than the offense intended. An offense under Subsection (a)(2) of this section is a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 913, ch. 342, § 7, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

TITLE 5. OFFENSES AGAINST THE PERSON

CHAPTER 21. SEXUAL OFFENSES

Section 21.13. Evidence of Previous Sexual Conduct [NEW].

§ 21.02. Rape

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

(b) The intercourse is without the female's consent under one or more of the following circumstances:

(1) he compels her to submit or participate by force that overcomes such earnest resistance as might reasonably be expected under the circumstances;

(2) he compels her to submit or participate by any threat, communicated by actions, words, or deeds, that would prevent resistance by a woman of ordinary resolution, under the same or similar circumstances, because of a reasonable fear of harm;

(3) she has not consented and he knows she is unconscious or physically unable to resist;

(4) he knows that as a result of mental disease or defect she is at the time of the intercourse incapable either of appraising the nature of the act or of resisting it;

(5) she has not consented and he knows that she is unaware that sexual intercourse is occurring;

(6) he knows that she submits or participates because she erroneously believes that he is her husband; or

(7) he has intentionally impaired her power to appraise or control her conduct by administering any substance without her knowledge.

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

[Amended by Acts 1975, 64th Leg., p. 476, ch. 203, § 1, eff. Sept. 1, 1975.]

Subsection 7(a) of the 1975 amendatory act provided: "Sections 1, 2, and 4 of this Act apply only to offenses committed on or after the effective date of this Act, and except as provided in Subsections (b), (c), and (d) of this section, a criminal action for an offense committed before the effective date of this Act is governed by the law existing before the effective date, which law is continued in effect for this purpose as though this law were not in force."

§ 21.04. Sexual Abuse

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

(b) The intercourse is without the other person's consent under one or more of the following circumstances:

(1) the actor compels the other person to submit or participate by force that overcomes such earnest resistance as might be reasonably expected under the circumstances;

(2) the actor compels the other person to submit or participate by any threat, communicated by actions, words, or deeds, that would prevent resistance by a person of ordinary resolution, under the same or similar circumstances, because of a reasonable fear of harm;

(3) the other person has not consented and the actor knows the other person is unconscious or physically unable to resist;

(4) the actor knows that as a result of mental disease or defect the other person is at the time of the deviate sexual intercourse incapable either of appraising the nature of the act or of resisting it;

(5) the other person has not consented and the actor knows the other person is unaware that deviate sexual intercourse is occurring;

(6) the actor knows that the other person submits or participates because of the erroneous belief that he is the other person's spouse; or

(7) the actor has intentionally impaired the other person's power to appraise or control the other person's conduct by administering any substance without the other person's knowledge.

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

[Amended by Acts 1975, 64th Leg., p. 477, ch. 203, § 2, eff. Sept. 1, 1975.]

Subsection 7(a) of the 1975 amendatory act provided: "Sections 1, 2, and 4 of this Act apply only to offenses committed on or after the effective date of this Act, and except as provided in Subsections (b), (c), and (d) of this section, a criminal action for an offense committed before the effective date of this Act is governed by the law existing before the effective date, which law is continued in effect for this purpose as though this law were not in force."

§ 21.09. Rape of a Child

(a) A person commits an offense if he has sexual intercourse with a female not his wife and she is younger than 17 years.

(b) It is a defense to prosecution under this section that the female was at the time of the alleged offense 14 years or older and had, prior to the time of the alleged offense, engaged promiscuously in sexual intercourse or deviate sexual intercourse.

(c) It is an affirmative defense to prosecution under this section that the actor was not more than two years older than the victim.

(d) An offense under this section is a felony of the second degree.

[Amended by Acts 1975, 64th Leg., p. 914, ch. 342, § 8, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 21.13. Evidence of Previous Sexual Conduct

(a) Evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct may be admitted under Sections 21.02 through 21.05 of this code (rape, aggravated rape,

sexual abuse, and aggravated sexual abuse) only if, and only to the extent that, the judge finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

(b) If the defendant proposes to ask any question concerning specific instances, opinion evidence, or reputation evidence of the victim's sexual conduct, either by direct examination or cross-examination of any witness, the defendant must inform the court out of the hearing of the jury prior to asking any such question. After this notice, the court shall conduct an in camera hearing, recorded by the court reporter, to determine whether the proposed evidence is admissible under Subsection (a) of this section. The court shall determine what evidence is admissible and shall accordingly limit the questioning. The defendant shall not go outside these limits nor refer to any evidence ruled inadmissible in camera without prior approval of the court without the presence of the jury.

(c) The court shall seal the record of the in camera hearing required in Subsection (b) of this section for delivery to the appellate court in the event of an appeal.

(d) This section does not limit the right of the state or the accused to impeach credibility by showing prior felony convictions nor the right of the accused to produce evidence of promiscuous sexual conduct of a child 14 years old or older as a defense to rape of a child, sexual abuse of a child, or indecency with a child. If evidence of a previous felony conviction involving sexual conduct or evidence of promiscuous sexual conduct is admitted, the court shall instruct the jury as to the purpose of the evidence and as to its limited use.

[Added by Acts 1975, 64th Leg., p. 477, ch. 203, § 3, eff. Sept. 1, 1975.]

Subsection 7(b) of the 1975 amendatory act provided:
"Sections 3 and 6 of this Act apply to the prosecution of criminal offenses committed but not brought to trial before the effective date of this Act."

CHAPTER 22. ASSAULTIVE OFFENSES

§ 22.01. Assault

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

(b) An offense under Subsection (a)(1) of this section is a Class A misdemeanor unless the offense is committed by the owner or an employee of an institution described in Subsection (a), Section 2, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 4442c, Vernon's Texas Civil Statutes), or a person providing medical or psychiatric treatment at an institution described in that subsection, and the offense is committed by causing bodily injury to a patient or resident of an institution described in that subsection, in which event the offense is a felony of the third degree.

(c) An offense under Subsection (a)(2) of this section is a Class C misdemeanor unless the offense is committed by the owner or an employee of an institution described in Subsection (a), Section 2, Chapter 413, Acts of the 53rd Legislature, Regular Session, 1953, as amended (Article 4442c, Vernon's Texas Civil Statutes), or a person providing medical or psychiatric treatment at an institution described in that subsection, and the offense is committed by threatening a patient or resident of an institution described in that subsection with bodily injury, in which event the offense is a Class B misdemeanor.

(d) An offense under Subsection (a)(3) of this section is a Class C misdemeanor.
[Amended by Acts 1977, 65th Leg., 1st C.S., p. 55, ch. 2, §§ 12, 13, eff. July 22, 1977.]

§ 22.04. Injury to a Child

(a) A person commits an offense if he intentionally, knowingly, recklessly, or with criminal negligence, by act or omission, engages in conduct that causes to a child who is 14 years of age or younger:

- (1) serious bodily injury;
- (2) serious physical or mental deficiency or impairment; or
- (3) disfigurement or deformity.

(b) An offense under this section is a felony of the second degree unless the conduct is engaged in recklessly or negligently, in which event it shall be a felony of the third degree.

[Amended by Acts 1977, 65th Leg., p. 2067, ch. 819, § 1, eff. Aug. 29, 1977.]

TITLE 6. OFFENSES AGAINST THE FAMILY

CHAPTER 25. OFFENSES AGAINST THE FAMILY

Section
25.06. Sale or Purchase of Child [NEW].
25.06. Solicitation of a Child [NEW].

§ 25.05. Criminal Nonsupport

Acts 1975, 64th Leg., p. 912, ch. 342, § 16, repealed Penal Code (1925), arts. 602 and 602-A, as amended by Acts 1973, 63rd Leg., p. 603, ch. 257, §§ 1, 2 and art. 602-B, as added by § 3 of the 1973 Act.
For saving provisions see note set out under Section 1.07.

§ 25.06. Sale or Purchase of Child

[Text as added by Acts 1977, 65th Leg., p. 81, ch. 38, § 1]

(a) A person commits an offense if he:

- (1) possesses a child or has the custody, conservatorship, or guardianship of a child, whether or not he has actual possession of the child, and he offers to accept, agrees to accept, or accepts a thing of value for the delivery of the child to another or for the possession of the child by another for purposes of adoption; or

- (2) offers to give, agrees to give, or gives a thing of value to another for acquiring or main-

taining the possession of a child for the purpose of adoption.

(b) It is an exception to the application of this section that the thing of value is:

(1) a fee paid to a child-placing agency as authorized by law;

(2) a fee paid to an attorney or physician for services rendered in the usual course of legal or medical practice; or

(3) a reimbursement of legal or medical expenses incurred by a person for the benefit of the child.

(c) An offense under this section is a Class A misdemeanor unless the actor has been convicted previously under this section, in which event the offense is a felony of the third degree.

[Added by Acts 1977, 65th Leg., p. 81, ch. 38, § 1, eff. March 30, 1977.]

For text of section added by Acts 1977, 65th Leg., p. 1115, ch. 413, § 1, see § 25.06, post.

§ 25.06. Solicitation of a Child

[Text as added by Acts 1977, 65th Leg., p. 1115, ch. 413, § 1]

(a) A person commits an offense if he entices, persuades, or invites a child younger than 14 years to enter a vehicle, building, structure, or enclosed area with intent to engage in or propose engaging in sexual intercourse, deviate sexual intercourse, or sexual contact with the child or with intent to expose his anus or any part of his genitals to the child.

(b) The definitions of "sexual intercourse," "deviate sexual intercourse," and "sexual contact" in Chapter 21 of this code¹ apply to this section.

(c) An offense under this section is a Class A misdemeanor unless the actor takes the child out of the county of residence of the parent, guardian, or person standing in the stead of the parent or guardian of the child, in which event the offense is a felony of the third degree.

[Added by Acts 1977, 65th Leg., p. 1115, ch. 413, § 1, eff. June 15, 1977.]

¹ See § 21.01.

For text of section added by Acts 1977, 65th Leg., p. 81, ch. 38, § 1, see § 25.06, ante.

TITLE 7. OFFENSES AGAINST PROPERTY

CHAPTER 31. THEFT

§ 31.01. Definitions

In this chapter:

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

(5) "Appropriate" means:

(A) to bring about a transfer or purported transfer of title to or other nonpossesso-

ry interest in property, whether to the actor or another; or

(B) to acquire or otherwise exercise control over property other than real property.

[See Compact Edition, Volume 1 for text of (6) to (8)]

[Amended by Acts 1975, 64th Leg., p. 914, ch. 342, § 9, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 31.03. Theft

(a) A person commits an offense if he unlawfully appropriates property with intent to deprive the owner of property.

(b) Appropriation of property is unlawful if:

(1) it is without the owner's effective consent; or

(2) the property is stolen and the actor appropriates the property knowing it was stolen by another;

(c) For purposes of Subsection (b)(2) of this section:

(1) evidence that the actor has previously participated in recent transactions other than, but similar to, that which the prosecution is based is admissible for the purpose of showing knowledge or intent and the issues of knowledge or intent are raised by the actor's plea of not guilty;

(2) the testimony of an accomplice shall be corroborated by proof that tends to connect the actor to the crime, but the actor's knowledge or intent may be established by the uncorroborated testimony of the accomplice;

(3) an actor engaged in the business of buying and selling used or secondhand personal property, or lending money on the security of personal property deposited with him, is presumed to know upon receipt by the actor of stolen property (other than a motor vehicle subject to Article 6687-1, Vernon's Texas Civil Statutes) that the property has been previously stolen from another if the actor pays for or loans against the property \$25 or more (or consideration of equivalent value) and the actor knowingly or recklessly:

(i) fails to record the name, address, and physical description or identification number of the seller or pledgor;

(ii) fails to record a complete description of the property, including the serial number, if reasonably available, or other identifying characteristics; or

(iii) fails to obtain a signed warranty from the seller or pledgor that the seller or pledgor has the right to possess the proper-

ty. It is the express intent of this provision that the presumption arises unless the actor complies with each of the numbered requirements.

(4) for the purposes of Subparagraph (i) above, "identification number" means driver's license number, military identification number, identification certificate, or other official number capable of identifying an individual.

(d) An offense under this section is:

(1) a Class C misdemeanor if the value of the property stolen is less than \$5;

(2) a Class B misdemeanor if:

(A) the value of the property stolen is \$5 or more but less than \$20; or

(B) the value of the property stolen is less than \$5 and the defendant has previously been convicted of any grade of theft;

(3) a Class A misdemeanor if the value of the property stolen is \$20 or more but less than \$200;

(4) a felony of the third degree if:

(A) the value of the property stolen is \$200 or more but less than \$10,000, or the property is one or more head of cattle, horses, sheep, swine, or goats or any part thereof under the value of \$10,000;

(B) regardless of value, the property is stolen from the person of another or from a human corpse or grave; or

(C) the value of the property stolen is less than \$200 and the defendant has been previously convicted two or more times of any grade of theft;

(5) a felony of the second degree if the value of the property stolen is \$10,000 or more;

(6) a felony of the second degree regardless of the value, if the property was stolen by threat to commit, in the future, a felony offense against the person or property of the person threatened or another.

[Amended by Acts 1975, 64th Leg., p. 914, ch. 342, § 10, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 937, ch. 349, § 1, eff. Aug. 29, 1977.]

For saving provisions see note set out under Section 1.07.

Section 2 of the 1977 amendatory act provided:

"The provisions of Subsections (c)(3) and (4) shall not apply to the purchase or sale of property at a public sale commonly known as a neighborhood garage sale or community-wide flea market or First Monday Sale."

§ 31.04. Theft of Service

(a) A person commits theft of service if, with intent to avoid payment for service that he knows is provided only for compensation:

(1) he intentionally or knowingly secures performance of the service by deception, threat, or false token;

(2) having control over the disposition of services of another to which he is not entitled, he intentionally or knowingly diverts the other's services to his own benefit or to the benefit of another not entitled to them; or

(3) having control of personal property under a written rental agreement, he holds the property beyond the expiration of the rental period without the effective consent of the owner of the property, thereby depriving the owner of the property of its use in further rentals.

(b) For purposes of this section, intent to avoid payment is presumed if

(1) the actor absconded without paying for the service in circumstances where payment is ordinarily made immediately upon rendering of the service, as in hotels, restaurants, and comparable establishments; or

(2) the actor failed to return the property held under a rental agreement within 10 days after receiving notice demanding return.

(c) For purposes of Subsection (b)(2) of this section, notice shall be notice in writing, sent by registered or certified mail with return receipt requested or by telegram with report of delivery requested, and addressed to the actor at his address shown on the rental agreement.

(d) If written notice is given in accordance with Subsection (c) of this section, it is presumed that the notice was received no later than five days after it was sent.

(e) An offense under this section is:

(1) a Class C misdemeanor if the value of the service stolen is less than \$5;

(2) a Class B misdemeanor if the value of the service stolen is \$5 or more but less than \$20;

(3) a Class A misdemeanor if the value of the service stolen is \$20 or more but less than \$200;

(4) a felony of the third degree if the value of the service stolen is \$200 or more but less than \$10,000;

(5) a felony of the second degree if the value of the service stolen is \$10,000 or more.

[Amended by Acts 1977, 65th Leg., p. 1138, ch. 429, § 1, eff. Aug. 29, 1977.]

CHAPTER 32. FRAUD

SUBCHAPTER D. OTHER DECEPTIVE PRACTICES

§ 32.42. Deceptive Business Practices

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

(c) An offense under Subsections (b)(1), (b)(2), (b)(3), (b)(4), (b)(5), and (b)(6) of this section is:

(1) a Class C misdemeanor if the actor commits an offense with criminal negligence and if he has not previously been convicted of a deceptive business practice; or

(2) a Class A misdemeanor if the actor commits an offense intentionally, knowingly, recklessly or if he has been previously convicted of a Class B or C misdemeanor under this section.

(d) An offense under Subsections (b)(7), (b)(8), (b)(9), (b)(10), (b)(11), and (b)(12) is a Class A misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 1350, ch. 508, §§ 1, 2, eff. Sept. 1, 1975.]

TITLE 8. OFFENSES AGAINST PUBLIC ADMINISTRATION

CHAPTER 36. BRIBERY AND CORRUPT INFLUENCE

§ 36.01. Definitions

In this chapter:

(1) "Coercion" means a threat, however communicated:

- (A) to commit any offense;
- (B) to inflict bodily injury on the person threatened or another;
- (C) to accuse any person of any offense;
- (D) to expose any person to hatred, contempt, or ridicule;
- (E) to harm the credit or business repute of any person; or
- (F) to take or withhold action as a public servant, or to cause a public servant to take or withhold action.

(2) "Custody" means:

- (A) detained or under arrest by a peace officer; or
- (B) under restraint by a public servant pursuant to an order of a court.

(3) "Official proceeding" means any type of administrative, executive, legislative, or judicial proceeding that may be conducted before a public servant authorized by law to take statements under oath.

(4) "Party official" means a person who holds any position or office in a political party, whether by election, appointment, or employment.

(5) "Pecuniary benefit" means money, property, commercial interests, or other similar benefit the primary significance of which is economic gain; but does not include contributions made and reported in accordance with law.

(6) "Vote" means to cast a ballot in an election regulated by law.

[Amended by Acts 1975, 64th Leg., p. 915, ch. 342, § 11, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 36.02. Bribery

(a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer on another, or solicits, accepts, or agrees to accept from another:

(1) any pecuniary benefit as consideration for the recipient's decision, opinion, recommendation, vote, or other exercise of discretion as a public servant, party official, or voter;

(2) any benefit as consideration for the recipient's decision, vote, recommendation, or other exercise of official discretion in a judicial or administrative proceeding; or

(3) any benefit as consideration for a violation of a duty imposed by law on a public servant or party official.

(b) It is no defense to prosecution under this section that a person whom the actor sought to influence was not qualified to act in the desired way whether because he had not yet assumed office or he lacked jurisdiction or for any other reason.

(c) An offense under this section is a felony of the second degree.

[Amended by Acts 1975, 64th Leg., p. 915, ch. 342, § 11, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 36.07. Compensation for Past Official Behavior

(a) A person commits an offense if he intentionally or knowingly offers, confers, or agrees to confer any pecuniary benefit on a public servant for the public servant's having exercised his official powers or performed his official duties in favor of the actor or another.

(b) A public servant commits an offense if he intentionally or knowingly solicits, accepts, or agrees to accept any pecuniary benefit for having exercised his official powers or performed his official duties in favor of another.

(c) An offense under this section is a Class A misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 915, ch. 342, § 11, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 36.08. Gift to Public Servant by Person Subject to His Jurisdiction

(a) A public servant in an agency performing regulatory functions or conducting inspections or investigations commits an offense if he solicits, accepts, or agrees to accept any pecuniary benefit from a person the public servant knows to be subject to

regulation, inspection, or investigation by the public servant or his agency.

(b) A public servant in an agency having custody of prisoners commits an offense if he solicits, accepts, or agrees to accept any pecuniary benefit from a person the public servant knows to be in his custody or the custody of his agency.

(c) A public servant in an agency carrying on civil or criminal litigation on behalf of government commits an offense if he solicits, accepts, or agrees to accept any pecuniary benefit from a person against whom the public servant knows litigation is pending or contemplated by the public servant or his agency.

(d) A public servant who exercises discretion in connection with contracts, purchases, payments, claims, or other pecuniary transactions of government commits an offense if he solicits, accepts, or agrees to accept any pecuniary benefit from a person the public servant knows is interested in or likely to become interested in any contract, purchase, payment, claim, or transaction involving the exercise of his discretion.

(e) A public servant who has judicial or administrative authority, who is employed by or in a tribunal having judicial or administrative authority, or who participates in the enforcement of the tribunal's decision, commits an offense if he solicits, accepts, or agrees to accept any pecuniary benefit from a person the public servant knows is interested in or likely to become interested in any matter before the public servant or tribunal.

(f) A public servant who is a member of or employed by the legislature or by an agency of the legislature commits an offense if he solicits, accepts, or agrees to accept any pecuniary benefit from any person.

(g) An offense under this section is a Class A misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 915, ch. 342, § 11, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 36.10. Non-Applicable

Sections 36.07 (Compensation for Past Official Behavior), 36.08 (Gift to Public Servant), and 36.09 (Offering Gift to Public Servant) of this code do not apply to:

(1) a fee prescribed by law to be received by a public servant or any other benefit to which the public servant is lawfully entitled or for which he gives legitimate consideration in a capacity other than as a public servant;

(2) a gift or other benefit conferred on account of kinship or a personal, professional, or business relationship independent of the official status of the recipient;

(3) an honorarium in consideration for legitimate services rendered above and beyond official duties and responsibilities if:

(A) not more than one honorarium is received from the same person in a calendar year; and

(B) not more than one honorarium is received for the same service; and

(C) the value of the honorarium does not exceed \$250;

(D) the honorarium, regardless of amount, is reported in the financial statement filed under Chapter 421, Acts of the 63rd Legislature, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), if the recipient is required to file a financial statement under that Act; and

(E) the benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision;

(4) a benefit consisting of food, lodging, transportation, or entertainment accepted as a guest and reported as required by law; or

(5) a benefit to a public servant required to file a financial statement under Chapter 421, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-9b, Vernon's Texas Civil Statutes), that is derived from a function in honor or appreciation of the recipient if:

(A) the benefit and the source of any benefit in excess of \$20 is reported in the financial statement; and

(B) the benefit is used solely to defray the expenses that accrue in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision.

(6) Subsection (5) of Section 36.10 of this Act does not apply to those public servants designated in Section 36.08(f) of this Act 30 days prior to or during a regular session of the Texas Legislature.

[Amended by Acts 1975, 64th Leg., p. 915, ch. 342, § 11, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

CHAPTER 38. OBSTRUCTING GOVERNMENTAL OPERATION

Section

38.14. Preventing Execution of Civil Process [NEW].

§ 38.14. Preventing Execution of Civil Process

(a) A person commits an offense if he intentionally or knowingly prevents the execution of any process in a civil cause.

(b) It is an exception to the application of this section that the actor evaded service of process by avoiding detection.

(c) An offense under this section is a Class C misdemeanor.

[Added by Acts 1977, 65th Leg., p. 1136, ch. 427, § 1, eff. Aug. 29, 1977.]

CHAPTER 39. ABUSE OF OFFICE

Section

39.04. Public Disclosure by Public Servant [NEW].

§ 39.04. Public Disclosure by Public Servant

(a) For purposes of this section:

(1) "Public servant" means a person elected, selected, appointed, employed, or otherwise designated as one of the following, even if he has not yet qualified for office or assumed his duties:

(A) an officer of government; or

(B) a candidate for nomination or election to public office.

(2) "Public disclosure" means the filing of an affidavit with the county clerks of the counties wherein the property to be acquired is located and wherein the public servant resides within 10 days prior to the acquisition, setting forth the following:

(A) name of the public servant;

(B) the public office, public title, or job designation with which the public servant is connected;

(C) a full and complete description of the property;

(D) a full description of the nature, type, and amount of interest in the property, including but not limited to the percent ownership interest in the property;

(E) the date the public servant acquired an interest in the property;

(F) a verification by the public servant, reading, "I do solemnly swear that the above and foregoing statement, filed herewith, is of my own personal knowledge in all things true and correct, and fully shows the information required to be reported by me pursuant to Section 39.04, Texas Penal Code"; and

(G) an acknowledgement of the same type as required for the recording of deeds

in the deed records of the county clerk's office.

(3) "Property" means both real and personal.

(4) "Acquired" means by purchase or condemnation.

(5) "Public funds" mean any funds collected by or through any government.

(b) A public servant commits an offense if he fails to make public disclosure of any legal or equitable interest he may have in property which is acquired with public funds provided such public servant has actual notice of the acquisition or intended acquisition.

(c) If the public servant fails to file the affidavit provided for herein within the time period prescribed, his intent to commit the offense provided herein shall be presumed.

(d) An offense under this section is a Class A misdemeanor.

[Added by Acts 1975, 64th Leg., p. 1361, ch. 518, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 Act provided:

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

TITLE 9. OFFENSES AGAINST PUBLIC ORDER AND DECENCY

CHAPTER 42. DISORDERLY CONDUCT AND RELATED OFFENSES

Section

42.12. Repealed.

§ 42.01. Disorderly Conduct

(a) A person commits an offense if he intentionally or knowingly:

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

(8) discharges a firearm in a public place other than a public road;

(9) displays a firearm or other deadly weapon in a public place in a manner calculated to alarm;

(10) discharges a firearm on or across a public road; or

(11) exposes his anus or genitals in a public place and is reckless about whether another may be present who will be offended or alarmed by his act.

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

(d) An offense under this section is a Class C misdemeanor unless committed under Subsection (a)(8) or (a)(9) of this section, in which event it is a Class B misdemeanor; and further provide that a person who violates Subsection (a)(10) is guilty of a

misdeemeanor and on a first conviction is punishable by a fine of not less than \$25 nor more than \$200, on a second conviction is punishable by a fine of not less than \$200 nor more than \$500, and on a third or subsequent conviction is punishable by a fine of \$500.

[Amended by Acts 1977, 65th Leg., p. 181, ch. 89, §§ 1, 2, eff. Aug. 29, 1977.]

§ 42.11. Cruelty to Animals

(a) A person commits an offense if he intentionally or knowingly:

- (1) tortures or seriously overworks an animal;
- (2) fails unreasonably to provide necessary food, care, or shelter for an animal in his custody;
- (3) abandons unreasonably an animal in his custody;
- (4) transports or confines an animal in a cruel manner;
- (5) kills, injures, or administers poison to an animal, other than cattle, horses, sheep, swine, or goats, belonging to another without legal authority or the owner's effective consent; or
- (6) causes one animal to fight with another.

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

[Amended by Acts 1975, 64th Leg., p. 917, ch. 342, § 12, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 42.12. Repealed by Acts 1975, 64th Leg., p. 918, ch. 342, § 16, eff. Sept. 1, 1975

For saving provisions see note set out under Section 1.07.

CHAPTER 43. PUBLIC INDECENCY

SUBCHAPTER A. PROSTITUTION

43.02. Prostitution.

SUBCHAPTER B. OBSCENITY

Section

43.25. Commercial Obscenity Involving Persons Under 17 Years [NEW].

SUBCHAPTER A. PROSTITUTION

§ 43.02. Prostitution

(a) A person commits an offense if he knowingly:

- (1) offers to engage, agrees to engage, or engages in sexual conduct for a fee; or

[See Compact Edition, Volume 1 for text of (a)(2)]

(b) An offense is established under Subsection (a)(1) of this section whether the actor is to receive or pay a fee. An offense is established under Subsection (a)(2) of this section whether the actor solicits a person to hire him or offers to hire the person solicited.

(c) An offense under this section is a Class B misdemeanor, unless the actor has been convicted previously under this section, in which event it is a Class A misdemeanor.

[Amended by Acts 1977, 65th Leg., p. 757, ch. 286, § 1, eff. May 27, 1977.]

§ 43.03. Promotion of Prostitution

(a) A person commits an offense if, acting other than as a prostitute receiving compensation for personally rendered prostitution services, he or she knowingly:

- (1) receives money or other property pursuant to an agreement to participate in the proceeds of prostitution; or
- (2) solicits another to engage in sexual conduct with another person for compensation.

[See Compact Edition, Volume 1 for text of (b)]
[Amended by Acts 1977, 65th Leg., p. 758, ch. 287, § 1, eff. May 27, 1977.]

SUBCHAPTER B. OBSCENITY

§ 43.21. Definitions

In this subchapter:

- (1) "Obscene" means having as a whole a dominant theme that:

(A) appeals to the prurient interest of the average person applying contemporary community standards;

(B) depicts or describes sexual conduct in a patently offensive way; and

(C) lacks serious literary, artistic, political, or scientific value.

- (2) "Material" means a book, magazine, newspaper, or other printed or written material; a picture, drawing, photograph, motion picture, or other pictorial representation; a play, dance, or performance; a statue or other figure; a recording, transcription, or mechanical, chemical, or electrical reproduction; or other article, equipment, or machine.

(3) "Prurient interest" means an interest in sexual conduct that goes substantially beyond customary limits of candor in description or representation of such conduct. If it appears from the character of the material or the circumstances of its dissemination that the subject matter is designed for a specially susceptible audience, the appeal of the subject matter shall be judged with reference to such audience.

(4) "Distribute" means to transfer possession, whether with or without consideration.

(5) "Commercially distribute" means to transfer possession for valuable consideration.

- (6) "Sexual conduct" means:

(A) any contact between any part of the genitals of one person and the mouth or anus of another person;

(B) any contact between the female sex organ and the male sex organ;

(C) any contact between a person's mouth or genitals and the anus or genitals of an animal or fowl; or

(D) patently offensive representations of masturbation or excretory functions.

[Amended by Acts 1975, 64th Leg., p. 372, ch. 163, § 1, eff. Sept. 1, 1975.]

§ 43.25. Commercial Obscenity Involving Person Under 17 Years of Age

(a) A person commits an offense if, knowing the content of the material, he sells, commercially distributes, commercially exhibits, or possesses for sale, commercial distribution, or commercial exhibition any motion picture or photograph showing a person younger than 17 years of age observing or engaging in sexual conduct.

(b) It is an affirmative defense to prosecution under this section that the obscene material was possessed by a person having scientific, educational, governmental, or other similar justification.

(c) An offense under this section is a felony of the third degree.

[Added by Acts 1977, 65th Leg., p. 1035, ch. 381, § 1, eff. June 10, 1977.]

TITLE 10. OFFENSES AGAINST PUBLIC HEALTH, SAFETY, AND MORALS

CHAPTER 46. WEAPONS

§ 46.01. Chapter Definitions

In this chapter:

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

(6) "Illegal knife" means a:

(A) knife with a blade over five and one-half inches;

(B) a hand instrument designed to cut or stab another by being thrown;

(C) dagger, including but not limited to a dirk, stiletto, and poniard;

(D) bowie knife;

(E) sword; or

(F) spear.

[See Compact Edition, Volume 1 for text of (7) to (11)]

[Amended by Acts 1975, 64th Leg., p. 917, ch. 342, § 13, eff. Sept. 1, 1975.]

For saving provisions see note set out under Section 1.07.

§ 46.03. Non-Applicable

The provisions of Section 46.02 of this code do not apply to a person:

(1) in the actual discharge of his official duties as a peace officer, a member of the armed forces or national guard, or a guard employed by a penal institution;

(2) on his own premises or premises under his control unless he is an employee or agent of the owner of the premises and his primary responsibility is to act in the capacity of a private security guard to protect persons or property, in which event he must comply with Subdivision (5) of this section;

(3) traveling;

(4) engaging in lawful hunting, fishing, or other sporting activity if the weapon is a type commonly used in the activity; or

(5) who holds a security officer commission issued by the Texas Board of Private Investigators and Private Security Agencies, if:

(A) he is engaged in the performance of his duties as a security officer or traveling to and from his place of assignment;

(B) he is wearing a distinctive uniform; and

(C) the weapon is in plain view.

[Amended by Acts 1975, 64th Leg., p. 109, ch. 49, § 1, eff. April 15, 1975; Acts 1975, 64th Leg., p. 918, ch. 342, § 14, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 1330, ch. 494, § 2; Acts 1977, 65th Leg., p. 1879, ch. 746, § 26, eff. Aug. 29, 1977.]

For saving provisions of Acts 1975, 64th Leg., ch. 342, see note set out under Section 1.07.

§ 46.06. Prohibited Weapons

(a) A person commits an offense if he intentionally or knowingly possesses, manufactures, transports, repairs, or sells:

(1) an explosive weapon;

(2) a machine gun;

(3) a short-barrel firearm;

(4) a firearm silencer;

(5) a switchblade knife; or

(6) knuckles.

(b) It is a defense to prosecution under this section that the actor's conduct was incidental to the performance of official duty by the armed forces or national guard, a governmental law enforcement agency, or a penal institution.

(c) It is a defense to prosecution under this section that the actor's possession was pursuant to registration pursuant to the National Firearms Act, as amended.¹

(d) It is an affirmative defense to prosecution under this section that the actor's conduct was incidental to dealing with a switchblade knife, springblade knife, or short-barrel firearm solely as an antique or curio.

(e) An offense under this section is a felony of the second degree unless it is committed under Subsection (a)(5) or (a)(6) of this section, in which event, it is a Class A misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 918, ch. 342, § 15, eff. Sept. 1, 1975.]

¹ 26 U.S.C.A. § 5801 et seq.

For saving provisions see note set out under Section 1.07.

CHAPTER 47. GAMBLING

§ 47.04. Keeping a Gambling Place

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

(c) It is an affirmative defense to prosecution under this section that the gambling place is aboard an ocean-going vessel that enters the territorial waters of this state to call at a port in this state in the course of a bona fide voyage to or from a foreign port if:

(1) before the vessel enters the territorial waters of this state, the district attorney or, if there is no district attorney, the county attorney for the county in which the port is located receives notice of the existence of the gambling place on board the vessel and of the anticipated dates on which the vessel will enter and leave the territorial waters of this state;

(2) the portion of the vessel that is used as a gambling place is locked or otherwise physically secured in a manner that makes the area inaccessible to anyone other than the master and crew of the vessel at all times while the vessel is in the territorial waters of this state;

(3) no person other than the master and crew of the vessel is permitted to enter or view the gambling place while the vessel is in the territorial waters of this state; and

(4) the gambling place is not used for gambling or other gaming purposes while the vessel is in the territorial waters of this state.

(d) An offense under this section is a felony of the third degree.

[Amended by Acts 1977, 65th Leg., p. 667, ch. 251, § 1, eff. Aug. 29, 1977.]

§ 47.06. Possession of Gambling Device or Equipment

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

[Text of subsec. (c) added by Acts 1977, 65th Leg., p. 668, ch. 251, § 2]

(c) It is an affirmative defense to prosecution under this section that the device or equipment is aboard an ocean-going vessel that enters the territorial waters of this state to call at a port in this state in the course of a bona fide voyage to or from a foreign port if:

(1) before the vessel enters the territorial waters of this state, the district attorney or, if there is no district attorney, the county attorney for the county in which the port is located receives notice of the existence of the device or equipment on board the vessel and of the anticipated dates on which the vessel will enter and leave the territorial waters of this state;

(2) the portion of the vessel in which the device or equipment is located is locked or otherwise physically secured in a manner that makes the area inaccessible to anyone other than the master and crew of the vessel at all times while the vessel is in the territorial waters of this state;

(3) no person other than the master and crew of the vessel is permitted to enter or view the portion of the vessel in which the device or equipment is located while the vessel is in the territorial waters of this state; and

(4) the device or equipment is not used for gambling or other gaming purposes while the vessel is in the territorial waters of this state.

[Text of subsec. (c) added by Acts 1977, 65th Leg., p. 1865, ch. 741, § 1]

(c) It is a defense to prosecution under this section that the gambling device was manufactured prior to 1940 and not used for gambling, gambling promotion, or keeping a gambling place under Sections 47.02, 47.03, and 47.04, respectively, of this code, and that the party possessing same:

(1) within 30 days after coming into possession of same or the effective date of this amendment, whichever last occurs, furnished the following information to the sheriff of the county wherein such device is to be maintained:

(A) the name and address of the party possessing same

(B) the name of the manufacturer, date of manufacture, and serial number of the device, if available, and

(2) within 30 days of the transfer of such device advises the sheriff of the county to whom the information provided for in item (1) above was furnished of the name and address of the transferee.

(d) An offense under this section is a felony of the third degree.

[Amended by Acts 1977, 65th Leg., p. 668, ch. 251, § 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1865, ch. 741, § 1, eff. Aug. 29, 1977.]

§ 47.07. Possession of Gambling Paraphernalia

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

(b) It is an affirmative defense to prosecution under this section that the gambling paraphernalia is aboard an ocean-going vessel that enters the terri-

torial waters of this state to call at a port in this state in the course of a bona fide voyage to or from a foreign port if:

(1) before the vessel enters the territorial waters of this state, the district attorney or, if there is no district attorney, the county attorney for the county in which the port is located receives notice of the existence of the gambling paraphernalia on board the vessel and of the anticipated dates on which the vessel will enter and leave the territorial waters of this state;

(2) the portion of the vessel in which the gambling paraphernalia is located is locked or otherwise physically secured in a manner that makes the area inaccessible to anyone other than the master and crew of the vessel at all times while the vessel is in the territorial waters of this state;

(3) no person other than the master and crew of the vessel is permitted to enter or view the portion of the vessel in which the gambling paraphernalia is located while the vessel is in the territorial waters of this state; and

(4) the gambling paraphernalia is not used for gambling or other gaming purposes while the vessel is in the territorial waters of this state.

(c) An offense under this section is a Class A misdemeanor.

(d) The district or county attorney shall not be required to have a search warrant or subpoena to enter the vessel to inspect the gambling paraphernalia.

[Amended by Acts 1977, 65th Leg., p. 668, ch. 251, § 3, eff. Aug. 29, 1977.]

CHAPTER 48. CONDUCT AFFECTING PUBLIC HEALTH

§ 48.01. Smoking Tobacco

(a) A person commits an offense if he is in possession of a burning tobacco product or smokes tobacco in a facility of a public primary or secondary school or an elevator, enclosed theater or movie house, library, museum, hospital, transit system bus, or intrastate bus, as defined by Section 4(b) of the Uniform Act Regulating Traffic on Highways (Article 6701d, Vernon's Texas Civil Statutes), plane, or train which is a public place.

(b) It is a defense to prosecution under this section that the conveyance or public place in which the offense takes place does not have prominently displayed a reasonably sized notice that smoking is prohibited by state law in such conveyance and/or public place and that an offense is punishable by a fine not to exceed \$200.

(c) All conveyances and public places set out in Subsection (a) of Section 48.01 shall be equipped with facilities for extinguishment of smoking materials and it shall be a defense to prosecution under this section if the conveyance or public place within which the offense takes place is not so equipped.

(d) It is an exception to the application of Subsection (a) if the person is in possession of the burning tobacco product or smokes tobacco exclusively within an area designated for smoking tobacco or as a participant in an authorized theatrical performance.

(e) An area designated for smoking tobacco on a transit system bus or intrastate plane or train must also include the area occupied by the operator of the transit system bus, plane, or train.

(f) An offense under this section is punishable as a Class C misdemeanor.

[Acts 1975, 64th Leg., p. 744, ch. 290, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 Act provided:

"The provisions of this Act shall not preempt any ordinance adopted by a government entity now or in the future which prohibits the possession of lighted tobacco products or prohibits the smoking of tobacco within the jurisdiction of said governmental entity."

TITLE 11. ORGANIZED CRIME [NEW]

CHAPTER 71. ORGANIZED CRIME [NEW]

Section

- 71.01. Definitions.
- 71.02. Engaging in Organized Criminal Activity.
- 71.03. Defenses Excluded.
- 71.04. Testimonial Immunity.
- 71.05. Renunciation Defense.

§ 71.01. Definitions

In this chapter,

(a) "combination" means five or more persons who collaborate in carrying on criminal activities, although:

(1) participants may not know each other's identity;

(2) membership in the combination may change from time to time; and

(3) participants may stand in a wholesaler-retailer or other arm's-length relationship in illicit distribution operations.

(b) "Conspires to commit" means that a person agrees with one or more persons that they or one or more of them engage in conduct that would constitute the offense and that person and one or more of them perform an overt act in pursuance of the agreement. An agreement constituting conspiring to commit may be inferred from the acts of the parties.

[Added by Acts 1977, 65th Leg., p. 922, ch. 346, § 1, eff. June 10, 1977.]

§ 71.02. Engaging in Organized Criminal Activity

(a) A person commits an offense if, with the intent to establish, maintain, or participate in a combination or in the profits of a combination, he commits or conspires to commit one or more of the following:

(1) murder, capital murder, arson, aggravated robbery, robbery, burglary, theft, aggravated kidnapping, kidnapping, aggravated assault, or forgery;

(2) any felony gambling offense;

(3) promotion of prostitution, aggravated promotion of prostitution, or compelling prostitution;

(4) unlawful manufacture, transportation, repair, or sale of firearms or prohibited weapons; or

(5) unlawful manufacture, delivery, dispensation, or distribution of a controlled substance or dangerous drug, or unlawful possession of a controlled substance or dangerous drug through forgery, fraud, misrepresentation, or deception.

(b) Except as provided in Subsection (c) of this section, an offense under this section is one category higher than the most serious offense listed in Subdivisions (1) through (5) of Subsection (a) of this section that was committed, and if the most serious offense is a Class A misdemeanor, the offense is a felony of the third degree, except that if the most serious offense is a felony of the first degree, the offense is a felony of the first degree.

(c) Conspiring to commit an offense under this section is of the same degree as the most serious offense listed in Subdivisions (1) through (5) of Subsection (a) of this section that the person conspired to commit.

[Added by Acts 1977, 65th Leg., p. 922, ch. 346, § 1, eff. June 10, 1977.]

§ 71.03. Defenses Excluded

It is no defense to prosecution under Section 71.02 of this code that:

(1) one or more members of the combination are not criminally responsible for the object offense;

(2) one or more members of the combination have been acquitted, have not been prosecuted or convicted, have been convicted of a different offense, or are immune from prosecution;

(3) a person has been charged with, acquitted, or convicted of any offense listed in Subsection (a) of Section 71.02 of this code; or

(4) once the initial combination of five or more persons is formed there is a change in the number or identity of persons in the combination as long as two or more persons remain in

the combination and are involved in a continuing course of conduct constituting an offense under this chapter.

[Added by Acts 1977, 65th Leg., p. 922, ch. 346, § 1, eff. June 10, 1977.]

§ 71.04. Testimonial Immunity

(a) A party to an offense under this chapter may be required to furnish evidence or testify about the offense.

(b) No evidence or testimony required to be furnished under the provisions of this section nor any information directly or indirectly derived from such evidence or testimony may be used against the witness in any criminal case, except a prosecution for aggravated perjury or contempt.

[Added by Acts 1977, 65th Leg., p. 922, ch. 346, § 1, eff. June 10, 1977.]

§ 71.05. Renunciation Defense

(a) It is an affirmative defense to prosecution under Section 71.02 of this code that under circumstances manifesting a voluntary and complete renunciation of his criminal objective the actor withdrew from the combination before commission of an offense listed in Subdivisions (1) through (5) of Subsection (a) of Section 71.02 of this code and took further affirmative action that prevented the commission of the offense.

(b) Renunciation is not voluntary if it is motivated in whole or in part:

(1) by circumstances not present or apparent at the inception of the actor's course of conduct that increase the probability of detection or apprehension or that make more difficult the accomplishment of the objective; or

(2) by a decision to postpone the criminal conduct until another time or to transfer the criminal act to another but similar objective or victim.

(c) Evidence that the defendant withdrew from the combination before commission of an offense listed in Subdivisions (1) through (5) of Subsection (a) of Section 71.02 of this code and made substantial effort to prevent the commission of an offense listed in Subdivisions (1) through (5) of Subsection (a) of Section 71.02 of this code shall be admissible as mitigation at the hearing on punishment if he has been found guilty under Section 71.02 of this code, and in the event of a finding of renunciation under this subsection, the punishment shall be one grade lower than that provided under Section 71.02 of this code.

[Added by Acts 1977, 65th Leg., p. 922, ch. 346, § 1, eff. June 10, 1977.]

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PENAL AUXILIARY LAWS

TITLE 11. OFFENSES AGAINST PUBLIC POLICY AND ECONOMY

CHAPTER EIGHT. TEXAS LIQUOR CONTROL ACT

Arts. 666-1 to 667-33. Repealed by Acts 1977, 65th
Leg., p. 557, ch. 194, § 2, eff. Sept. 1, 1977

*This Chapter 8 of Title 11 of the Texas Penal
Code of 1925, consisting of articles 666-1 to
667-33, was repealed by § 2 of Acts 1977, 65th
Leg., p. 557, ch. 194, enacting the Alcoholic
Beverage Code, effective September 1, 1977.*

*For disposition of the subject matter of the
repealed articles, see Disposition Table following
the Alcoholic Beverage Code.*

TITLE 13. OFFENSES AGAINST PUBLIC PROPERTY

CHAPTER SIX. GAME, FISH AND OYSTERS

Arts. 871 to 978n-2. Repealed by Acts 1975, 64th
Leg., p. 1804, ch. 545, § 2(a)(1), eff. Sept. 1, 1975

*This Chapter 6 of Title 13 of the Texas Penal
Code of 1925, consisting of articles 871 to 978n-
2, was repealed by § 2(a)(1) of Acts 1975, 64th
Leg., p. 1804, ch. 545, enacting the Parks and
Wildlife Code, effective September 1, 1975.
Section 2(b) of the 1975 Act also repealed the
special laws cited in notes under article 978j.*

*For disposition of the subject matter of the
repealed articles, see Disposition Table following
the Parks and Wildlife Code.*

*

CODE OF CRIMINAL PROCEDURE

PART I. CODE OF CRIMINAL PROCEDURE OF 1965

Chapter Section
32A. Speedy Trial [New] ----- 32A.01

CHAPTER TWO. GENERAL DUTIES OF OFFICERS

Art. 2.12. Who are Peace Officers

The following are peace officers:

- (1) sheriffs and their deputies;
- (2) constables and deputy constables;
- (3) marshals or police officers of an incorporated city, town, or village;
- (4) rangers and officers commissioned by the Public Safety Commission and the Director of the Department of Public Safety;
- (5) investigators of the district attorneys', criminal district attorneys', and county attorneys' offices;
- (6) law enforcement agents of the Alcoholic Beverage Commission;
- (7) each member of an arson investigating unit of a city, county or the state;
- (8) any private person specially appointed to execute criminal process;
- (9) officers commissioned by the governing board of any state institution of higher education, public junior college or the Texas State Technical Institute;
- (10) officers commissioned by the Board of Control;
- (11) law enforcement officers commissioned by the Parks and Wildlife Commission;
- (12) airport security personnel commissioned as peace officers by the governing body of any political subdivision of this state that operates an airport served by a Civil Aeronautics Board certificated air carrier;
- (13) municipal park and recreational patrolmen and security officers; and
- (14) security officers commissioned as peace officers by the State Treasurer.

[Amended by Acts 1975, 64th Leg., p. 480, ch. 204, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 618, ch. 227, § 2, eff. May 1, 1977; Acts 1977, 65th Leg., p. 1082, ch. 396, § 1, eff. Aug. 29, 1977.]

Section 2 of Acts 1977, 65th Leg., p. 1082, ch. 396, provided:
"The following named criminal investigators of the United States shall not be deemed peace officers, but shall have the powers of arrest, search and seizure as to felony offenses only under the laws of the State of Texas:
"Special Agents of the Federal Bureau of Investigation,
"Special Agents of the Secret Service,
"Special Agents of United States Customs, excluding border patrolmen and custom inspectors,
"Special Agents of Alcohol, Tobacco and Firearms, and
"Special Agents of Federal Drug Enforcement Agency."

CHAPTER THREE. DEFINITIONS

Art. 3.01. Words and Phrases

All words, phrases and terms used in this Code are to be taken and understood in their usual acceptance in common language, except where specially defined.

[Amended by Acts 1975, 64th Leg., p. 909, ch. 341, § 1, eff. June 19, 1975.]

Saving provisions. Section 7 of the 1975 Act provided:

"Sec. 7. (a) Except as provided in Subsections (b) and (c) of this section, this Act applies only to offenses committed on or after its effective date, and a criminal action for an offense committed before this Act's effective date is governed by the law existing before the effective date, which law is continued in effect for this purpose, as if this Act were not in force. For purposes of this section, an offense is committed on or after the effective date of this Act if any element of the offense occurs on or after the effective date."

"(b) Conduct constituting an offense under existing law that is repealed by this Act and that does not constitute an offense under this Act may not be prosecuted after the effective date of this Act. If, on the effective date of this Act, a criminal action is pending for conduct that was an offense under the laws repealed by this Act and that does not constitute an offense under this Act, the action is dismissed on the effective date of this Act. However, a conviction existing on the effective date of this Act for conduct constituting an offense under laws repealed by this Act is valid and unaffected by this Act. For purposes of this section, "conviction" means a finding of guilt in a court of competent jurisdiction, and it is of no consequence that the conviction is not final."

"(c) In a criminal action pending on or commenced on or after the effective date of this Act, for an offense committed before the effective date, the defendant, if adjudged guilty, shall be assessed punishment under this Act if he so elects by written motion filed with the trial court before the sentencing hearing begins."

HABEAS CORPUS

CHAPTER ELEVEN. HABEAS CORPUS

Art. 11.07. Return to Certain County; Procedure After Conviction

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

Sec. 2. (a) After final conviction in any felony case, the writ must be made returnable to the Court of Criminal Appeals of Texas at Austin, Texas.

(b) Whenever a petition for writ of habeas corpus is filed after final conviction in a felony case, the clerk shall transfer or assign it to the court in which the conviction being challenged was obtained. When the petition is received by that court, a writ of habeas corpus, returnable to the Court of Criminal Appeals, shall issue by operation of law. The clerk

of that court shall make appropriate notation thereof, assign to the case a file number (ancillary to that of the conviction being challenged), and send a copy of the petition by certified mail, return receipt requested, to the attorney representing the state in that court, who shall have 15 days in which it may answer the petition. Matters alleged in the petition not admitted by the state are deemed denied.

(c) Within 20 days of the expiration of the time in which the state is allowed to answer, it shall be the duty of the convicting court to decide whether there are controverted, previously unresolved facts material to the legality of the applicant's confinement. If the convicting court decides that there are no such issues, the clerk shall immediately transmit to the Court of Criminal Appeals a copy of the petition, any answers filed, and a certificate reciting the date upon which that finding was made. Failure of the court to act within the allowed 20 days shall constitute such a finding.

(d) If the convicting court decides that there are controverted, previously unresolved facts which are material to the legality of the applicant's confinement, it shall enter an order within 20 days of the expiration of the time allowed for the state to reply, designating the issues of fact to be resolved. To resolve those issues the court may order affidavits, depositions, interrogatories, and hearings, as well as using personal recollection. Also, the convicting court may appoint an attorney or a magistrate to hold a hearing and make findings of fact. An attorney so appointed shall be compensated as provided in Article 26.05 of this code. It shall be the duty of the reporter who is designated to transcribe a hearing held pursuant to this article to prepare a transcript within 15 days of its conclusion. After the convicting court makes findings of fact or approves the findings of the person designated to make them, the clerk of the convicting court shall immediately transmit to the Court of Criminal Appeals, under one cover, the petition, any answers filed, any motions filed, transcripts of all depositions and hearings, any affidavits, and any other matters such as official records used by the court in resolving issues of fact.

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

[Amended by Acts 1977, 65th Leg., p. 1974, ch. 789, § 1, eff. Aug. 29, 1977.]

LIMITATION AND VENUE

CHAPTER TWELVE. LIMITATION

Art. 12.01. Felonies

Except as provided in Article 12.03, felony indictments may be presented within these limits, and not afterward:

- (1) no limitation: murder and manslaughter;
- (2) ten years from the date of the commission of the offense:

(A) theft of any estate, real, personal or mixed, by an executor, administrator, guardian or trustee, with intent to defraud any creditor, heir, legatee, ward, distributee, beneficiary or settlor of a trust interested in such estate;

(B) theft by a public servant of government property over which he exercises control in his official capacity;

(C) forgery or the uttering, using or passing of forged instruments;

(3) five years from the date of the commission of the offense:

(A) theft, burglary, robbery;

(B) arson;

(4) three years from the date of the commission of the offense: all other felonies.

[Amended by Acts 1975, 64th Leg., p. 478, ch. 203, § 5, eff. Sept. 1, 1975.]

Subsection 7(c) of the 1975 amendatory act provided:

(c) Section 5 of this Act applies to the prosecution of criminal offenses committed not more than one year before the effective date of this Act.

CHAPTER THIRTEEN. VENUE

Article

13.20. Venue by Consent [NEW].

13.21. Organized Criminal Activity [NEW].

Art. 13.15. Rape

Rape may be prosecuted in the county in which it is committed, in the county in which the victim is abducted, or in any county through or into which the victim is transported in the course of the abduction and rape. When it shall come to the knowledge of any district judge whose court has jurisdiction under this Article that rape has probably been committed, he shall immediately, if his court be in session, and if not in session, then, at the first term thereafter in any county of the district, call the attention of the grand jury thereto; and if the court be in session, but the grand jury has been discharged, he shall immediately recall the grand jury to investigate the accusation. Prosecution for rape shall take precedence in all cases in courts; and the district courts are authorized and directed to change the venue in such cases whenever it shall be necessary to secure a speedy trial.

[Amended by Acts 1977, 65th Leg., p. 692, ch. 262, § 1, eff. May 25, 1977.]

Art. 13.20. Venue by Consent

The trial of all felony cases, without a jury, may, with the consent of the defendant in writing, his attorney, and the attorney for the state, be held in any county within the judicial district or districts for the county where venue is otherwise authorized by law.

[Added by Acts 1975, 64th Leg., p. 242, ch. 91, § 1, eff. Sept. 1, 1975.]

Art. 13.21. Organized Criminal Activity

The offense of engaging in organized criminal activity may be prosecuted in any county in which any act is committed to effect an objective of the combination.

[Added by Acts 1977, 65th Leg., p. 924, ch. 346, § 2, eff. June 10, 1977.]

ARREST, COMMITMENT AND BAIL**CHAPTER SEVENTEEN. BAIL****Article**

17.151. Release Because of Delay [NEW].

17.39. Records of Bail [NEW].

Art. 17.151. Release Because of delay

[Text of article added effective July 1, 1978]

Sec. 1. A defendant who is detained in jail pending trial of an accusation against him must be released either on personal bond or by reducing the amount of bail required, if the state is not ready for trial of the criminal action for which he is being detained within:

- (1) 90 days from the commencement of his detention if he is accused of a felony;
- (2) 30 days from the commencement of his detention if he is accused of a misdemeanor punishable by a sentence of imprisonment in jail for more than 180 days;
- (3) 15 days from the commencement of his detention if he is accused of a misdemeanor punishable by a sentence of imprisonment for 180 days or less; or
- (4) five days from the commencement of his detention if he is accused of a misdemeanor punishable by a fine only.

Sec. 2. The provisions of this article do not apply to a defendant who is:

- (1) serving a sentence of imprisonment for another offense while he is serving that sentence;
- (2) being detained pending trial of another accusation against him as to which the applicable period has not yet elapsed; or
- (3) incompetent to stand trial, during the period of his incompetence.

Sec. 3. If a person released under this article is arrested and detained for a violation of the conditions of his release, the time for release under Section 1 of this article begins to run on the date of the arrest for violation of conditions of the release. [Added by Acts 1977, 65th Leg., p. 1972, ch. 787, § 2, eff. July 1, 1978.]

Art. 17.39. Records of Bail

A magistrate or other officer who sets the amount of bail or who takes bail shall record in a well-bound book the name of the person whose appearance the bail secures, the amount of bail, the date bail is set, the magistrate or officer who sets bail, the offense or other cause for which the appearance is secured, the magistrate or other officer who takes bail, the date the person is released, and the name of the bondsman, if any.

[Added by Acts 1977, 65th Leg., p. 1525, ch. 618, § 1, eff. Aug. 29, 1977.]

SEARCH WARRANTS**CHAPTER EIGHTEEN. SEARCH WARRANTS****Art. 18.01. Search Warrant**

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

(c) A search warrant may not be issued pursuant to Subdivision (10) of Article 18.02 of this code unless the sworn affidavit required by Subsection (b) of this article sets forth sufficient facts to establish probable cause: (1) that a specific offense has been committed, (2) that the specifically described property or items that are to be searched for or seized constitute evidence of that offense or evidence that a particular person committed that offense, and (3) that the property or items constituting evidence to be searched for or seized are located at or on the particular person, place, or thing to be searched.

(d) Only the specifically described property or items set forth in a search warrant issued under Subdivision (10) of Article 18.02 of this code or property or items enumerated in Subdivisions (1) through (9) of Article 18.02 of this code may be seized. Subsequent search warrants may not be issued pursuant to Subdivision (10) of Article 18.02 of this code to search the same person, place, or thing subjected to a prior search under Subdivision (10) of Article 18.02 of this code.

[Amended by Acts 1977, 65th Leg., p. 640, ch. 237, § 1, eff. May 25, 1977.]

Art. 18.02. Grounds for Issuance

A search warrant may be issued to search for and seize:

[See Compact Edition, Volume 1 for text of (1) to (8)]

(9) implements or instruments used in the commission of a crime; or

(10) property or items, except the personal writings by the accused, constituting evidence of an offense or constituting evidence tending to show that a particular person committed an offense.

[Amended by Acts 1977, 65th Leg., p. 640, ch. 237, § 2, eff. May 25, 1977.]

AFTER COMMITMENT OR BAIL AND BEFORE THE TRIAL

CHAPTER TWENTY-ONE. INDICTMENT AND INFORMATION

Art. 21.09. Description of Property

If known, personal property alleged in an indictment shall be identified by name, kind, number, and ownership. When such is unknown, that fact shall be stated, and a general classification, describing and identifying the property as near as may be, shall suffice. If the property be real estate, its general locality in the county, and the name of the owner, occupant or claimant thereof, shall be a sufficient description of the same.

[Amended by Acts 1975, 64th Leg., p. 909, ch. 341, § 2, eff. June 19, 1975.]

For saving provisions of 1975 amendatory act, see note set out under art. 3.01.

CHAPTER TWENTY-SIX. ARRAIGNMENT

Article

26.055. Contribution from State for Defense of Certain Prisoners [NEW].

Art. 26.055. Contribution from State for Defense of Certain Prisoners

Sec. 1. A county in which a facility of the Texas Department of Corrections is located shall pay from its general fund only the first \$250 of the aggregate sum allowed and awarded by the court for attorneys' fees, investigation, and expert testimony under Article 26.05 toward defending a prisoner committed to that facility who is being prosecuted for an offense committed in that county while in the custody of the department if the prisoner was originally committed for an offense committed in another county.

Sec. 2. If the fees awarded for court-appointed counsel in a case covered by Section 1 of this article exceed \$250, the court shall certify the amount in excess of \$250 to the Comptroller of Public Accounts of the State of Texas. The comptroller shall issue a warrant to the court-appointed counsel in the amount certified to the comptroller by the court. [Added by Acts 1975, 64th Leg., p. 168, ch. 72, § 1, eff. Sept. 1, 1975.]

Art. 26.13. Plea of Guilty

(a) Prior to accepting a plea of guilty or a plea of nolo contendere, the court shall admonish the defendant of:

- (1) the range of punishment attached to the offense; and
- (2) the fact that the recommendation of the prosecuting attorney as to punishment is not binding on the court. Provided that the court

shall inquire as to the existence of any plea bargaining agreements between the state and the defendant and, in the event that such an agreement exists, the court shall inform the defendant whether it will follow or reject such agreement in open court and before any finding on the plea. Should the court reject any such agreement, the defendant shall be permitted to withdraw his plea of guilty or nolo contendere, and no statement or other evidence received during such hearing on the defendant's plea of guilty or nolo contendere may be admitted against the defendant on the issue of guilt or punishment in any subsequent criminal proceeding.

(b) No plea of guilty or plea of nolo contendere shall be accepted by the court unless it appears that the defendant is mentally competent and the plea is free and voluntary.

(c) In admonishing the defendant as herein provided, substantial compliance by the court is sufficient, unless the defendant affirmatively shows that he was not aware of the consequences of his plea and that he was misled or harmed by the admonishment of the court.

[Amended by Acts 1975, 64th Leg., p. 909, ch. 341, § 3, eff. June 19, 1975; Acts 1977, 65th Leg., p. 748, ch. 280, § 1, eff. Aug. 29, 1977.]

For saving provisions of 1975 amendatory act, see note set out under art. 3.01.

CHAPTER TWENTY-SEVEN. THE PLEADING IN CRIMIAL ACTIONS

Art. 27.14. Plea of Guilty or Nolo Contendere in Misdemeanor

(a) A plea of "guilty" or a plea of "nolo contendere" in a misdemeanor case may be made either by the defendant or his counsel in open court; in such case, the defendant or his counsel may waive a jury, and the punishment may be assessed by the court either upon or without evidence, at the discretion of the court.

(b) A defendant charged with a misdemeanor for which the maximum possible punishment is by fine only may, in lieu of the method provided in Subsection (a) of this article, mail to the court a plea of "guilty" or a plea of "nolo contendere" and a waiver of jury trial. If the court receives a plea and waiver before the time the defendant is scheduled to appear in court, the court shall dispose of the case without requiring a court appearance by the defendant. The court shall notify the defendant by certified mail, return receipt requested, of the amount of any fine assessed in the case. The defendant shall pay any fine assessed before the 31st day after receiving notice of the fine.

(c) In a misdemeanor case arising out of a moving traffic violation for which the maximum possible

punishment is by fine only, payment of a fine, or an amount accepted by the court constitutes a finding of guilty in open court, as though a plea of nolo contendere had been entered by the defendant. [Amended by Acts 1977, 65th Leg., p. 2143, ch. 858, § 1, eff. June 16, 1977.]

Art. 27.16. Plea of Not Guilty, How Made

(a) The plea of not guilty may be made orally by the defendant or by his counsel in open court. If the defendant refuses to plead, the plea of not guilty shall be entered for him by the court.

(b) A defendant charged with a misdemeanor for which the maximum possible punishment is by fine only may, in lieu of the method provided in Subsection (a) of this article, mail to the court a plea of not guilty.

[Amended by Acts 1977, 65th Leg., p. 2143, ch. 858, § 2, eff. June 16, 1977.]

CHAPTER TWENTY-EIGHT. MOTIONS, PLEADINGS AND EXCEPTIONS

Article

28.061. Discharge for Delay [NEW].

Art. 28.061. Discharge for Delay

[Text of article added effective July 1, 1978]

If a motion to set aside an indictment, information, or complaint for failure to provide a speedy trial as required by Article 32A.02 is sustained, the court shall discharge the defendant. A discharge under this article is a bar to any further prosecution for the offense discharged or for any other offense arising out of the same transaction.

[Added by Acts 1977, 65th Leg., p. 1972, ch. 787, § 4, eff. July 1, 1978.]

CHAPTER TWENTY-NINE. CONTINUANCE

Art. 29.02. By Agreement

[Text of article effective July 1, 1978]

A criminal action may be continued by consent of the parties thereto, in open court, at any time on a showing of good cause, but a continuance may be only for as long as is necessary.

[Amended by Acts 1977, 65th Leg., p. 1972, ch. 787, § 3, eff. July 1, 1978.]

[For text of article effective until July 1, 1978, see Compact Edition, Volume 1]

Art. 29.03. For Sufficient Cause Shown

[Text of article effective July 1, 1978]

A criminal action may be continued on the written motion of the State or of the defendant, upon sufficient cause shown; which cause shall be fully set

forth in the motion. A continuance may be only for as long as is necessary.

[Amended by Acts 1977, 65th Leg., p. 1972, ch. 787, § 3, eff. July 1, 1978.]

[For text of article effective until July 1, 1978, see Compact Edition, Volume 1]

CHAPTER THIRTY. DISQUALIFICATION OF THE JUDGE

Art. 30.03. County Judge Disqualified, Absent or Disabled

Sec. 1. When the judge of the county court or county court at law, or of any county criminal court, is disqualified in any criminal case pending in the court of which he is judge, the parties may by consent agree upon a special judge to try such case. If they fail to agree upon a special judge to try such case, on or before the third day of the term at which such case may be called for trial, the practicing attorneys of the court present may elect from among their number a special judge who shall try the case. The election of the special judge shall be conducted in accordance with the provisions of Article 1887, et seq., V.A.C.S.

Sec. 2. In the event a county judge or the regular judge of a county court at law created in a county is absent, or is for any cause disabled from presiding, a special judge, who is an attorney, may be appointed by the commissioners court of the county.

Sec. 3. The special judge so appointed must possess those qualifications required of the regular judge of the court and, when appointed shall serve for the period of time designated by the order of appointment but in no event beyond that period of time the regular judge is absent or disabled.

[Amended by Acts 1975, 64th Leg., p. 1191, ch. 448, § 1, eff. June 19, 1975.]

Art. 30.04. Special Judge to Take Oath

The attorney agreed upon, elected, or appointed shall, before he enters upon his duties as special judge, take the oath of office required by the Constitution.

[Amended by Acts 1975, 64th Leg., p. 1191, ch. 448, § 2, eff. June 19, 1975.]

Art. 30.05. Record Made by Clerk

When a special judge is agreed upon by the parties, elected, or appointed as herein provided, the clerk shall enter in the minutes as a part of the proceedings in such cause a record showing:

1. That the judge of the court was disqualified, absent, or disabled to try the cause;
2. That such special judge (naming him) was by consent of the parties agreed upon, or elected or appointed;

3. That the oath of office prescribed by law was duly administered to such special judge. [Amended by Acts 1975, 64th Leg., p. 1191, ch. 448, § 3, eff. June 19, 1975.]

TRIAL AND ITS INCIDENTS

CHAPTER THIRTY-TWO A. SPEEDY TRIAL [NEW]

Article

32A.01. Trial Priorities.

32A.02. Time Limitations.

Chapter 32A, Speedy Trial, was added by Acts 1977, 65th Leg., p. 1970, ch. 787, § 1, effective July 1, 1978.

Art. 32A.01. Trial Priorities

Insofar as is practicable, the trial of a criminal action shall be given preference over trials of civil cases, and the trial of a criminal action against a defendant who is detained in jail pending trial of the action shall be given preference over trials of other criminal actions.

[Added by Acts 1977, 65th Leg., p. 1970, ch. 787, § 1, eff. July 1, 1978.]

Section 5 of the 1977 Act provided: "The effective date of this Act shall be July 1, 1978."

Art. 32A.02. Time Limitations

Sec. 1. A court shall grant a motion to set aside an indictment, information, or complaint if the state is not ready for trial within:

(1) 120 days of the commencement of a criminal action if the defendant is accused of a felony;

(2) 90 days of the commencement of a criminal action if the defendant is accused of a misdemeanor punishable by a sentence of imprisonment for more than 180 days;

(3) 60 days of the commencement of a criminal action if the defendant is accused of a misdemeanor punishable by a sentence of imprisonment for 180 days or less; or

(4) 30 days of the commencement of a criminal action if the defendant is accused of a misdemeanor punishable by a fine only.

Sec. 2. (a) Except as provided in subsections (b) and (c) of this section, a criminal action commences for purposes of this article when an indictment, information, or complaint against the defendant is filed in court, unless prior to the filing the defendant is either detained in custody or released on bail or personal bond to answer for the same offense or any other offense arising out of the same transaction, in which event the criminal action commences when he is arrested.

(b) If a defendant is to be retried following a mistrial, an order granting a new trial, or an appeal or collateral attack, a criminal action commences for purposes of this article on the date of the mistrial, the order granting a new trial, or the remand.

(c) If an indictment, information, or complaint is dismissed on motion of the defendant, a criminal action commences for the purposes of the article when a new indictment, information, or complaint against the defendant is filed in court, unless the defendant is either detained in custody or released on bail or personal bond to answer for the same offense or any other offense arising out of the same transaction, in which event the criminal action commences when he is detained or released.

Sec. 3. The failure of a defendant to move for discharge under the provisions of this article prior to trial or entry of a plea of guilty constitutes a waiver of the rights accorded by this article.

Sec. 4. In computing the time by which the state must be ready for trial, the following periods shall be excluded:

(1) a reasonable period of delay resulting from other proceedings involving the defendant, including but not limited to proceedings for the determination of competence to stand trial, hearing on pretrial motions, appeals, and trials of other charges;

(2) any period during which the defendant is incompetent to stand trial;

(3) a period of delay resulting from a continuance granted at the request or with the consent of the defendant or his counsel, except that a defendant without counsel is deemed not to have consented to a continuance unless the court advised him of his right to a speedy trial and of the effect of his consent;

(4) a period of delay resulting from the absence of the defendant because his location is unknown and:

(A) he is attempting to avoid apprehension or prosecution; or

(B) the state has been unable to determine his location by due diligence;

(5) a period of delay resulting from the unavailability of the defendant whose location is known to the state but whose presence cannot be obtained by due diligence or because he resists being returned to the state for trial;

(6) a reasonable period of delay resulting from a continuance granted at the request of the state if the continuance is granted:

(A) because of the unavailability of evidence that is material to the state's case, if the state has exercised due diligence to

obtain the evidence and there are reasonable grounds to believe the evidence will be available within a reasonable time; or

(B) to allow the state additional time to prepare its case and the additional time is justified because of the exceptional circumstances of the case;

(7) if the charge is dismissed upon motion of the state or the charge is disposed of by a final judgment and the defendant is later charged with the same offense or another offense arising out of the same transaction, the period of delay from the date of dismissal or the date of the final judgment to the date the time limitation would commence running on the subsequent charge had there been no previous charge;

(8) a reasonable period of delay when the defendant is joined for trial with a codefendant as to whom the time for trial has not run, if there is good cause for not granting a severance;

(9) a period of delay resulting from detention of the defendant in another jurisdiction, if the state is aware of the detention and exercises due diligence to obtain his presence for trial; and

(10) any other reasonable period of delay that is justified by exceptional circumstances.

[Added by Acts 1977, 65th Leg., p. 1970, ch. 787, eff. July 1, 1978.]

TRIAL AND ITS INCIDENTS

CHAPTER THIRTY-FIVE. FORMATION OF THE JURY

Article

35.24. [Repealed].

Art. 35.16. Reasons for Challenge for Cause

(a) A challenge for cause is an objection made to a particular juror, alleging some fact which renders him incapable or unfit to serve on the jury. A challenge for cause may be made by either the state or the defense for any one of the following reasons:

1. That he is not a qualified voter in the state and county under the Constitution and laws of the state; provided, however, the failure to pay a poll tax or register to vote shall not be a disqualification;

2. That he has been convicted of theft or any felony;

3. That he is under indictment or other legal accusation for theft or any felony;

4. That he is insane or has such defect in the organs of feeling or hearing, or such bodily or

mental defect or disease as to render him unfit for jury service, or that he is legally blind and either the court or the state in its discretion or the defendant or the prospective juror in his discretion is not satisfied that he is fit for jury service in that particular case;

5. That he is a witness in the case;

6. That he served on the grand jury which found the indictment;

7. That he served on a petit jury in a former trial of the same case;

8. That he has a bias or prejudice in favor of or against the defendant;

9. That from hearsay, or otherwise, there is established in the mind of the juror such a conclusion as to the guilt or innocence of the defendant as would influence him in his action in finding a verdict. To ascertain whether this cause of challenge exists, the juror shall first be asked whether, in his opinion, the conclusion so established will influence his verdict. If he answers in the affirmative, he shall be discharged without further interrogation by either party or the court. If he answers in the negative, he shall be further examined as to how his conclusion was formed, and the extent to which it will affect his action; and, if it appears to have been formed from reading newspaper accounts, communications, statements or reports or mere rumor or hearsay, and if the juror states that he feels able, notwithstanding such opinion, to render an impartial verdict upon the law and the evidence, the court, if satisfied that he is impartial and will render such verdict, may, in its discretion, admit him as competent to serve in such case. If the court, in its discretion, is not satisfied that he is impartial, the juror shall be discharged;

10. That he cannot read or write.

No juror shall be impaneled when it appears that he is subject to the second, third or fourth grounds of challenge for cause set forth above, although both parties may consent. All other grounds for challenge may be waived by the party or parties in whose favor such grounds of challenge exist.

In this subsection, "legally blind" shall mean having not more than 20/200 of visual acuity in the better eye with correcting lenses, or visual acuity greater than 20/200 but with a limitation in the field of vision such that the widest diameter of the visual field subtends an angle no greater than 20 degrees.

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

[Amended by Acts 1975, 64th Leg., p. 475, ch. 202, § 2, eff. Sept. 1, 1975.]

Art. 35.24. Repealed by Acts 1975, 64th Leg., p. 1353, ch. 510, § 2, eff. Sept. 1, 1975

See, now, Civil Statutes, Art. 2122.

**CHAPTER THIRTY-SIX. THE TRIAL
BEFORE THE JURY**

Art. 36.14. Charge of Court

Subject to the provisions of Article 36.07 in each felony case and in each misdemeanor case tried in a court of record, the judge shall, before the argument begins, deliver to the jury, except in pleas of guilty, where a jury has been waived, a written charge distinctly setting forth the law applicable to the case; not expressing any opinion as to the weight of the evidence, not summing up the testimony, discussing the facts or using any argument in his charge calculated to arouse the sympathy or excite the passions of the jury. Before said charge is read to the jury, the defendant or his counsel shall have a reasonable time to examine the same and he shall present his objections thereto in writing, distinctly specifying each ground of objection. Said objections may embody errors claimed to have been committed in the charge, as well as errors claimed to have been committed by omissions therefrom or in failing to charge upon issues arising from the facts, and in no event shall it be necessary for the defendant or his counsel to present special requested charges to preserve or maintain any error assigned to the charge, as herein provided. The requirement that the objections to the court's charge be in writing will be complied with if the objections are dictated to the court reporter in the presence of and with the consent of the court, before the reading of the court's charge to the jury, and are subsequently transcribed, endorsed with the court's ruling and official signature, and filed with the clerk in time to be included in the transcript. Compliance with the provisions of this Article is all that is necessary to preserve, for review, the exceptions and objections presented to the charge and any amendment or modification thereof. In no event shall it be necessary for the defendant to except to the action of the court in over-ruling defendant's exceptions or objections to the charge.

[Amended by Acts 1975, 64th Leg., p. 617, ch. 253, § 1, eff. Sept. 1, 1975.]

**CHAPTER THIRTY-EIGHT. EVIDENCE IN
CRIMINAL ACTIONS**

Article

38.07. Testimony in Corroboration of Victim of Sexual Offense. [NEW].

Art. 38.07. Testimony in Corroboration of Victim of Sexual Offense

A conviction under Chapter 21, Penal Code,¹ is supportable on the uncorroborated testimony of the victim of the sexual offense if the victim informed any person, other than the defendant, of the alleged offense within six months after the date on which

the offense is alleged to have occurred. The court shall instruct the jury that the time which lapsed between the alleged offense and the time it was reported shall be considered by the jury only for the purpose of assessing the weight to be given to the testimony of the victim.

[Added by Acts 1975, 64th Leg., p. 479, ch. 203, § 6, eff. Sept. 1, 1975.]

¹ Penal Code, § 21.01 et seq.

Subsection 7(b) of the 1975 amendatory act provided: "Sections 3 and 6 of this Act apply to the prosecution of criminal offenses committed but not brought to trial before the effective date of this Act."

Art. 38.21. Statement

A statement of an accused may be used in evidence against him if it appears that the same was freely and voluntarily made without compulsion or persuasion, under the rules hereafter prescribed.

[Amended by Acts 1977, 65th Leg., p. 935, ch. 348, § 1, eff. Aug. 29, 1977.]

Art. 38.22. When Statements May be Used

Sec. 1. In this article, a written statement of an accused means a statement signed by the accused or a statement made by the accused in his own handwriting or, if the accused is unable to write, a statement bearing his mark, when the mark has been witnessed by a person other than a peace officer.

Sec. 2. No written statement made by an accused as a result of custodial interrogation is admissible as evidence against him in any criminal proceeding unless it is shown on the face of the statement that:

(a) the accused, prior to making the statement, either received from a magistrate the warning provided in Article 15.17 of this code or received from the person to whom the statement is made a warning that:

(1) he has the right to remain silent and not make any statement at all and that any statement he makes may be used against him at his trial;

(2) any statement he makes may be used as evidence against him in court;

(3) he has the right to have a lawyer present to advise him prior to and during any questioning;

(4) if he is unable to employ a lawyer, he has the right to have a lawyer appointed to advise him prior to and during any questioning; and

(5) he has the right to terminate the interview at any time; and

(b) the accused, prior to and during the making of the statement, knowingly, intelligently, and voluntarily waived the rights set out in the warning prescribed by Subsection (a) of this section.

Sec. 3. (a) An oral statement of an accused made as a result of custodial interrogation is admissible against the accused in a criminal proceeding for the purpose of impeachment only and when:

(1) an electronic recording, which may include motion picture, video tape, or other visual recording, is made of the statement;

(2) prior to the statement but during the recording the accused is told that a recording is being made;

(3) prior to the statement but during the recording the accused is given the warning in Subsection (a) of Section 2 above and the accused knowingly, intelligently, and voluntarily waives any rights set out in the warning;

(4) the recording device was capable of making an accurate recording, that the operator was competent, and that the recording is accurate and has not been altered;

(5) the statement is witnessed by at least two persons; and

(6) all voices on the recording are identified.

(b) Every electronic recording of any statement made by an accused during custodial interrogation must be preserved until its destruction is permitted by order of a district court of this state.

(c) Subsection (a) of this section shall not apply to any statement which contains assertions of facts or circumstances that are found to be true and which conduce to establish the guilt of the accused, such as the finding of secreted or stolen property or the instrument with which he states the offense was committed.

Sec. 4. When any statement, the admissibility of which is covered by this article, is sought to be used in connection with an official proceeding, any person who swears falsely to facts and circumstances which, if true, would render the statement admissible under this article is presumed to have acted with intent to deceive and with knowledge of the statement's meaning for the purpose of prosecution for aggravated perjury under Section 37.03 of the Penal Code. No person prosecuted under this subsection shall be eligible for probation.

Sec. 5. Nothing in this article precludes the admission of a statement made by the accused in open court at his trial, before a grand jury, or at an examining trial in compliance with Articles 16.03 and 16.04 of this code, or of a statement that is the *res gestae* of the arrest or of the offense, or of a statement that does not stem from custodial interrogation, or of a voluntary statement, whether or not the result of custodial interrogation, that has a bearing upon the credibility of the accused as a witness, or of any other statement that may be admissible under law.

Sec. 6. In all cases where a question is raised as to the voluntariness of a statement of an accused, the court must make an independent finding in the absence of the jury as to whether the statement was made under voluntary conditions. If the statement has been found to have been voluntarily made and held admissible as a matter of law and fact by the court in a hearing in the absence of the jury, the court must enter an order stating its conclusion as to whether or not the statement was voluntarily made, along with the specific finding of facts upon which the conclusion was based, which order shall be filed among the papers of the cause. Such order shall not be exhibited to the jury nor the finding thereof made known to the jury in any manner. Upon the finding by the judge as a matter of law and fact that the statement was voluntarily made, evidence pertaining to such matter may be submitted to the jury and it shall be instructed that unless the jury believes beyond a reasonable doubt that the statement was voluntarily made, the jury shall not consider such statement for any purpose nor any evidence obtained as a result thereof. In any case where a motion to suppress the statement has been filed and evidence has been submitted to the court on this issue, the court within its discretion may reconsider such evidence in his finding that the statement was voluntarily made and the same evidence submitted to the court at the hearing on the motion to suppress shall be made a part of the record the same as if it were being presented at the time of trial. However, the state or the defendant shall be entitled to present any new evidence on the issue of the voluntariness of the statement prior to the court's final ruling and order stating its findings.

Sec. 7. When the issue is raised by the evidence, the trial judge shall appropriately instruct the jury, generally, on the law pertaining to such statement. [Amended by Acts 1977, 65th Leg., p. 935, ch. 348, § 2, eff. Aug. 29, 1977.]

Section 3 of the 1977 amendatory act provided: "This Act applies only to statements made on or after its effective date."

PROCEEDINGS AFTER VERDICT

CHAPTER FORTY. NEW TRIALS

Art. 40.09. The Record on Appeal

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

3. Statement of Facts and Other Proceedings

The record may include a transcription of all or any part of the proceedings shown by notes of the reporter to have occurred before, during or after the trial and the same will constitute the statement of facts for the appeal. A transcription applicable to any proceeding occurring before or within a period of ninety days after notice of appeal shall be filed

with the clerk for inclusion in the record not later than the end of such period. A transcription of notes applicable to any proceeding occurring after the end of such period shall be filed with the clerk for inclusion in the record not later than thirty days after the end of such proceeding.

[See Compact Edition, Volume 1 for text of 4 and 5]

6. Bills of Exception

(a) A party desiring to have the record disclose some action, testimony, evidence, proceeding, objection, exception or other event or occurrence not otherwise shown by the record may utilize a bill of exception for this purpose. Bills of exception must be filed with the clerk and presented to the trial judge within ninety days after notice of appeal is given. The clerk shall notify the court of each bill immediately upon its being filed. The court shall either approve the bill without qualification or shall approve it subject to qualification or refuse it, setting forth in the qualification or refusal any reasons that may seem proper to the judge. Notice of the court's action in qualifying or refusing a bill shall be immediately given by the clerk to the party filing the bill or to his counsel, and such party, if unwilling to accept the court's qualification or refusal may not later than fifteen days after receipt of such notice, file a bystander's bill of exception, and the clerk shall include same in the record. A bill of exception will be deemed approved without qualification if it be not acted upon by the trial judge within a period of 100 days after notice of appeal is given and no extension of time for filing has been granted; provided, however, if an extension of time for filing has been granted, a bill of exception will be deemed approved without qualification if it be not acted upon by the trial judge within a period of 10 days after the actual filing of the bill.

[See Compact Edition, Volume 1 for text of 6(b) to 8]

9. Defendant's Brief

Within thirty days after approval of the record by the court, the defendant shall file with the clerk of the trial court his appellate brief and sufficient copies of said brief so that each Judge and Commissioner of the Court of Criminal Appeals individually will be provided with a copy of the brief. This brief shall set forth separately each ground of error of which the defendant desires to complain on appeal and may set forth such arguments as he deems appropriate. Each ground of error shall briefly refer to that part of the ruling of the trial court, charge given to the jury, or charge refused, admission or rejection of evidence or other proceedings which are designated to be complained of in such way so that the point of objection can be clearly identified and understood by the court. If the de-

fendant includes in his brief arguments supporting a particular ground of error, they shall be construed with it in determining what point of objection is sought to be presented by such ground of error; and if the court, upon consideration of such ground of error in the light of arguments made in support thereof in the brief, can identify and understand such point of objection, the same shall be reviewed notwithstanding any generality, vagueness or any other technical defect that may exist in the language employed to set forth such ground of error.

10. The State's Brief

Within thirty days after defendant files his brief with the clerk of the trial court, the State shall file with the clerk of the trial court its brief and sufficient copies of said brief so that each Judge and Commissioner of the Court of Criminal Appeals individually will be provided with a copy of the brief. Each party, upon filing his brief with the clerk of the trial court, shall cause a true copy thereof to be delivered to the opposing party or to the latter's counsel.

[See Compact Edition, Volume 1 for text of 11 to 15]

16. Extensions of Time

Extensions of time for meeting the limits prescribed in Sections 3, 6, 9, and 10 of this Article for either the appellant or the State may be granted by the Court of Criminal Appeals or a judge of the Court for good cause shown on timely application to the Court of Criminal Appeals.

[Amended by Acts 1977, 65th Leg., p. 638, ch. 236, §§ 1 to 3, eff. May 25, 1977.]

CHAPTER FORTY-TWO. JUDGMENT AND SENTENCE

Article

- 42.121. Texas Adult Probation Commission [NEW].
42.17. Transfer Under Treaty [NEW].

Art. 42.01. Judgment

Sec. 1. A "judgment" is the declaration of the court entered of record, showing:

1. The title and number of the case;
2. That the case was called for trial and that the parties appeared;
3. The plea of the defendant;
4. The selection, impaneling and swearing of the jury;
5. The submission of the evidence;
6. That the jury was charged by the court;
7. The return of the verdict;
8. The verdict;

9. In the case of a conviction, that it is considered by the court that the defendant is adjudged to be guilty of the offense as found by the jury; or in case of acquittal, that the defendant be discharged;

10. That the defendant be punished as has been determined.

Sec. 2. The judge may order the clerk of the court, the prosecuting attorney, or the attorney or attorneys representing any defendant to prepare the judgment, or the court may prepare the same.

Sec. 3. The provisions of this Article shall apply to both felony and misdemeanor cases.

[Amended by Acts 1975, 64th Leg., p. 245, ch. 95, § 1, eff. Sept. 1, 1975.]

Art. 42.03. Pronouncing Sentence; Time; Credit for Time Spent in Jail Between Arrest and Sentence or Pending Appeal

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

Sec. 5. (a) Where jail time has been awarded, the trial judge may, when in his or her discretion the ends of justice would best be served and upon written motion of the defendant, sentence the defendant to serve his or her sentence during his or her off-work hours, or on weekends. When such a sentence is permitted by the trial judge it must be served on consecutive days or consecutive weekends. The trial judge may require bail of the defendant to insure the faithful performance of the sentence. The trial judge may attach conditions regarding the employment, travel, and other conduct of the defendant during the performance of such a sentence.

(b) The court may impose as a condition to permitting a defendant to serve the jail time assessed during off-work hours or on weekends a requirement that the defendant execute a letter and direct it to his or her employer directing the employer to deduct from the defendant's salary an amount directed by the court, which is to be sent by the employer to the clerk of the court. The money directed by the court under this section may be used to pay the following expenses as directed by the court:

- (1) the support of the prisoner's dependents, if necessary;
- (2) the prisoner's personal, business, and travel expenses;
- (3) reimbursement of the general fund of the county for the maintenance of the prisoner in jail; and
- (4) installment payments on restitution, fines, and court costs ordered by the court.

The condition shall not be binding on the employer and his or her compliance shall be on a voluntary basis.

(c) The court may sentence the defendant to serve his or her sentence during his or her off-work hours or on weekends in order for the defendant to continue his or her employment if the court imposes confinement as punishment for criminal nonsupport under Section 25.05, Penal Code, or contempt of a court order for periodic payments for the support of a child.

(d) The court may impose as a condition to permitting a defendant to serve the jail time assessed during off-work hours or on weekends a requirement that the defendant execute a letter and direct it to his or her employer directing the employer to deduct from the defendant's salary an amount directed by the court, which is to be sent by the employer to the clerk of the court and credited against any arrears of child support payments. The condition shall not be binding on the employer and his or her compliance shall be on a voluntary basis. [Amended by Acts 1977, 65th Leg., p. 1036, ch. 382, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2076, ch. 827, § 1, eff. Aug. 29, 1977.]

Art. 42.07. Reasons to Prevent Sentence

Before pronouncing sentence, the defendant shall be asked whether he has anything to say why the sentence should not be pronounced against him. The only reasons which can be shown, on account of which sentence cannot be pronounced, are:

1. That the defendant has received a pardon from the proper authority, on the presentation of which, legally authenticated, he shall be discharged.
2. That the defendant is incompetent to stand trial; and if evidence be shown to support a finding of incompetency to stand trial, no sentence shall be pronounced, and the court shall proceed under Article 46.02 of this code;
3. Where there has not been a motion for a new trial or a motion in arrest of judgment made, the defendant may answer that he has good grounds for either or both of these motions and either or both motions may be immediately entered and disposed of, although more than ten days may have elapsed since the rendition of the verdict; and
4. When a person who has been convicted escapes after conviction and before sentence and an individual supposed to be the same has been arrested he may before sentence is pronounced, deny that he is the person convicted, and an issue be accordingly tried before a jury as to his identity.

[Amended by Acts 1975, 64th Leg., p. 1102, ch. 415, § 3, eff. June 19, 1975.]

Art. 42.09. Indeterminate Sentence; Commencement of Sentence and Delivery to Place of Confinement

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

Sec. 4. If a defendant is convicted of a felony and sentenced to death, life, or a term of more than ten years in the Department of Corrections and he gives notice of appeal, he shall be transferred to the Department of Corrections on a commitment pending a mandate from the Court of Criminal Appeals.

Sec. 5. If a defendant is convicted of a felony and his sentence is a term of ten years or less and he gives notice of appeal, he shall be transferred to the Department of Corrections on a commitment pending a mandate from the Court of Criminal Appeals upon request in open court or upon written request to the sentencing court. Upon a valid transfer to the Department of Corrections under this section, the defendant may not thereafter be released on bail pending his appeal.

[See Compact Edition, Volume 1 for text of 6 and 7]

[Amended by Acts 1977, 65th Leg., p. 2018, ch. 806, § 1, eff. Aug. 29, 1977.]

Art. 42.11. Uniform Act for Out-of-State Parolee Supervision

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

Sec. 3a. The office of Interstate Parole Compact Administrator for Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished, and this Article expires effective September 1, 1987.

¹ Civil Statutes, art. 5429k.

[Amended by Acts 1977, 65th Leg., p. 1851, ch. 735, § 2.134, eff. Aug. 29, 1977.]

Art. 42.12. Adult Probation, Parole, and Mandatory Supervision Law

A. Purpose of Article and Definitions

Sec. 1. It is the purpose of this Article to place wholly within the State courts of appropriate jurisdiction the responsibility for determining when the imposition of sentence in certain cases shall be suspended, the conditions of probation, and the supervision of probationers, in consonance with the powers assigned to the judicial branch of this government by the Constitution of Texas. It is also the intent of this Article to provide for the release of persons on parole and for the method thereof, to designate the Board of Pardons and Paroles as the responsible agency of State government to recommend determination of paroles and to further designate the Board of Pardons and Paroles as responsible for the inves-

tigation and supervision of persons released on parole. It is the intent of this Article to aid all prisoners to readjust to society upon completion of their period of incarceration by providing a program of mandatory supervision for those prisoners not released on parole or through executive clemency and to designate the Board of Pardons and Paroles as the agency of government responsible for the program. It is the final purpose of this Article to remove from existing statutes the limitations, other than questions of constitutionality, that have acted as barriers to effective systems of probations and paroles in the public interest.

Sec. 2. This Article may be cited as the "Adult Probation, Parole, and Mandatory Supervision Law".

Unless the context otherwise requires, the following definitions shall apply to the specified words and phrases as used in this Article:

[See Compact Edition, Volume 1 for text of 2(a) to 2(c)]

d. "Mandatory supervision" shall mean the release of a prisoner from imprisonment but not on parole and not from the legal custody of the State, for rehabilitation outside of prison walls under such conditions and provisions for disciplinary supervision as the Board of Pardons and Paroles may determine. Mandatory supervision may not be construed as a commutation of sentence or any other form of executive clemency;

e. "Probation officer" shall mean either a person duly appointed by one or more courts of record having original criminal jurisdiction, to supervise defendants placed on probation; or a person designated by such courts for such duties on a part-time basis;

f. "Parole officer" shall mean a person duly appointed by the Director of the Division of Parole Supervision and assigned the duties of investigating and supervising paroled prisoners and prisoners released to mandatory supervision to see that the conditions of parole or mandatory supervision are complied with;

g. "Board" shall mean the Board of Pardons and Paroles;

h. "Division" shall mean the Division of Parole Supervision of the Board of Pardons and Paroles; and

i. "Director" shall mean the Director of the Division of Parole Supervision.

B. Probations

Sec. 3. The judges of the courts of the State of Texas having original jurisdiction of criminal actions, when it shall appear to the satisfaction of the court that the ends of justice and the best interests of the public as well as the defendant will be sub-

served thereby, shall have the power, after conviction or a plea of guilty for any crime or offense, where the maximum punishment assessed against the defendant does not exceed ten years imprisonment, to suspend the imposition of the sentence and may place the defendant on probation or impose a fine applicable to the offense committed and also place the defendant on probation as hereinafter provided. In all cases where the punishment is assessed by the Court it may fix the period of probation without regard to the term of punishment assessed, but in no event may the period of probation be greater than 10 years or less than the minimum prescribed for the offense for which the defendant was convicted. Any such person placed on probation, whether in a trial by jury or before the court, shall be under the supervision of such court.

Sec. 3a. Where there is a conviction in any court of this State and the punishment assessed by the jury shall not exceed ten years, the jury may recommend probation for a period of any term of years authorized for the offense for which the defendant was convicted, but in no event for more than ten years, upon written sworn motion made therefor by the defendant, filed before the trial begins. When the jury recommends probation, it may also assess a fine applicable to the offense for which the defendant was convicted. When the trial is to a jury, and the defendant has no counsel, the court shall inform the defendant of his right to make such motion, and the court shall appoint counsel to prepare and present same, if desired by the defendant. In no case shall probation be recommended by the jury except when the sworn motion and proof shall show, and the jury shall find in their verdict that the defendant has never before been convicted of a felony in this or any other State. This law is not to be construed as preventing the jury from passing on the guilt of the defendant, but he may enter a plea of not guilty. In all eligible cases, probation shall be granted by the court, if the jury recommends it in their verdict, for the period recommended by the jury.

If probation is granted by the jury the court may impose only those conditions which are set forth in Section 6 hereof.

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

Sec. 3d. (a) When in its opinion the best interest of society and the defendant will be served, the court may, after receiving a plea of guilty or plea of nolo contendere, hearing the evidence, and finding that it substantiates the defendant's guilt, defer further proceedings without entering an adjudication of guilt, and place the defendant on probation on reasonable terms and conditions as the court may require and for a period as the court may prescribe

not to exceed 10 years. However, upon written motion of the defendant requesting final adjudication filed within 30 days after entering such plea and the deferment of adjudication, the court shall proceed to final adjudication as in all other cases.

(b) On violation of a condition of probation imposed under Subsection (a) of this section, the defendant may be arrested and detained as provided in Section 8 of this Article. The defendant is entitled to a hearing limited to the determination by the court of whether it proceeds with an adjudication of guilt on the original charge. No appeal may be taken from this determination. After an adjudication of guilt, all proceedings, including assessment of punishment, pronouncement of sentence, granting of probation, and defendant's appeal continue as if the adjudication of guilt had not been deferred.

(c) On expiration of a probationary period imposed under Subsection (a) of this section, if the court has not proceeded to adjudication of guilt, the court shall dismiss the proceedings against the defendant and discharge him. The court may dismiss the proceedings and discharge the defendant prior to the expiration of the term of probation if in its opinion the best interest of society and the defendant will be served. A dismissal and discharge under this section may not be deemed a conviction for the purposes of disqualifications or disabilities imposed by law for conviction of an offense, except that upon conviction of a subsequent offense, the fact that the defendant had previously received probation shall be admissible before the court or jury to be considered on the issue of penalty.

Sec. 3e. (a) For the purposes of this section, the jurisdiction of the courts in this state in which a sentence requiring confinement in the Texas Department of Corrections is imposed for conviction of a felony shall continue for 120 days from the date the execution of the sentence actually begins. After the expiration of 60 days but prior to the expiration of 120 days from the date the execution of the sentence actually begins, the judge of the court that imposed such sentence may, on his own motion or on written motion of the defendant, suspend further execution of the sentence imposed and place the defendant on probation under the terms and conditions of this article, if such sentence is otherwise eligible for probation under this article and prior to the execution of such sentence, the defendant had never been incarcerated in a penitentiary serving a sentence for a felony and in the opinion of the judge the defendant would not benefit from further incarceration in a penitentiary. Probation may be granted under this section only if the offense for which the defendant was sentenced was an offense other than criminal homicide, rape, or robbery.

(b) When the defendant files a written motion requesting suspension by the court of further execution of the sentence and placement on probation, or when requested to do so by the judge, the clerk of the court shall request a copy of the defendant's record while incarcerated from the Texas Department of Corrections. Upon receipt of such request, the Texas Department of Corrections shall forward to the court, as soon as possible, a full and complete copy of the defendant's record while incarcerated.

Sec. 3f. (a) The provisions of Sections 3 and 3c of this Article do not apply:

(1) to a defendant adjudged guilty of an offense defined by the following sections of the Penal Code:

- (A) Section 19.03 (Capital murder);
 - (B) Section 20.04 (Aggravated kidnaping);
 - (C) Section 21.03 (Aggravated rape);
 - (D) Section 21.05 (Aggravated sexual abuse);
 - (E) Section 29.03 (Aggravated robbery);
- or

(2) to a defendant when it is shown that the defendant used or exhibited a deadly weapon as defined in Section 1.07(a)(11), Penal Code, during the commission of a felony offense or during immediate flight therefrom. Upon affirmative finding that the defendant used or exhibited a deadly weapon during the commission of an offense or during immediate flight therefrom, the trial court shall enter the finding in the judgment of the court. Upon an affirmative finding that the deadly weapon the defendant used or exhibited was a firearm, the court shall enter that finding in its judgment.

(b) If there is an affirmative finding that the defendant convicted of a felony of the second degree or higher used or exhibited a firearm during the commission or flight from commission of the offense and the defendant is granted probation, the court may order the defendant confined in the Texas Department of Corrections for not less than 60 and not more than 120 days. At any time after the defendant has served 60 days in the custody of the Department of Corrections, the sentencing judge, on his own motion or on motion of the defendant, may order the defendant released to probation. The Department of Corrections shall release the defendant to probation after he has served 120 days.

Sec. 4. When directed by the court, a probation officer shall fully investigate and report to the court in writing the circumstances of the offense, criminal record, social history and present condition of the defendant. Whenever practicable, such investiga-

tion shall include a physical and mental examination of defendant. Defendant, if not represented by counsel, counsel for defendant and counsel for the state shall be afforded an opportunity to see a copy of the report upon request. If a defendant is committed to any institution the probation officer shall send a report of such investigation to the institution at the time of commitment.

[See Compact Edition, Volume 1 for text of 5]

Sec. 6. The court having jurisdiction of the case shall determine the terms and conditions of probation and may, at any time, during the period of probation alter or modify the conditions; provided, however, that the clerk of the court shall furnish a copy of such terms and conditions to the probationer, and shall note the date of delivery of such copy on the docket. Terms and conditions of probation may include, but shall not be limited to, the conditions that the probationer shall:

[See Compact Edition, Volume 1 for text of 6(a) to 6(i)]

[Text of subd. j added by Acts 1977, 65th Leg., p. 821, ch. 306, § 2]

j. Participate in any community-based program;

[Text of subd. j added by Acts 1977, 65th Leg., p. 1058, ch. 388, § 1]

j. Reimburse the county in which the prosecution was instituted for compensation paid to appointed counsel for defending him in the case, if counsel was appointed.

k. Remain under custodial supervision in a community-based facility, obey all rules and regulations of such facility, and pay a percentage of his income to the facility for room and board;

l. Pay a percentage of his income to his dependents for their support while under custodial suspension in a community-based facility; and

m. Pay a percentage of his income to the victim of the offense, if any, to compensate the victim for any property damage or medical expenses sustained by the victim as a direct result of the commission of the offense.

Sec. 6a. (a) A court granting probation may fix a fee not exceeding \$15 per month to be paid to the court by the probationer during the probationary period. The court may make payment of the fee a condition of granting or continuing the probation.

[See Compact Edition, Volume 1 for text of 6a(b)]

Sec. 6b. (a) When the court having jurisdiction of the case grants probation to the defendant, in addition to the conditions imposed under Section 6 of this article, the court may require as a condition of

probation that the defendant submit to a period of detention in a penal institution to serve a term of imprisonment not to exceed 30 days or one-third of the sentence whichever is lesser.

(b) The imprisonment imposed shall be treated as a condition of probation, and in the event of a sentence of imprisonment upon the revocation of probation, the term of imprisonment served hereunder shall be credited toward service of such subsequent imprisonment.

[See Compact Edition, Volume 1 for text of 7]

Sec. 8. (a) At any time during the period of probation the court may issue a warrant for violation of any of the conditions of the probation and cause the defendant to be arrested. Any probation officer, police officer or other officer with power of arrest may arrest such defendant without a warrant upon the order of the judge of such court to be noted on the docket of the court. A probationer so arrested may be detained in the county jail or other appropriate place of detention until he can be taken before the court. Such officer shall forthwith report such arrest and detention to such court. If the defendant has not been released on bail, on motion by the defendant the court shall cause the defendant to be brought before it for a hearing within 20 days of filing of said motion, and after a hearing without a jury, may either continue, modify, or revoke the probation. The court may continue the hearing for good cause shown by either the defendant or the state. If probation is revoked, the court may proceed to dispose of the case as if there had been no probation, or if it determines that the best interests of society and the probationer would be served by a shorter term of imprisonment, reduce the term of imprisonment originally assessed to any term of imprisonment not less than the minimum prescribed for the offense of which the probationer was convicted.

[See Compact Edition, Volume 1 for text of 8(b)]

(c) In a probation revocation hearing at which it is alleged that the probationer violated the conditions of probation by failing to pay compensation paid to appointed counsel, probation fees, court costs, restitution, or reparations, the inability of the probationer to pay as ordered by the court is an affirmative defense to revocation, which the probationer must prove by a preponderance of evidence.

[See Compact Edition, Volume 1 for text of 9]

[Text of section effective September 1, 1978]

Sec. 10. (a) For the purpose of providing adequate probation services, the district judge or district judges having original jurisdiction of criminal actions in each judicial district in this state shall establish a probation office and employ, in accord-

ance with standards set by the commission, district personnel as may be necessary to conduct presentence investigations, supervise and rehabilitate probationers, and enforce the terms and conditions of misdemeanor and felony probation. If two or more judicial districts serve a county, or a district has more than one county, one district probation department shall serve all courts and counties in the districts.

(b) Where more than one probation officer is required, the judge or judges shall appoint a chief adult probation officer or director, who, with their approval, shall appoint a sufficient number of assistants and other employees to carry on the professional, clerical, and other work of the court.

(c) To be eligible for appointment as an adult probation officer, a person who is not an adult probation officer on the effective date of this Act:

(1) must have acquired a bachelor's degree conferred by a college or university accredited by an accrediting organization recognized by the Coordinating Board, Texas College and University System; and

(A) one year of graduate study in criminology, corrections, counseling, law, social work, psychology, sociology, or a related field that has been approved by the Texas Adult Probation Commission;¹ or

(B) one year of experience in full-time case work, counseling, or community or group work in a social, community, corrections, or juvenile agency that deals with offenders or disadvantaged persons that has been approved by the Texas Adult Probation Commission; and

(2) must not be otherwise disqualified by Section 31 of this article.

(d) The same person serving as a probation officer for juveniles may not be required to serve as a probation officer for adults and vice versa.

(e) Probation officers shall be furnished transportation or, alternatively, shall be entitled to an automobile allowance for use of personal automobile on official business.

(f) Personnel of the respective district probation departments shall not be deemed state employees and the responsible judge or judges of a district probation department shall negotiate a contract with the most populous county within the judicial district for all district probation department staff to participate in that county's group insurance program; retirement plan; and personnel policies with regard to vacation credit, sick leave credit, holiday schedule, credit union, jury leave, military leave, etc. It shall be the responsibility of the county or counties comprising the judicial district or geographical area

served by such district probation department to provide physical facilities, equipment, and utilities for an effective and professional adult probation and adult community-based correctional service.

(g) Where a judicial district has criminal jurisdiction in two or more counties, those counties may enter into agreement that the total expenses of such facilities, equipment, and utilities be distributed approximately in the same proportion as the population in each county bears to the total population of all those counties, according to the last preceding or any future federal census.

(h) The salaries of personnel, and other expenses essential to the adequate supervision of probationers, shall be paid from the funds of the judicial district. In all the instances of employment of probation officers, the responsible judges are authorized to accept state-aid, grants or gifts from other political subdivisions of the state or associations and foundations, for the sole purpose of financing adequate and effective probationary programs and community-based correctional facilities other than jails or prisons in the various parts of the district. For the purposes of this Act, the municipalities of this state are specifically authorized to grant and allocate such sums of money as their respective governing bodies may approve to their appropriate county governments for the support and maintenance of effective programs. All grants, gifts, and allocations of the character and purpose described in this section shall be handled and accounted for separately from other public funds of the county.

¹ See Art. 42.121.

[For text of section effective until September 1, 1978, see *Compact Edition, Volume 1*]

[See *Compact Edition, Volume 1* for text of 11]

Sec. 11a. The provisions of Sections 6a, 10, and 11 of this Article also apply to Article 42.13.

C. Pardons

Sec. 12. The Board of Pardons and Pardons created by Article 4, Section 11 of the Constitution of this State, shall administer the provisions of this Act respecting determinations of which prisoners shall be paroled from an institution operated by the Department of Corrections, the conditions of parole and mandatory supervision, and may recommend the revocation of releases to mandatory supervision, paroles, and conditional pardons by the Governor. Keeping the goals of this Act in mind, the Board shall have the authority to determine the degree and intensity of supervision a prisoner released on parole or released to mandatory supervision should receive.

Sec. 12a. The Board of Pardons and Pardons is subject to the Texas Sunset Act,¹ but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective Sep-

tember 1 of 1987 and of every 12th year after 1987 are reviewed.

¹ Civil Statutes, art. 5429k.

Sec. 13. The members of the Board shall give full time to the duties of their office and shall be paid such salaries as the Legislature may determine in Appropriation Acts. The members of the Board shall elect one of their number as chairman, who shall serve for a period of two years and until his successor is elected and qualified.

The Board shall meet at the call of the chairman and from time to time as may otherwise be determined by majority vote of the Board. A majority of the Board shall constitute a quorum for the transaction of all business.

The Board shall adopt an official seal of which the courts shall take judicial notice. Decisions of the Board shall be by majority vote.

The Board shall keep a record of its acts and shall notify each institution of its decision relating to the persons who are confined therein. At the close of each fiscal year the Board shall submit to the Governor and to the Legislature a report with statistical and other data of its work.

All minutes of the Board and decisions relating to mandatory supervision, parole, pardon, and clemency shall be matters of public record and subject to public inspection at all reasonable times.

[See *Compact Edition, Volume 1* for text of 14]

Sec. 14A. (a) To aid and assist the Board of Pardons and Pardons in parole and mandatory supervision decisions, provision is hereby made for the appointment of parole commissioners.

(b) There shall be appointed no less than six commissioners.

(c) One-third of the commissioners shall be appointed by the governor; one-third of the commissioners by the Chief Justice of the Supreme Court of Texas; and one-third of the commissioners by the Presiding Judge of the Texas Court of Criminal Appeals. One of the commissioners appointed by each of the appointing authorities shall reside in Walker County.

(d) Each commissioner shall hold office for a term of six years; provided that of the commissioners first appointed, the commissioners appointed by one of the appointing authorities shall serve for two years; the commissioners appointed by one of the appointing authorities shall serve for four years; and the other one-third of the commissioners shall serve for six years. Prior to appointment, the appointing authority shall draw lots for the length of the first term for his respective appointees. All terms shall begin on September 1, 1975.

(e) In matters of parole and mandatory supervision revocation decisions, the commissioners shall have the same duties and authority as the board members. A parole panel, as hereinafter provided, may recommend the granting, denying, or revocation of parole, the revocation of mandatory supervision status, and may conduct parole revocation hearings and mandatory supervision revocation hearings. The commissioners may interview inmates for parole consideration, and they shall perform their duties as directed by the board in its rules and regulations affecting these commissioners.

(f) The board may provide and promulgate a written plan for the administrative review of actions taken by a parole panel.

(g) The commissioners shall be compensated while holding office at a salary to be set by the legislature. They shall be reimbursed for their expenses in the same manner and in the same amount as are board members.

(h) The board members shall continue to exercise their responsibility for the administrative operation of the board of pardons and paroles.

(i) In matters of parole and release to mandatory supervision, the board members and commissioners may act in panels comprised of three persons in each panel. The composition of the respective panels shall be designated by the board. A majority of each panel shall constitute a quorum for the transaction of its business, and its decisions shall be by a majority vote. The functions given to the board throughout Article 42.12, Code of Criminal Procedure, 1965, as amended, may be enlarged and extend to the parole panels, as provided by board rules. The powers of the board and the board members can be delegated by the board to the parole panels and to the commissioners as needed for the convenience of and assistance to the board.

(j) In case of a vacancy among the parole commissioners, the appointing authority who appointed the commissioner now absent shall fill the vacancy with another appointment, and the person so appointed shall continue in office for the unexpired portion of the term for which the commissioner so vacating his office has been appointed.

Sec. 15. (a) The Board is authorized to release on parole, with the approval of the Governor, any person confined in any penal or correctional institution of this State who is eligible for parole under Subsection (b) of this Section. The period of parole shall be equivalent to the maximum term for which the prisoner was sentenced less calendar time actually served on the sentence. All paroles shall issue upon order of the Board, duly adopted and approved by the Governor.

(b) A prisoner under sentence of death is not eligible for parole. If a prisoner is serving a sentence for the offenses listed in Section 3f(a)(1) of this Article or if the judgment contains an affirmative finding under Section 3f(a)(2) of this Article, he is not eligible for release on parole until his actual calendar time served, without consideration of good conduct time, equals one-third of the maximum sentence or 20 calendar years, whichever is less, but in no event shall he be eligible for release on parole in less than two calendar years. All other prisoners shall be eligible for release on parole when their calendar time served plus good conduct time equals one-third of the maximum sentence imposed or 20 years, whichever is less.

(c) A prisoner who is not on parole, except a person under sentence of death, shall be released to mandatory supervision by order of the Board when the calendar time he has served plus any accrued good conduct time equal the maximum term to which he was sentenced. A prisoner released to mandatory supervision shall, upon release, be deemed as if released on parole. To the extent practicable, arrangements for the prisoner's proper employment, maintenance, and care shall be made prior to his release to mandatory supervision. The period of mandatory supervision shall be for a period equivalent to the maximum term for which the prisoner was sentenced less calendar time actually served on the sentence. The time served on mandatory supervision is calculated as calendar time. Every prisoner while on mandatory supervision shall remain in the legal custody of the institution from which he was released but shall be amenable to the orders of the Board.

(d) A prisoner who has not been released to mandatory supervision and has 180 calendar days or less remaining on his sentence may be released by order of the Board to mandatory supervision.

(e) Within one year after a prisoner's admittance to the penal or correctional institution and at such intervals thereafter, as it may determine, the Board shall secure and consider all pertinent information regarding each prisoner, except any under sentence of death, including the circumstances of his offense, his previous social history and criminal record, his conduct, employment and attitude in prison, and his physical and mental health.

(f) Before ordering the parole of any prisoner, the Board may have the prisoner appear before it and interview him. A parole shall be ordered only for the best interest of society, not as an award of clemency; it shall not be considered to be a reduction of sentence or pardon. A prisoner shall be placed on parole only when arrangements have been made for his proper employment or for his maintenance and care, and, as may be, in part, evidenced by the prisoner's having made, in whole or in part,

restitution or reparation to the victim of his crime, the total amount of such restitution or reparation as may be established by the court and entered in the judgment of the court which sentenced the prisoner to his term of imprisonment, and when the Board believes that he is able and willing to fulfill the obligations of a law-abiding citizen. Every prisoner while on parole shall remain in the legal custody of the institution from which he was released but shall be amenable to the orders of the Board.

(g) The Board may adopt such other reasonable rules not inconsistent with law as it may deem proper or necessary with respect to the eligibility of prisoners for parole and mandatory supervision, the conduct of parole and mandatory supervision hearings, or conditions to be imposed upon parolees and persons released to mandatory supervision. Each person to be released on parole shall be furnished a written statement and contract setting forth in clear and intelligible language the conditions and rules of parole. The conditions may include the making of restitution or reparation to the victim of the prisoner's crime, the total amount of such restitution or reparation as may be established by the court and entered in the judgment of the court which sentenced the prisoner to his term of imprisonment. Acceptance, signing, and execution of the contract by the inmate to be paroled shall be a precondition to release on parole. Persons to be released on mandatory supervision shall be furnished a written statement setting forth in clear and intelligible language the conditions and rules of mandatory supervision.

(h) It shall be the duty of the Board at least ten days before ordering the parole of any prisoner or upon the granting of executive clemency by the Governor to notify the sheriff, the district attorney and the district judge in the county where such person was convicted that such parole or clemency is being considered by the Board or by the Governor.

(i) If no parole officer has been assigned to the locality where a person is to be released on parole, mandatory supervision, or executive clemency the Board shall notify the chairman of the Voluntary Parole Board of such county prior to the release of such person. The Board shall request such Voluntary Parole Board, in the absence of a parole officer, for information which would herein be required of such duly appointed parole officer. This shall not, however, preclude the Board from requesting information from any public agency in such locality.

[See Compact Edition, Volume 1 for text of 16 to 19]

Sec. 20. The Board shall have the power and duty to make rules for the conduct of persons placed on parole and of persons released to mandatory supervision.

Sec. 21. (a) A warrant for the return of a paroled prisoner, a prisoner released to mandatory supervision, a prisoner released on emergency reprieve or on furlough, or a person released on a conditional pardon to the institution from which he was paroled, released, or pardoned may be issued by the Board on order by the Governor when there is reason to believe that he has committed an offense against the laws of this State or of the United States, violated a condition of his parole, mandatory supervision, or conditional pardon, or when the circumstances indicate that he poses a danger to society that warrants his immediate return to incarceration. Such warrant shall authorize all officers named therein to take actual custody of the prisoner and return him to the institution from which he was released. Pending hearing, as hereinafter provided, upon any charge of parole violation or violation of the conditions of mandatory supervision, the prisoner shall remain incarcerated.

(b) A prisoner for whose return a warrant has been issued by the Board shall, after the issuance of such warrant, be deemed a fugitive from justice and if it shall appear that he has violated the conditions or provisions of his mandatory supervision or parole, then the time from the issuing of such warrant to the date of his arrest shall not be counted as any part of the time to be served under his sentence. The law now in effect concerning the right of the State of Texas to extradite persons and return fugitives from justice, and Article 42.11 of this Code concerning the waiver of all legal requirements to obtain extradition of fugitives from justice, from other states to this State, shall not be impaired by this Act and shall remain in full force and effect.

Sec. 22. Whenever a prisoner or a person granted a conditional pardon is accused of a violation of his parole, mandatory supervision, or conditional pardon on information and complaint by a law enforcement officer or parole officer, he shall be entitled to be heard on such charges before the Board or its designee under such rules and regulations as the Board may adopt; providing, however, said hearing shall be a public hearing and shall be held within ninety days of the date of arrest under a warrant issued by the Board of Pardons and Paroles or the Governor and at a time and place set by the Board. When the Board has heard the facts, it may recommend to the Governor that the parole, mandatory supervision, or conditional pardon be continued, or revoked, or modified in any manner the evidence may warrant. When the Governor revokes a person's parole, mandatory supervision, or conditional pardon, that person may be required to serve the portion remaining of the sentence on which he was released, such portion remaining to be calculated without credit for the time from the date of his

release to the date of revocation. When a warrant is issued by the Board of Pardons and Paroles or the Governor charging a violation of release conditions, the sentence time credit shall be suspended until a determination is made by the Board of Pardons and Paroles or the Governor in such case and such suspended time credit may be re-instated by the Board of Pardons and Paroles should such parole, mandatory supervision, or conditional pardon be continued.

[See Compact Edition, Volume 1 for text of 23]

Sec. 24. When any prisoner who has been paroled or released to mandatory supervision has complied with the rules and conditions governing his release until the end of the term to which he was sentenced, and without a revocation of his parole or mandatory supervision, the Board shall make a final order of discharge and issue the prisoner a certificate of discharge.

[See Compact Edition, Volume 1 for text of 25]

Sec. 26. The Board of Pardons and Paroles shall have general responsibility for the investigation and supervision of all prisoners released on parole and to mandatory supervision. For the discharge of this responsibility, there is hereby created with the Board of Pardons and Paroles, a Division of Parole Supervision. Subject to the general direction of the Board of Pardons and Paroles, the Division of Parole Supervision, including its field staff shall be responsible for obtaining and assembling any facts the Board of Pardons and Paroles may desire in considering parole eligibility, in establishing a mandatory supervision plan, and for investigating and supervising paroled prisoners and prisoners released to mandatory supervision to see that the conditions of parole and mandatory supervision are complied with, and for making such periodic reports on the progress of parolees and prisoners released to mandatory supervision as the Board may desire.

Sec. 27. All information obtained in connection with inmates of the Texas Department of Corrections subject to parole, release to mandatory supervision, or executive clemency or individuals who may be on mandatory supervision or parole and under the supervision of the division, or persons directly identified in any proposed plan of release for a prisoner, shall be confidential and privileged information and shall not be subject to public inspection; provided, however, that all such information shall be available to the Governor and the Board of Pardons and Paroles upon request. It is further provided, that statistical and general information respecting the parole and mandatory supervision program and system, including the names of paroled prisoners, prisoners released to mandatory supervision, and data recorded in connection with parole and mandatory supervision services, shall be subject to public inspection at any reasonable time.

Sec. 28. Salaries of all employees of the Division of Parole Supervision shall be governed by Appropriation Acts of the Legislature. The Board of Pardons and Paroles shall appoint a Director of the division, and all other employees shall be selected by the Director, subject to such general policies and regulations as the Board may approve.

It is expressly provided, however, that no person may be employed as a parole officer or supervisor, or be responsible for the investigations or supervision of persons on parole or mandatory supervision, unless he meets the following qualifications together with any other qualifications that may be specified by the Director of the Division, with the approval of the Board of Pardons and Paroles; four years of successfully completed education in an accredited college or university, and two years of full time paid employment in responsible correctional work with adults or juveniles, social welfare work, teaching, or personnel work. Additional experience in the above categories may be substituted year for year for the required college education, with a maximum substitution for two years.

[See Compact Edition, Volume 1 for text of 29]

Sec. 30. In order to provide supervision of parolees, persons released to mandatory supervision, and persons granted executive clemency who reside in sparsely settled areas of the State and in localities not served by regularly employed parole officers, the Governor of this State is authorized to appoint chairmen of Voluntary Parole Boards for such areas or localities. The appointed chairman may, with the advice and approval of the Director of the Division of Parole Supervision, appoint additional members of such Voluntary Parole Boards. The term of service by such appointed chairmen of Voluntary Parole Boards shall not exceed the term of office of the appointing Governor; and the terms of service of locally appointed additional members of such Voluntary Parole Boards shall not exceed the terms of office of the director. However, it is expressly provided that the terms of service by such chairmen and additional members of Voluntary Parole Boards may be continued by appropriate reappointments. The chairman of the Voluntary Parole Board shall be responsible for assigning supervision of parolees and of persons released to mandatory supervision to the members of such board.

Sec. 31. No person who is serving as a sheriff, deputy sheriff, constable, deputy constable, city policeman, Texas Ranger, state highway patrolman, or similar law enforcement officer, or as a prosecuting attorney, shall act as a parole officer or be responsible for the supervision of persons on parole or released to mandatory supervision.

[See Compact Edition, Volume 1 for text of 32]

E. General Provisions

[See Compact Edition, Volume 1 for text of 33 to 35]

Sec. 36. The provisions of this article do not apply to temporary furloughs granted to an inmate by the Texas Department of Corrections under Article 6184n, Revised Civil Statutes of Texas, 1925.

[Amended by Acts 1975, 64th Leg., p. 263, ch. 110, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 572, ch. 231, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 909, ch. 341, § 4, eff. June 19, 1975; Acts 1975, 64th Leg., p. 1243, ch. 467, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 1244, ch. 468, §§ 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2150, ch. 692, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 38, ch. 22, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 102, ch. 47, § 1, eff. April 5, 1977; Acts 1977, 65th Leg., p. 821, ch. 306, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 909, ch. 342, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 914, ch. 343, § 2, eff. Sept. 1, 1978; Acts 1977, 65th Leg., p. 925, ch. 347, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1058, ch. 388, §§ 1, 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1850, ch. 735, § 2.133, eff. Aug. 29, 1977.]

For saving provisions of Acts 1975, 64th Leg., p. 909, ch. 341, see note set out under art. 3.01.

Section 7 of Acts 1977, 65th Leg., p. 934, ch. 347, provided:

"This Act applies only to inmates sentenced to the Texas Department of Corrections for an offense committed on or after the effective date of this Act. Inmates sentenced for an offense committed prior to the effective date of this Act are governed by the law existing before the effective date, which is continued in effect for this purpose. For the purpose of this Act, an offense is committed on or after the effective date if any element of the offense occurs on or after the effective date."

Art. 42.121. Texas Adult Probation Commission
 [Text of article added effective until September 1, 1987]

SUBCHAPTER A. GENERAL PROVISION

Purposes

Sec. 1.01. The purposes of this article are to make probation services available throughout the state, to improve the effectiveness of probation services, to provide alternatives to incarceration by providing financial aid to judicial districts for the establishment and improvement of probation services and community-based correctional programs and facilities other than jails or prisons, and to establish uniform probation administration standards.

Definitions

Sec. 1.02. In this article:

- (1) "Director" means the executive director of the Texas Adult Probation Commission.
- (2) "Commission" means the Texas Adult Probation Commission.
- (3) "Probation office" means the office established under Section 10(a), Article 42.12, Code of Criminal Procedure, 1965, as amended, to provide probation services in each judicial district.

(4) "Employee in the criminal justice system" means a person employed as a peace officer, county attorney, district attorney, probation officer, parole officer, corrections officer, or any person employed by a court.

SUBCHAPTER B. TEXAS ADULT PROBATION COMMISSION

Creation

Sec. 2.01. The Texas Adult Probation Commission is hereby created.

Membership

Sec. 2.02. The commission shall consist of three judges of the district courts of Texas and two citizens of Texas who are not employed in the criminal justice system to be appointed by the Chief Justice of the Supreme Court of Texas and three judges of the district courts of Texas and one citizen of Texas not employed in the criminal justice system to be appointed by the presiding judge of the Texas Court of Criminal Appeals.

Terms of Office

Sec. 2.03. (a) The first members appointed to the Board shall serve terms of two, four, and six years respectively, and until their successors are appointed. Thereafter each member shall serve for six years.

(b) The appointing authority shall draw lots to determine which members serve two, four, and six-year terms.

(c) If any judicial member of the commission ceases to hold his judicial office, or a citizen member resigns or expires, the appointing authority for his respective commission position shall appoint another member to serve the remainder of the unexpired term.

Chairman

Sec. 2.04. (a) The members of the commission shall elect a chairman from among its members.

(b) The chairman of the commission shall serve for a term of two years.

Expenses

Sec. 2.05. Members of the commission are not entitled to compensation but are entitled to reimbursement for actual and necessary expenses incurred in performing their official duties as commission members.

Meetings

Sec. 2.06. (a) The Chief Justice of the Supreme Court of Texas shall call the first meeting of the commission in September, 1977.

(b) The commission shall hold regular quarterly meetings each year on dates fixed by the commission

and such special meetings as the commission determines necessary. The commission shall make rules providing for the regulation of its proceedings and for the holding of special meetings.

(c) A majority of the commission shall constitute a quorum.

(d) The commission shall keep a public record of its decisions at its general office.

Executive Director, Employees

Sec. 2.07. (a) The commission shall employ an executive director, whose qualifications shall comply with the standards required for a probation officer and who has a minimum of two years experience in the administration and supervision of adult probation services, and as many other employees as it needs to administer this article.

(b) The commission may delegate authority to the executive director to select employees of the commission.

Expiration

Sec. 2.08. Unless continued by law, the commission is abolished and this article expires effective September 1, 1987.

SUBCHAPTER C. POWERS AND DUTIES OF COMMISSION

Standards for Probation Offices, Probation Officers, and Community-based Correctional Programs and Facilities

Sec. 3.01. The commission shall promulgate reasonable rules:

(1) establishing minimum standards for case loads, programs, facilities, and equipment, and other aspects of the operation of a probation office necessary for the provision of adequate and effective probation services;

(2) establishing a code of ethics for probation officers and providing for the enforcement thereof.

Records and Reports

Sec. 3.02. The commission shall require each probation office in Texas to:

(1) keep such financial and statistical records as the commission deems necessary;

(2) submit periodic financial and statistical reports to the commission.

Gifts and Grants

Sec. 3.03. The commission may apply for and accept gifts or grants from any public or private source for use in maintaining and improving probation services in Texas.

Intergovernmental Cooperation

Sec. 3.04. The commission may cooperate and contract with the federal government, with govern-

mental agencies of Texas and other states, and with political subdivisions of Texas to improve probation services.

Inspections, Audits

Sec. 3.05. The commission may inspect and evaluate any probation office and conduct audits of financial records at any reasonable time to determine compliance with the commission's rules, regulations, or standards.

Studies

Sec. 3.06. The commission may conduct or participate in studies of corrections methods and systems.

Annual Report

Sec. 3.07. The commission shall make a report to the governor and to the legislature each year covering its operations and the condition of probation services in Texas during the previous year and making whatever recommendations it considers desirable.

Delegation of Authority

Sec. 3.08. The commission may delegate to the director or to any other employee any authority given it by this article except the authority to make rules.

Deposit of Money

Sec. 3.09. All money received by the commission under Section 3.03 of this article shall be deposited to the credit of special funds, which shall be appropriated, from the General Revenue Fund, for the payment of state aid by this article and for the administration of this article.

SUBCHAPTER D. STATE-AID TO PROBATION OFFICES

State-Aid Defined

Sec. 4.01. "State-aid" means funds appropriated by the state legislature to be used by the commission for financial assistance to judicial districts to achieve the purposes of this Act as stated previously in Section 1.01 of this Act and to conform to the standards and policies promulgated by the commission.

Determination of Amount

Sec. 4.02. The legislature shall determine and appropriate the amount of state-aid necessary to maintain and improve statewide probation services commensurate with the purposes as stated in Section 1.01 of this Act.

Data for State-Aid

Sec. 4.03. The district judge or judges in each judicial district shall present data to the commission, determined by the commission, which is necessary to determine the amount of state financial aid needed for use in maintaining and improving probation

services and community-based correctional programs and facilities other than jails or prisons in the district.

Reports

Sec. 4.04. A judicial district receiving state-aid shall submit reports as required by the commission.

Payment of State-Aid

[Text of section effective September 1, 1978]

Sec. 4.05. (a) When the commission determines that a judicial district complies with its standards, the commission shall prepare and submit to the comptroller of public accounts a voucher for payment to the district the amount of state-aid to which it is entitled.

(b) The fiscal officer designated for the district shall deposit all state-aid received under this article in a special fund of the county treasury, to be used solely for the provision of adult probation services and community-based correctional programs and facilities other than jails or prisons.

Refusal or Suspension of State-Aid

Sec. 4.06. The commission shall refuse or suspend payment of state-aid to any district that fails to comply with the commission standards. The commission shall provide for notice and a hearing in cases in which it refuses or suspends state-aid. [Added by Acts 1977, 65th Leg., p. 910, ch. 343, § 1, eff. June 10, 1977.]

Section 3 of the 1977 Act provided:

"Section 4.05 of Article 42.121, Code of Criminal Procedure, 1965, as amended, and Section 2 of this Act take effect on September 1, 1978."

Art. 42.13. Misdemeanor Probation Law

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

Probation Authorized in Misdemeanor Cases

Sec. 3. (a) A defendant who has been found guilty of a misdemeanor wherein the maximum permissible punishment is by confinement in jail or by a fine in excess of \$200.00 or by both such fine and imprisonment may be granted probation if:

(1) he applies by written motion under oath to the court for probation before trial;

(2) he has not been granted probation nor been under probation under this Act or any other Act in the preceding 5 years; provided that the court may grant probation regardless of the prior probation of the defendant, except for a like offense within the last 5 years;

(3) he has paid all costs of his trial and so much of any fine imposed as the court directs; and

(4) the court believes that the ends of justice and the best interests of society and of the defendant will be served by granting him probation.

(b) If a defendant satisfies all the requirements of Section 3(a)(1), (2), (3) and (4) of this Article, and the jury hearing his case recommends probation in its verdict, the court must grant the defendant probation. The court may grant the defendant probation regardless of the recommendation of the jury or the prior conviction of the defendant, except for a like offense within the last five years. The court may, however, extend the term of the probationary period to any length of time not exceeding the maximum time of confinement allowed by law. In the event probation is revoked in accordance with Section 6, the judgment of the court shall not prescribe any penalty in excess of that imposed by the jury.

(c) A defendant's application for probation must be made under oath and must also contain statements (1) either that he has never before been convicted in this or another jurisdiction of a felony or of a misdemeanor for which the maximum permissible punishment is by confinement in jail or by a fine in excess of \$200 or by both such fine and imprisonment, or, if he has been so convicted, setting forth such fact and specifying the time and place of such conviction, the nature of the offense for which he was convicted, and the final punishment assessed therein; and (2) that he has not been granted probation nor been under probation under this Article or any other Article in the preceding five years, or if he has been granted probation or been under probation in the preceding five years, setting forth such fact and specifying the time and place of such probation, and the nature of the offense for which he was placed on probation. The application may contain what other information the court directs.

(d) When a defendant has applied for probation, the court during the trial of his case must receive competent evidence concerning the defendant's entitlement to probation.

Jurisdiction to Suspend Execution of Sentence and Place Defendant on Probation

Sec. 3A. (a) For the purposes of this section, the jurisdiction of the courts in this state in which a sentence requiring confinement in a jail is imposed for conviction of a misdemeanor shall continue for a period of 90 days from the date the execution of the sentence actually begins. After the expiration of 10 days but prior to the expiration of 90 days from the date the execution of the sentence actually begins, the judge of the court that imposed such sentence may, on his own motion or on the motion of the defendant, suspend further execution of the sentence imposed and place the defendant on probation under the terms and conditions of this article if, prior to the execution of that sentence, the defendant had never been incarcerated in a penitentiary or jail serving a sentence for a felony or misdemeanor and in the opinion of the judge the defendant would not benefit from further incarceration in a jail.

(b) When the defendant files a written motion with the court requesting suspension of further execution of the sentence and placement on probation, or when requested to do so by the judge, the clerk of the court shall request a copy of the defendant's record while incarcerated from the agency operating the jail where the defendant is incarcerated. Upon receipt of such request, the agency operating the jail where the defendant is incarcerated shall forward to the court, as soon as possible, a full and complete copy of the defendant's record while incarcerated.

[See Compact Edition, Volume 1 for text of 4]
Sec. 5.

[See Compact Edition, Volume 1 for text of 5(a) to 5(b)(10)]

The clerk shall send such fingerprints to the Texas Department of Public Safety, which shall return a certificate to the court in which the defendant was tried, which certificate shall contain any criminal record of the defendant or record with the Department, or if no record exists, then a certificate from the Texas Department of Public Safety showing the absence of any previous criminal record. The Texas Department of Public Safety shall, in addition to its present responsibilities, keep a record of all misdemeanor arrests within the purview of this section and the deposition of such cases.

The terms may require the probationer to reimburse the county in which the prosecution was instituted for compensation paid to appointed counsel for defending him in the case, if counsel was appointed.

[See Compact Edition, Volume 1 for text of 5(c) and 5(d)]

Sec. 6.

[See Compact Edition, Volume 1 for text of 6(a) and 6(b)]

(c) In a probation revocation hearing at which it is alleged that the probationer violated the conditions of probation by failing to pay compensation paid to appointed counsel, probation fees, court costs, restitution, or reparations, the inability of the probationer to pay as ordered by the court is an affirmative defense to revocation, which the probationer must prove by a preponderance of evidence.

[Amended by Acts 1975, 64th Leg., p. 910, ch. 341, § 5, eff. June 19, 1975; Acts 1977, 65th Leg., p. 822, ch. 306, § 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1059, ch. 388, §§ 3, 4, eff. Aug. 29, 1977.]

For saving provisions of 1975 amendatory act, see note set out under art. 3.01.

Art. 42.17. Transfer Under Treaty

When a treaty is in effect between the United States and a foreign country providing for the transfer of convicted offenders who are citizens or nation-

als of foreign countries to the foreign countries of which they are citizens or nationals, the governor is authorized, subject to the terms of such treaty, to act on behalf of the State of Texas and to consent to the transfer of such convicted offenders under the provisions of Article IV, Section 11 of the Constitution of the State of Texas.

[Added by Acts 1977, 65th Leg., p. 1266, ch. 489, § 1, eff. June 15, 1977.]

CHAPTER FORTY-THREE. EXECUTION OF JUDGMENT

Art. 43.14. Execution of Convict

Whenever the sentence of death is pronounced against a convict, the sentence shall be executed at any time before the hour of sunrise on the day set for the execution not less than thirty days from the day of sentence, as the court may adjudge, by intravenous injection of a substance or substances in a lethal quantity sufficient to cause death and until such convict is dead, such execution procedure to be determined and supervised by the Director of the Department of Corrections.

[Amended by Acts 1977, 65th Leg., p. 287, ch. 138, § 1, eff. Aug. 29, 1977.]

Art. 43.18. Executioner

The Director of the Texas Department of Corrections shall designate an executioner to carry out the death penalty provided by law.

[Amended by Acts 1975, 64th Leg., p. 911, ch. 341, § 6, eff. June 19, 1975; Acts 1977, 65th Leg., p. 288, ch. 138, § 2, eff. Aug. 29, 1977.]

For saving provisions of 1975 amendatory act, see note set out under art. 3.01.

APPEAL AND WRIT OF ERROR

CHAPTER FORTY-FOUR. APPEAL AND WRIT OF ERROR

Art. 44.02. Defendant May Appeal

A defendant in any criminal action has the right of appeal under the rules hereinafter prescribed, provided, however, before the defendant who has been convicted upon either his plea of guilty or plea of nolo contendere before the court and the court, upon the election of the defendant, assesses punishment and the punishment does not exceed the punishment recommended by the prosecutor and agreed to by the defendant and his attorney may prosecute his appeal, he must have permission of the trial court, except on those matters which have been raised by written motion filed prior to trial. This article in no way affects appeals pursuant to Article 44.17 of this chapter.

[Amended by Acts 1977, 65th Leg., p. 940, ch. 351, § 1, eff. Aug. 29, 1977.]

Art. 44.04. Bond Pending Appeal

(a) Pending the appeal from any misdemeanor conviction, the defendant is entitled to be released on reasonable bail, and if a defendant charged with a misdemeanor is on bail, is convicted, and appeals that conviction, his bond is not discharged until his conviction is final or in the case of an appeal to a court where a trial de novo is held, he files an appeal bond as required by this code for appeal from the conviction.

(b) The defendant may not be released on bail pending the appeal from any felony conviction where the punishment exceeds 15 years confinement but shall immediately be placed in custody and the bail discharged.

(c) Pending the appeal from any felony conviction where the punishment does not exceed 15 years confinement, the trial court may deny bail and commit the defendant to custody if there then exists good cause to believe that the defendant would not appear when his conviction became final or is likely to commit another offense while on bail, permit the defendant to remain at large on the existing bail, or, if not then on bail, admit him to reasonable bail until his conviction becomes final. The court may impose reasonable conditions on bail pending the finality of his conviction. On a finding by the court on a preponderance of the evidence of a violation of a condition, the court may revoke the bail.

(d) After conviction, either pending determination of any motion for new trial or pending final determination of the appeal, the court in which trial was had may increase or decrease the amount of bail, as it deems proper, either upon its own motion or the motion of the State or of the defendant.

(e) Any bail entered into after conviction and the sureties on the bail must be approved by the court where trial was had. Bail is sufficient if it substantially meets the requirements of this code and may be entered into and given at any term of court.

(f) In no event shall the defendant and the sureties on his bond be released from their liability on such bond or bonds until the defendant is placed in the custody of the sheriff.

(g) The right of appeal to the Court of Criminal Appeals of this state is expressly accorded the defendant for a review of any judgment or order made hereunder, and said appeal shall be given preference by the Court of Criminal Appeals.

[Amended by Acts 1977, 65th Leg., p. 636, ch. 234, § 1, eff. Aug. 29, 1977.]

MISCELLANEOUS PROCEEDINGS
CHAPTER FORTY-SIX. INSANITY
AS DEFENSE

Article

46.03. Insanity Defense [NEW].

Art. 46.02. Incompetency to Stand Trial**Incompetency to Stand Trial**

Sec. 1. (a) A person is incompetent to stand trial if he does not have:

(1) sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding; or

(2) a rational as well as factual understanding of the proceedings against him.

(b) A defendant is presumed competent to stand trial and shall be found competent to stand trial unless proved incompetent by a preponderance of the evidence.

Raising the Issue of Incompetency to Stand Trial

Sec. 2. (a) The issue of the defendant's incompetency to stand trial shall be determined in advance of the trial on the merits if the court determines there is evidence to support a finding of incompetency to stand trial on its own motion or on written motion by the defendant or his counsel filed prior to the date set for trial on the merits asserting that the defendant is incompetent to stand trial.

(b) If during the trial evidence of the defendant's incompetency is brought to the attention of the court from any source, the court must conduct a hearing out of the presence of the jury to determine whether or not there is evidence to support a finding of incompetency to stand trial.

Examination of the Defendant

Sec. 3. (a) At any time the issue of the defendant's incompetency to stand trial is raised, the court may, on its own motion or motion by the defendant, his counsel, or the prosecuting attorney, appoint disinterested experts experienced and qualified in mental health or mental retardation to examine the defendant with regard to his competency to stand trial and to testify at any trial or hearing on this issue.

(b) The court may order any defendant to submit to examination for the purposes described in this article. If the defendant is free on bail, the court in its discretion may order him to submit to examination. If the defendant fails or refuses to submit to examination, the court may order him to custody for examination for a reasonable period not to exceed 21 days. The court may not order a defendant to a facility operated by the Texas Department of Mental Health and Mental Retardation for examination without the consent of the head of that facility or for a period exceeding 21 days. If a defendant who has been ordered to a facility operated by Texas Department of Mental Health and Mental Retardation for examination remains in such facility for a period of time exceeding 21 days, the head of that facility shall cause the defendant to be immediately transported to the committing court and placed in the

custody of the sheriff of the county in which the committing court is located. That county shall reimburse the Texas Department of Mental Health and Mental Retardation facility for the mileage and per diem expenses of the personnel required to transport the defendant calculated in accordance with the state travel regulations in effect at the time.

(c) The court shall advise any expert appointed pursuant to this section of the facts and circumstances of the offense with which the defendant is charged and the meaning of incompetency to stand trial.

(d) A written report of the examination shall be submitted to the court within 30 days of the order of examination, and the court shall furnish copies of the report to the defense counsel and the prosecuting attorney. The report shall include a description of the procedures used in the examination, the examiner's observations and findings pertaining to the defendant's competency to stand trial, and recommended treatment. If the examiner concludes that the defendant is incompetent to stand trial, the report shall include the examiner's observations and findings about whether there is a substantial probability that the defendant will attain the competence to stand trial in the foreseeable future. The examiner shall also submit a separate report setting forth his observations and findings concerning:

(1) whether the defendant is mentally ill and requires observation and/or treatment or hospitalization in a mental hospital for his own welfare and protection or the protection of others; or

(2) whether the defendant is a mentally retarded person as defined in The Mentally Retarded Persons Act (Article 3871b, Vernon's Texas Civil Statutes)¹ and requires commitment to a mental retardation facility.

(e) If the examiner is a physician and concludes that the defendant is mentally ill, he shall complete and submit to the court a Certificate of Medical Examination for Mental Illness. If the examiner concludes that the defendant is a mentally retarded person and the examination has been conducted at a facility of the Texas Department of Mental Health and Mental Retardation or at a diagnostic center approved by the Texas Department of Mental Health and Mental Retardation, the examiner shall submit to the court an affidavit setting forth the conclusions reached as a result of the diagnostic examination.

(f) The appointed experts shall be paid by the county in which the indictment was returned or information was filed. A facility operated by the Texas Department of Mental Health and Mental Retardation which accepts a defendant for examination under Subsection (a) of this section shall be reimbursed by the county in which the indictment was returned or information was filed for such ex-

penses incurred as are determined by the department to be reasonably necessary and incidental to the proper examination of the defendant.

(g) No statement made by the defendant during the examination or hearing on his competency to stand trial may be admitted in evidence against the defendant on the issue of guilt in any criminal proceeding.

(h) When a defendant wishes to be examined by a psychiatrist or other expert of his own choice, the court on timely request shall provide the examiner with reasonable opportunity to examine the defendant.

(i) The experts appointed under this section to examine the defendant with regard to his competency to stand trial also may be appointed by the court to examine the defendant with regard to the insanity defense pursuant to Section 3 of Article 46.03 of this code, but separate written reports concerning the defendant's competency to stand trial and the insanity defense shall be filed with the court.

¹ Repealed; see, now, the Mentally Retarded Persons Act of 1977, classified as Civil Statutes, art. 5547-300.

Incompetency Hearing

Sec. 4. (a) If the court determines that there is evidence to support a finding of incompetency to stand trial, a jury shall be impaneled to determine the defendant's competency to stand trial. This determination shall be made by a jury that has not been selected to determine the guilt or innocence of the defendant. If the defendant is found incompetent to stand trial, a further hearing may be held to determine whether or not the defendant is mentally ill and requires observation and/or treatment or hospitalization in a mental hospital for his own welfare and protection or the protection of others or whether he is a mentally retarded person as defined in The Mentally Retarded Persons Act (Article 3871b, Vernon's Texas Civil Statutes), and requires commitment to a mental retardation facility.

(b) The defendant is entitled to counsel at the competency hearing. If the defendant is indigent and the court has not yet appointed counsel to represent the defendant, the court shall appoint counsel prior to the competency hearing.

(c) If the issue of incompetency to stand trial is raised other than by written motion in advance of trial pursuant to Subsection (a) of Section 2 of this article and the court determines that there is evidence to support a finding of incompetency to stand trial, the court shall set the issue for determination at any time prior to the sentencing of the defendant. If the competency hearing is delayed until after a verdict on the guilt or innocence of the defendant is returned, the competency hearing shall be held as soon thereafter as reasonably possible, but a competency hearing may be held only if the verdict in the trial on the merits is "guilty." If the defendant is found incompetent to stand trial after the beginning of the trial on the merits, the court shall declare a

mistrial in the trial on the merits. A subsequent trial and conviction of the defendant for the same offense is not barred and jeopardy does not attach by reason of a mistrial under this section.

(d) Instructions submitting the issue of incompetency to stand trial shall be framed to require the jury to state in its verdict:

(1) whether the defendant is incompetent to stand trial; and

(2) if found incompetent to stand trial, whether there is no substantial probability that the defendant will attain the competency to stand trial within the foreseeable future.

(e) If the jury is unable to agree on a unanimous verdict after a reasonable opportunity to deliberate, the court shall declare a mistrial of the incompetency hearing, discharge the jury, and impanel another jury to determine the incompetency of the defendant to stand trial.

(f) If the defendant is found competent to stand trial, the court shall dismiss the jury that decided the issue and may continue the trial on the merits before the court or with the jury selected for that purpose.

(g) If the defendant is found incompetent to stand trial and it is determined that there is a substantial probability that he will attain the competency to stand trial within the foreseeable future, the court shall proceed under Section 5 of this article.

(h) If the defendant is found incompetent to stand trial and there is found no substantial probability that he will become competent within the foreseeable future, and the court determines there is evidence that the defendant is mentally ill or is a mentally retarded person, and all charges pending against the defendant are not then dismissed, the court shall proceed under Section 6 of this article or shall release the defendant.

(i) If the defendant is found incompetent to stand trial and there is found no substantial probability that he will become competent within the foreseeable future, and the court determines there is evidence that the defendant is mentally ill or is a mentally retarded person, and all charges pending against the defendant are then dismissed, the court shall proceed under Section 7 of this article or shall release the defendant.

Criminal Commitment

Sec. 5. (a) When a defendant has been determined incompetent to stand trial, and absent a determination that there is no substantial probability that the defendant will attain competency to stand trial in the foreseeable future, the court shall enter an order committing the defendant to the maximum security unit of Rusk State Hospital, to the maximum security unit of any other facility designated by the Texas Department of Mental Health and Mental Retardation, to an agency of the United

States operating a mental hospital, or to a Veterans Administration hospital for a period of at least 60 days, but not to exceed 18 months, and placing him in the custody of the sheriff for transportation to the facility to be confined therein for further examination and treatment toward the specific objective of attaining competency to stand trial. The court shall order that a transcript of all medical testimony received by the jury be forthwith prepared by the court reporter and that such transcript, together with a statement of the facts and circumstances surrounding the alleged offense, shall accompany the patient to the facility.

(b) No person shall be committed to a mental health or mental retardation facility under this section except on competent medical or psychiatric testimony.

(c) The facility to which the defendant is committed shall develop an individual program of treatment and shall report on the defendant's progress towards achieving competency to the court at least every 90 days.

(d) Nothing in this section precludes the court from allowing the defendant to be released on bail if the court determines that the defendant can be adequately treated on an outpatient basis for the purpose of attaining competency to stand trial.

(e) If the charges pending against a defendant are dismissed, the committing court shall send a copy of the order of dismissal to the head of the facility in which the defendant is held and the defendant shall then be discharged.

(f) The head of a facility to which a person has been committed pursuant to Subsection (a) of this section shall promptly notify the committing court:

(1) when he is of the opinion that the defendant has attained competency to stand trial; or

(2) when he is of the opinion that there is no substantial probability that the defendant will attain the competency to stand trial in the foreseeable future; or

(3) when an 18-month commitment is due to expire, such notice to be given 14 days prior to such expiration.

(g) On notification to the committing court under Subsection (f) of this section, the sheriff of the county in which the committing court is located shall forthwith transport the defendant to the committing court; provided, however, that if the defendant remains in the maximum security unit of a facility of the Texas Department of Mental Health and Mental Retardation 14 days following receipt by the committing court of such notification, the head of that facility shall cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. That county shall reimburse the Texas Department of Mental Health and

Mental Retardation facility for the mileage and per diem expenses of the personnel required to transport the defendant calculated in accordance with the state travel regulations in effect at the time.

(h) Upon the defendant's return to court, if he has no counsel and the court determines that the defendant is indigent, the court shall appoint counsel to represent him.

(i) When the head of a facility to which the defendant is committed discharges the defendant and the defendant is returned to court, a final report shall be filed with the court documenting the applicable reason therefor under Subsection (f) of this section, and the court shall furnish copies to the defense counsel and the prosecuting attorney. If the head of such facility is of the opinion that the defendant is mentally ill and requires observation and/or treatment or hospitalization in a mental hospital for his own welfare and protection or the protection of others, he shall complete and submit to the court a Certificate of Medical Examination for Mental Illness. If the head of such facility is of the opinion that the defendant is mentally retarded, he shall submit to the court an affidavit setting forth the conclusions reached as a result of the diagnostic examination. When the report is filed with the court, the court is authorized to make a determination based solely on the report with regard to the defendant's competency to stand trial, unless the prosecuting attorney or the defense counsel objects in writing or in open court to the findings of the report within 15 days from the time the report is served on the parties. In the event of objection, the issue shall be set for a hearing before the court or, on motion by the defendant, his counsel, the prosecuting attorney, or the court, the hearing shall be held before a jury. The hearing shall be held within 30 days following the date of objection unless continued for good cause.

(j) No defendant who has been committed to a facility under Subsection (a) of this section may be recommitted to a facility under that subsection in connection with the same offense.

(k) If the defendant is found competent to stand trial, criminal proceedings against him may be resumed.

(l) If the defendant is found incompetent to stand trial, and all charges pending against the defendant are not then dismissed, the court shall proceed under Section 6 of this article or shall release the defendant.

(m) If the defendant is found incompetent to stand trial, and all charges pending against the defendant are then dismissed, the court shall proceed under Section 7 of this article or shall release the defendant.

Civil Commitment—Charges Pending

Sec. 6. (a) If a defendant is found incompetent to stand trial and there is found no substantial

probability that he will become competent in the foreseeable future, or if the defendant is found incompetent to stand trial and he has been previously committed to a facility under Subsection (a) of Section 5 of this article in connection with the same offense, and, in either event, all charges pending against the defendant are not then dismissed, the court shall determine whether there is evidence to support findings that the defendant is mentally ill or is mentally retarded and requires commitment to a mental health or mental retardation facility.

(b) If it appears to the court that the defendant may be mentally ill and there is on file with the court Certificates of Medical Examination for Mental Illness by two physicians, at least one of whom must not be employed by the Texas Department of Mental Health and Mental Retardation, who have examined the defendant within 45 days of the date of the commitment hearing, each stating that the defendant is mentally ill and requires observation and/or treatment or hospitalization in a mental hospital, the court shall impanel a jury to determine whether the defendant shall be committed to a mental health facility or such hearing may be held before the jury impaneled to determine the defendant's competency to stand trial.

(1) If there has not been filed with the court two such Certificates of Medical Examination for Mental Illness, the judge shall appoint the necessary physicians, at least one of whom shall be a psychiatrist if one is available in the county, to examine the defendant and file certificates with the court. The judge may order the defendant to submit to the examination.

(2) The Texas Mental Health Code (Article 5547-1 et seq., Vernon's Texas Civil Statutes) shall govern proceedings for commitment of the defendant to a mental health facility insofar as the provisions of that code are applicable and not in conflict herewith, except that the criminal court shall conduct the proceedings whether or not the criminal court is also the county court.

(3) If the defendant has not been under observation and/or treatment in a mental hospital for at least 60 days under the provisions of Section 5(a) above or under an Order of Temporary Commitment pursuant to the provisions of the Texas Mental Health Code (Article 5547-1 et seq., Vernon's Texas Civil Statutes) within the 12 months immediately preceding the date of the hearing, the instructions submitting the issue shall be framed to require the jury to state in its verdict:

(i) whether the defendant is mentally ill, and if so

(ii) whether he requires observation and/or treatment in a mental hospital for his own welfare and protection or the protection of others.

(4) If the jury finds that the defendant is not mentally ill or does not require observation and/or treatment in a mental hospital, the court shall order the immediate release of the defendant.

If the jury finds that the defendant is mentally ill and requires observation and/or treatment in a mental hospital for his own welfare and protection or the protection of others, the court shall order that the defendant be committed as a patient for observation and/or treatment in a state mental hospital for a period not exceeding 90 days.

(5) If the defendant has been under observation and/or treatment in a mental hospital for at least 60 days under the provisions of Section 5(a) above or under an Order of Temporary Commitment pursuant to the provisions of the Texas Mental Health Code (Article 5547-1 et seq., Vernon's Texas Civil Statutes) within the 12 months immediately preceding the date of the hearing, the instructions submitting the issue shall be framed to require the jury to state in its verdict:

(i) whether the defendant is mentally ill, and if so

(ii) whether he requires hospitalization in a mental hospital for his own welfare and protection or the protection of others, and if so

(iii) whether he is mentally incompetent.

(6) If the jury finds that the defendant is not mentally ill or that he does not require hospitalization in a mental hospital for his own welfare and protection or the protection of others, the court shall enter an order discharging the defendant.

If the jury finds that the defendant is mentally ill and requires hospitalization in a mental hospital for his own welfare and protection or the protection of others, the court shall order that the defendant be committed as a patient to a state mental hospital for an indefinite period.

(7) If the court enters an order committing the defendant to a state mental hospital, the defendant shall be treated and released in conformity to the Texas Mental Health Code except as may be provided in this article.

(c) If it appears to the court that the defendant may be mentally retarded and there is on file with the court an Affidavit of Examination of Alleged Mentally Retarded Person based upon an examination conducted at a facility of the Texas Department of Mental Health and Mental Retardation or at a diagnostic center approved by that department, the court shall impanel a jury to determine whether the defendant is a mentally retarded person or such hearing may be held before the jury impaneled to determine the defendant's competency to stand trial.

(1) If such affidavit is not on file with the court, the judge shall arrange for such diagnostic examination of the defendant by a facility of the Texas Department of Mental Health and Mental Retardation or by a diagnostic center approved by that department. The judge may order the defendant to submit to the examination. The county shall reimburse the facility or center which conducts the examination for the reasonable and necessary expenses incurred in conducting such examination.

(2) The Mentally Retarded Persons Act (Article 3871b, Vernon's Texas Civil Statutes) shall govern proceedings for commitment of the defendant to a mental retardation facility insofar as the provisions of that Act are applicable and not in conflict herewith, except that the criminal court shall conduct the proceedings whether or not the criminal court is also a county court.

(3) The instructions submitting the issue of mental retardation to the jury shall be framed to require the jury to state in its verdict whether the defendant is a mentally retarded person as defined in the Mentally Retarded Persons Act, and if so, whether he requires commitment to a mental retardation facility.

(4) If the jury finds that the defendant is not a mentally retarded person as defined in the Mentally Retarded Persons Act, or that he does not require commitment to a mental retardation facility, the court shall enter an order discharging the defendant.

(5) If the jury finds that the defendant is a mentally retarded person as defined in the Mentally Retarded Persons Act, and requires commitment to a mental retardation facility, the court shall enter an order declaring that fact and that the person is committed to a mental retardation facility of the Texas Department of Mental Health and Mental Retardation.

(d) In the proceedings conducted under this section:

(1) no Application for Temporary Hospitalization, Petition for Indefinite Commitment or Application to have the defendant declared a mentally retarded person shall be required;

(2) the provisions of the Texas Mental Health Code and the Mentally Retarded Persons Act relating to notice of hearing shall not be applicable;

(3) appeals from the criminal court proceedings under this section shall be to the court of civil appeals as in the proceedings for temporary hospitalization or for indefinite commitment under the Texas Mental Health Code.

Civil Commitment—Charges Dismissed

Sec. 7. If a defendant is found incompetent to stand trial and there is found no substantial probability that he will become competent in the foreseeable

ble future, or if the defendant is found incompetent to stand trial and he has been previously committed to a facility under Section 5 of this article and all charges pending against the defendant are then dismissed, the court shall determine whether there is evidence to support findings that the defendant is either mentally ill or is a mentally retarded person. If it appears to the court that there is evidence to support either of such findings, the court shall enter an order transferring the defendant to the appropriate court for civil commitment proceedings, stating that all charges pending against the defendant in that court have been dismissed, and may order the defendant detained in jail or other suitable place pending the prompt initiation and prosecution by the attorney for the state or other person designated by the court of appropriate civil proceedings to determine whether the defendant will be committed to a mental health or mental retardation facility; provided, however, that a patient placed in a facility of the Texas Department of Mental Health and Mental Retardation pending civil hearing under this section may be detained in such facility only pursuant to an Order of Protective Custody issued pursuant to the provisions of the Texas Mental Health Code and with the consent of the head of the facility, or the court may give the defendant into the care of a responsible person on satisfactory security being given for his proper care and protection; otherwise, the defendant shall be discharged.

General

Sec. 8. (a) A person committed to a mental health or mental retardation facility as a result of the proceedings initiated pursuant to Section 6 or Section 7 of this article shall be committed to the maximum security unit of Rusk State Hospital or to the maximum security unit of any other facility designated by the Texas Department of Mental Health and Mental Retardation. Within 60 days following arrival at the maximum security unit, the person shall be transferred to a nonsecurity unit of a mental health or mental retardation facility designated by the Texas Department of Mental Health and Mental Retardation unless the person is determined to be manifestly dangerous by a review board with the Texas Department of Mental Health and Mental Retardation. The Commissioner of the Texas Department of Mental Health and Mental Retardation shall appoint three psychiatrists who are licensed to practice medicine in the State of Texas to determine whether the person is manifestly dangerous. If the superintendent of the facility at which the maximum security unit is located disagrees with the determination, then the matter will be referred to the Commissioner of the Texas Department of Mental Health and Mental Retardation who will resolve the disagreement by deciding whether the person is manifestly dangerous.

(b) The court shall order that a transcript of all medical testimony received in both the criminal proceedings and the civil commitment proceedings be prepared forthwith by the court reporters and that such transcripts, together with a statement of the facts and circumstances surrounding the alleged offense, shall accompany the patient to the mental health or mental retardation facility.

(c) If the head of a mental health facility determines that a patient committed to a state mental hospital for a period not exceeding 90 days as a result of proceedings initiated pursuant to Section 6 or Section 7 of this article requires indefinite commitment to a mental hospital for his own welfare and protection or the protection of others, he shall notify the court from which the patient was committed in writing at least 30 days prior to the expiration of the temporary commitment. The court from which the patient was committed shall order the sheriff of the county in which the court is located to return the patient for a Hearing for Indefinite Commitment or shall make arrangements for the hearing to be held in an appropriate court of the county in which the patient is hospitalized. Provided, however, that if the patient has not received a Hearing for Indefinite Commitment by the date on which the temporary commitment expires, the head of the facility in which the patient is hospitalized shall cause the patient to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the court is located. That county shall reimburse the facility of the Texas Department of Mental Health and Mental Retardation for the mileage and per diem expenses of the personnel required to transport the defendant calculated in accordance with the state travel regulations in effect at the time.

(d) The head of a mental health or mental retardation facility to which a person has been committed or transferred as a result of the proceedings initiated pursuant to Section 6 of this article and who has received written notice from a court or prosecuting attorney that criminal charges are pending against the person shall notify the court in writing at least 14 days prior to the discharge of the person unless the notice provided for in (c) above has been given. A written report as to the competency of the person to stand trial shall accompany the notice of discharge.

(e) On written notice by the head of a mental health or mental retardation facility that in his opinion a person who has been civilly committed to that facility and against whom criminal charges are pending is competent to stand trial, or on good cause shown by the defendant, his counsel, or the prosecuting attorney, the court in which the criminal charges are pending may hold a hearing to determine the competency of the defendant to stand trial. The

hearing shall be before a jury unless waived by agreement of the parties. The order setting the hearing shall order the defendant placed in the custody of the sheriff for transportation to the court. The court may appoint disinterested experts to examine the defendant in accordance with the provisions of Section 3 of this article. If the defendant is found to be competent to stand trial, the proceedings on the criminal charges may be continued. If the defendant is found incompetent to stand trial and is under an order of commitment to a mental health or mental retardation facility, the court shall order him placed in the custody of the sheriff for transportation to that facility.

Time Credited

Sec. 9. The time a person charged with a criminal offense is confined in a mental health or mental retardation facility pending trial shall be credited to the term of his sentence on subsequent sentencing or resentencing.

[Amended by Acts 1975, 64th Leg., p. 1095, ch. 415, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1458, ch. 596, § 1, Sept. 1, 1977.]

Section 10 of the 1977 amendatory act provided:

"If any portion of this Act is declared invalid or unconstitutional, it is the intention of the legislature that the other portions shall remain in full force and effect, and to this end the provisions of this Act are declared to be severable."

Art. 46.03. Insanity Defense

The Insanity Defense

Sec. 1. (a) The insanity defense provided in Section 8.01 of the Penal Code shall be submitted to the jury only if supported by competent evidence.

(b) When the insanity defense is submitted, the trier of facts shall determine and include in the verdict or judgment or both whether the defendant is guilty, not guilty, or not guilty by reason of insanity.

(c) A defendant who has been found not guilty by reason of insanity shall stand acquitted of the offense charged and may not be considered a person charged with a criminal offense.

Raising the Insanity Defense

Sec. 2. (a) A defendant planning to offer evidence of the insanity defense shall file a notice of his intention to offer such evidence with the court and the prosecuting attorney:

(1) at least 10 days prior to the date the case is set for trial; or

(2) if the court sets a pretrial hearing before the 10-day period, the defendant shall give notice at the hearing; or

(3) if the defendant raises the issue of his incompetency to stand trial before the 10-day period, he shall at the same time file notice of his intention to offer evidence of the insanity defense.

(b) Unless notice is timely filed pursuant to Subsection (a) of this section, evidence on the insanity defense is not admissible unless the court finds that good cause exists for failure to give notice.

Examination of the Defendant

Sec. 3. (a) If notice of intention to raise the insanity defense is filed under Section 2 of this article, the court may, on its own motion or motion by the defendant, his counsel, or the prosecuting attorney, appoint disinterested experts experienced and qualified in mental health and mental retardation to examine the defendant with regard to the insanity defense and to testify thereto at any trial or hearing on this issue.

(b) The court may order any defendant to submit to examination for the purposes described in this article. If the defendant is free on bail, the court in its discretion may order him to submit to examination. If the defendant fails or refuses to submit to examination, the court may order him to custody for examination for a reasonable period not to exceed 21 days. The court may not order a defendant to a facility operated by the Texas Department of Mental Health and Mental Retardation for examination without the consent of the head of that facility or for a period exceeding 21 days. If a defendant who has been ordered to a facility operated by the Texas Department of Mental Health and Mental Retardation for examination remains in such facility for a period of time exceeding 21 days, the head of that facility shall cause the defendant to be immediately transported to the committing court and placed in the custody of the sheriff of the county in which the committing court is located. That county shall reimburse the Texas Department of Mental Health and Mental Retardation facility for the mileage and per diem expenses of the personnel required to transport the defendant calculated in accordance with the state travel regulations in effect at that time.

(c) The court shall advise any expert appointed pursuant to this section of the facts and circumstances of the offense with which the defendant is charged and the elements of the insanity defense.

(d) A written report of the examination shall be submitted to the court within 30 days of the order of examination, and the court shall furnish copies of the report to the defense counsel and the prosecuting attorney. The report shall include a description of the procedures used in the examination and the examiner's observations and findings pertaining to the insanity defense. The examiner shall also submit a separate report setting forth his observations and findings concerning:

(1) whether the defendant is presently mentally ill and requires observation and/or treatment or hospitalization in a mental hospital for his own welfare and protection or the protection of others; or

(2) whether the defendant is a mentally retarded person as defined in the Mentally Retarded Persons Act (Article 3871b, Vernon's Texas Civil Statutes).¹

(e) The appointed experts shall be paid by the county in which the indictment was returned or information was filed. A facility operated by the Texas Department of Mental Health and Mental Retardation which accepts a defendant for examination under Subsection (a) of this section shall be reimbursed by the county in which the indictment was returned or information was filed for such expenses incurred as are determined by the department to be reasonably necessary and incidental to the proper examination of the defendant.

(f) When a defendant wishes to be examined by a psychiatrist or other expert of his own choice, the court on timely request shall provide the examiner with reasonable opportunity to examine the defendant.

(g) The experts appointed under this section to examine the defendant with regard to the insanity defense also may be appointed by the court to examine the defendant with regard to his competency to stand trial pursuant to Section 3 of Article 46.02 of this code, provided that separate written reports concerning the defendant's competency to stand trial and the insanity defense shall be filed with the court.

¹ Repealed; see, now, the Mentally Retarded Persons Act of 1977, classified as Civil Statutes, art. 5547-300.

Civil Commitment

Sec. 4. (a) If a defendant is found not guilty by reason of insanity in the trial of a criminal offense, the court shall determine whether there is evidence to support findings that the defendant is either mentally ill or is a mentally retarded person. If the court determines that there is evidence to support either of such findings, the court shall transfer the defendant to the appropriate court for civil commitment proceedings and may order the defendant detained in jail or other suitable place pending the prompt initiation and prosecution by the attorney for the state or other person designated by the court of appropriate civil proceedings to determine whether the defendant shall be committed to a mental health or mental retardation facility; provided, however, that a patient placed in a facility of the Texas Department of Mental Health and Mental Retardation pending civil hearing under this section shall only be detained pursuant to the provisions for an Order of Protective Custody as set out in the Texas Mental Health Code and with the consent of the head of the facility, or the court may give the defendant into the care of a responsible person on satisfactory security being given for his proper care and protection; otherwise, the defendant shall be discharged.

(b) A person committed to a mental health or mental retardation facility as a result of the proceedings initiated pursuant to Subsection (a) of this section shall be committed to the maximum security unit of Rusk State Hospital or the maximum security unit of any other facility designated by the Texas Department of Mental Health and Mental Retardation. Within 60 days following arrival at the maximum security unit, the person shall be transferred to a nonsecurity unit of a mental health or mental retardation facility designated by the Texas Department of Mental Health and Mental Retardation unless the person is determined to be manifestly dangerous by a review board within the Texas Department of Mental Health and Mental Retardation. The Commissioner of the Texas Department of Mental Health and Mental Retardation shall appoint three psychiatrists who are licensed to practice medicine in the State of Texas to determine whether the person is manifestly dangerous. If the superintendent of the facility at which the maximum security unit is located disagrees with the determination, then the matter will be referred to the Commissioner of the Texas Department of Mental Health and Mental Retardation who will resolve the disagreement by deciding whether the person is manifestly dangerous.

(c) The court shall order a transcript of all medical testimony received in both the criminal proceedings and the civil commitment proceedings be prepared forthwith by the court reporters and that such transcripts, together with a statement of the facts and circumstances surrounding the alleged offense, shall accompany the patient to the mental health or mental retardation facility.

[Added by Acts 1975, 64th Leg., p. 1100, ch. 415, § 2, eff. June 19, 1975. Amended by Acts 1977, 65th Leg., p. 1467, ch. 596, § 2, eff. Sept. 1, 1977.]

CHAPTER FORTY-SEVEN. DISPOSITION OF STOLEN PROPERTY

Article

47.01a. Restoration When No Trial is Pending [NEW].

Art. 47.01a. Restoration When No Trial is Pending

If no criminal action is pending, a magistrate of the county or city in which the property is being held may hold a hearing to determine the right to possession of the property, upon the petition of any interested person. The magistrate shall order the property delivered to whoever has the superior right to possession, subject to the condition that the property be made available to the prosecuting authority should it be needed in the future, or the magistrate may remand the property to the custody of the peace officer.

[Added by Acts 1977, 65th Leg., p. 2034, ch. 813, § 1, eff. Aug. 29, 1977.]

CHAPTER FORTY-EIGHT. PARDON AND PAROLE

Section
48.05. Repealed.

Art. 48.05. Repealed by Acts 1977, 65th Leg., p. 933, ch. 347, § 6, eff. Aug. 29, 1977

CHAPTER FORTY-NINE. INQUESTS UPON DEAD BODIES

Art. 49.03. Autopsies and Tests

The justice of the peace may in all cases call in the County Health Officer, or if there be none or if his services are not then obtainable, then a duly licensed and practicing physician, and shall procure their opinions and their advice on whether or not to order an autopsy to determine the cause of death. If upon his own determination he deems an autopsy necessary, the justice of the peace shall, by proper order, request the County Health Officer, or if there be none or if it be impracticable to secure his service, then some duly licensed and practicing physician who is trained in pathology to make an autopsy in order to determine the cause of death, and whether death was from natural causes or resulting from violence, and the nature and character of either of them. The county in which such autopsy and inquest is held shall pay the physician making such autopsy a reasonable fee, the amount to be determined by the Commissioners Court after ascertaining the amount and nature of the work performed in making such autopsy. In those cases where a complete autopsy is deemed unnecessary by the justice of the peace to ascertain the cause of death, he may by proper order, order the taking of blood samples or any other samples of fluids, body tissues or organs in order to ascertain the cause of death or whether any crime has been committed. In the case of a body of a human being whose identity is unknown, the justice of the peace may, by proper order, authorize such investigative and laboratory tests and processes as are required to determine the identity as well as the cause of death.

[Amended by Acts 1977, 65th Leg., p. 691, ch. 261, § 1, eff. Aug. 29, 1977.]

Art. 49.05. Consent to Autopsy

Sec. 1. Consent for a licensed physician to conduct an autopsy of the body of a deceased person shall be deemed sufficient when given by the following: In the case of a married person, the surviving spouse, or if no spouse survive him, by any child of such marriage, or in the event of a minor child of such marriage, the guardian of such child if any there be, or in the absence of such guardian, the court having jurisdiction of the person of such minor; in the event that neither spouse nor child

survives such deceased, then permission for an autopsy shall be valid when given by a person who would be allowed to give such permission in the case of an unmarried deceased.

If the deceased be unmarried, then permission shall be given by the following for such autopsy, in the order stated: parent, guardian, or next of kin, and in the absence of any of the foregoing, by any natural person assuming custody of and responsibility for burial of the body of such deceased. If two or more of the above-named persons assume custody of the body, consent of one of them shall be deemed sufficient.

[See Compact Edition, Volume 1 for text of 2]
[Amended by Acts 1977, 65th Leg., p. 1106, ch. 407, § 1, eff. Aug. 29, 1977.]

Art. 49.25. Medical Examiners

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

Waiting Period Between Death and Cremation

Sec. 10a. The body of a deceased person shall not be cremated within forty-eight hours after the time of death as indicated on the regular death certificate, unless the death certificate indicates death was caused by the pestilential diseases of Asiatic cholera, bubonic plague, typhus fever, or smallpox, or unless the time requirement is waived in writing by the county medical examiner or, in counties not having a county medical examiner, a justice of the peace.

[See Compact Edition, Volume 1 for text of 11 to 13]

[Amended by Acts 1975, 64th Leg., p. 1826, ch. 562, § 1, eff. Sept. 1, 1975.]

CHAPTER FIFTY-ONE. FUGITIVES FROM JUSTICE

Article

51.14. Interstate Agreement on Detainers [NEW].

Art. 51.14. Interstate Agreement on Detainers

This article may be cited as the "Interstate Agreement on Detainers Act." This agreement on detainers is hereby enacted into law and entered into by this state with all other jurisdictions legally joined therein in the form substantially as follows:

The contracting states solemnly agree that:

ARTICLE I.

The party states find that charges outstanding against a prisoner, detainers based on untried indictments, informations, or complaints, and difficulties in securing speedy trial of persons already incarcerated in other jurisdictions, produce uncertainties

which obstruct programs of prisoner treatment and rehabilitation. Accordingly, it is the policy of the party states and the purpose of this agreement to encourage the expeditious and orderly disposition of such charges and determination of the proper status of any and all detainees based on untried indictments, informations, or complaints. The party states also find that proceedings with reference to such charges and detainees, when emanating from another jurisdiction, cannot properly be had in the absence of cooperative procedures. It is the further purpose of this agreement to provide such cooperative procedures.

ARTICLE II.

As used in this agreement: (a) "State" shall mean a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico.

(b) "Sending state" shall mean a state in which a prisoner is incarcerated at the time that he initiates a request for final disposition pursuant to Article III hereof or at the time that a request for custody or availability is initiated pursuant to Article IV hereof.

ARTICLE III.

(a) Whenever a person has entered upon a term of imprisonment in a penal or correctional institution of a party state, and whenever during the continuance of the term of imprisonment there is pending in any other party state any untried indictment, information, or complaint on the basis of which a detainee has been lodged against the prisoner, he shall be brought to trial within 180 days after he shall have caused to be delivered to the prosecuting officer and the appropriate court of the prosecuting officer's jurisdiction written notice of the place of his imprisonment and his request for a final disposition to be made of the indictment, information, or complaint; provided that for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance. The request of the prisoner shall be accompanied by a certificate of the appropriate official having custody of the prisoner, stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decision of the state parole agency relating to the prisoner.

(b) The written notice and request for final disposition referred to in Paragraph (a) hereof shall be given or sent by the prisoner to the warden, commissioner of corrections, or other official having custody of him, who shall promptly forward it together with

the certificate to the appropriate prosecuting official and court by registered or certified mail, return receipt requested.

(c) The warden, commissioner of corrections, or other official having custody of the prisoner shall promptly inform him of the source and contents of any detainer lodged against him and shall also inform him of his right to make a request for final disposition of the indictment, information, or complaint on which the detainer is based.

(d) Any request for final disposition made by a prisoner pursuant to Paragraph (a) hereof shall operate as a request for final disposition of all untried indictments, informations, or complaints on the basis of which detainees have been lodged against the prisoner from the state to whose prosecuting official the request for final disposition is specifically directed. The warden, commissioner of corrections, or other official having custody of the prisoner shall forthwith notify all appropriate prosecuting officers and courts in the several jurisdictions within the state to which the prisoner's request for final disposition is being sent of the proceeding being initiated by the prisoner. Any notification sent pursuant to this paragraph shall be accompanied by copies of the prisoner's written notice, request, and the certificate. If trial is not had on any indictment, information, or complaint contemplated hereby prior to the return of the prisoner to the original place of imprisonment, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

(e) Any request for final disposition made by a prisoner pursuant to Paragraph (a) hereof shall also be deemed to be a waiver of extradition with respect to any charge or proceeding contemplated thereby or included therein by reason of Paragraph (d) hereof, and a waiver of extradition to the receiving state to serve any sentence there imposed upon him after completion of his term of imprisonment in the sending state. The request for final disposition shall also constitute a consent by the prisoner to the production of his body in any court where his presence may be required in order to effectuate the purposes of this agreement and a further consent voluntarily to be returned to the original place of imprisonment in accordance with the provisions of this agreement. Nothing in this paragraph shall prevent the imposition of a concurrent sentence if otherwise permitted by law.

(f) Escape from custody by the prisoner subsequent to his execution of the request for final disposition referred to in Paragraph (a) hereof shall void the request.

ARTICLE IV.

(a) The appropriate officer of the jurisdiction in which an untried indictment, information, or complaint is pending shall be entitled to have a prisoner against whom he has lodged a detainer and who is serving a term of imprisonment in any party state made available in accordance with Paragraph (a) of Article V hereof upon presentation of a written request for temporary custody or availability to the appropriate authorities of the state in which the prisoner is incarcerated; provided that the court having jurisdiction of such indictment, information, or complaint shall have duly approved, recorded, and transmitted the request; and provided further that there shall be a period of 30 days after receipt by the appropriate authorities before the request be honored, within which period the governor of the sending state may disapprove the request for temporary custody or availability, either upon his own motion or upon motion of the prisoner.

(b) Upon receipt of the officer's written request as provided in Paragraph (a) hereof, the appropriate authorities having the prisoner in custody shall furnish the officer with a certificate stating the term of commitment under which the prisoner is being held, the time already served, the time remaining to be served on the sentence, the amount of good time earned, the time of parole eligibility of the prisoner, and any decisions of the state parole agency relating to the prisoner. Said authorities simultaneously shall furnish all other officers and appropriate courts in the receiving state who have lodged detainers against the prisoner with similar certificates and with notices informing them of the request for custody or availability and of the reasons therefor.

(c) In respect of any proceeding made possible by this article, trial shall be commenced within 120 days of the arrival of the prisoner in the receiving state, but for good cause shown in open court, the prisoner or his counsel being present, the court having jurisdiction of the matter may grant any necessary or reasonable continuance.

(d) Nothing contained in this article shall be construed to deprive any prisoner of any right which he may have to contest the legality of his delivery as provided in Paragraph (a) hereof, but such delivery may not be opposed or denied on the ground that the executing authority of the sending state has not affirmatively consented to or ordered such delivery.

(e) If trial is not had on any indictment, information, or complaint contemplated hereby prior to the prisoner's being returned to the original place of imprisonment pursuant to Paragraph (e) of Article V hereof, such indictment, information, or complaint shall not be of any further force or effect, and the court shall enter an order dismissing the same with prejudice.

ARTICLE V.

(a) In response to a request made under Article III or Article IV hereof, the appropriate authority in a sending state shall offer to deliver temporary custody of such prisoner to the appropriate authority in the state where such indictment, information, or complaint is pending against such person in order that speedy and efficient prosecution may be had. If the request for final disposition is made by the prisoner, the offer of temporary custody shall accompany the written notice provided for in Article III of this agreement. In the case of a federal prisoner, the appropriate authority in the receiving state shall be entitled to temporary custody as provided by this agreement or to the prisoner's presence in federal custody at the place of trial, whichever custodial arrangement may be approved by the custodian.

(b) The officer or other representative of a state accepting an offer of temporary custody shall present the following upon demand:

(1) proper identification and evidence of his authority to act for the state into whose temporary custody this prisoner is to be given;

(2) a duly certified copy of the indictment, information, or complaint on the basis of which the detainer has been lodged and on the basis of which the request for temporary custody of the prisoner has been made.

(c) If the appropriate authority shall refuse or fail to accept temporary custody of said person, or in the event that an action on the indictment, information, or complaint on the basis of which the detainer has been lodged is not brought to trial within the period provided in Article III or Article IV hereof, the appropriate court of the jurisdiction where the indictment, information, or complaint has been pending shall enter an order dismissing the same with prejudice, and any detainer based thereon shall cease to be of any force or effect.

(d) The temporary custody referred to in this agreement shall be only for the purpose of permitting prosecution on the charge or charges contained in one or more untried indictments, informations, or complaints which form the basis of the detainer or detainers or for prosecution on any other charge or charges arising out of the same transaction. Except for his attendance at court and while being transported to or from any place at which his presence may be required, the prisoner shall be held in a suitable jail or other facility regularly used for persons awaiting prosecution.

(e) At the earliest practicable time consonant with the purposes of this agreement, the prisoner shall be returned to the sending state.

(f) During the continuance of temporary custody or while the prisoner is otherwise being made availa-

ble for trial as required by this agreement, time being served on the sentence shall continue to run but good time shall be earned by the prisoner only if, and to the extent that, the law and practice of the jurisdiction which imposed the sentence may allow.

(g) For all purposes other than that for which temporary custody as provided in this agreement is exercised, the prisoner shall be deemed to remain in the custody of and subject to the jurisdiction of the sending state and any escape from temporary custody may be dealt with in the same manner as an escape from the original place of imprisonment or in any other manner permitted by law.

(h) From the time that a party state receives custody of a prisoner pursuant to this agreement until such prisoner is returned to the territory and custody of the sending state, the state in which the one or more untried indictments, informations, or complaints are pending or in which trial is being had shall be responsible for the prisoner and shall also pay all costs of transporting, caring for, keeping, and returning the prisoner. The provisions of this paragraph shall govern unless the states concerned shall have entered into a supplementary agreement providing for a different allocation of costs and responsibilities as between or among themselves. Nothing herein contained shall be construed to alter or affect any internal relationship among the departments, agencies, and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

ARTICLE VI.

(a) In determining the duration and expiration dates of the time periods provided in Articles III and IV of this agreement, the running of said time periods shall be tolled whenever and for as long as the prisoner is unable to stand trial, as determined by the court having jurisdiction of the matter.

(b) No provision of this agreement, and no remedy made available by this agreement shall apply to any person who is adjudged to be mentally ill.

ARTICLE VII.

Each state party to this agreement shall designate an officer who, acting jointly with like officers of other party states, shall promulgate rules and regulations to carry out more effectively the terms and provisions of this agreement, and who shall provide, within and without the state, information necessary to the effective operation of this agreement.

ARTICLE VIII.

This agreement shall enter into full force and effect as to a party state when such state has enacted the same into law. A state party to this agreement may withdraw herefrom by enacting a

statute repealing the same. However, the withdrawal of any state shall not affect the status of any proceedings already initiated by inmates or by state officers at the time such withdrawal takes effect, nor shall it affect their rights in respect thereof.

ARTICLE IX.

(a) This agreement shall be liberally construed so as to effectuate its purposes. The provisions of this agreement shall be severable and if any phrase, clause, sentence, or provision of this agreement is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this agreement and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this agreement shall be held contrary to the constitution of any state party hereto, the agreement shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters.

(b) As used in this article, "appropriate court" means a court of record with criminal jurisdiction.

(c) All courts, departments, agencies, officers, and employees of this state and its political subdivisions are hereby directed to enforce this article and to cooperate with one another and with other party states in enforcing the agreement and effectuating its purpose.

(d) Any prisoner escapes from lawful custody while in another state as a result of the application of this article shall be punished as though such escape had occurred within this state.

(e) The governor is empowered to designate the officer who will serve as central administrator of and information agent for the agreement on detainees pursuant to the provisions of Article VII hereof.

(f) Copies of this article, upon its enactment, shall be transmitted to the governor of each state, the Attorney General and the Secretary of State of the United States, and the council of state governments. [Added by Acts 1975, 64th Leg., p. 920, ch. 343, § 1, eff. June 19, 1975.]

CHAPTER FIFTY-FIVE. EXPUNCTION OF CRIMINAL RECORDS [NEW]

Article

- 55.01. Right to Expunction.
- 55.02. Procedure for Expunction.
- 55.03. Effect of Expunction.
- 55.04. Violation of Expunction Order.
- 55.05. Notice of Right to Expunction.

Art. 55.01. Right to Expunction

A person who has been arrested is entitled to have all records and files relating to the arrest expunged if:

- (1) an indictment or information has not been presented against him for an offense arising out of the transaction for which he was arrested;
- (2) he has been released and the charge, if any, has been dismissed; and
- (3) he has not been convicted of a felony in the five years preceding the date of the arrest.

[Added by Acts 1977, 65th Leg., p. 1880, ch. 747, § 1, eff. Aug. 29, 1977.]

Art. 55.02. Procedure for Expunction

Sec. 1. (a) A person who is entitled to expunction of records and files under this chapter may file a petition for expunction in a district court for the county in which he was arrested.

(b) The petitioner shall include in the petition a list of all law enforcement agencies, jails or other detention facilities, magistrates, courts, prosecuting attorneys, correctional facilities, central state depositories of criminal records, and any other officials or agencies or other entities of this state or of any political subdivision of this state and of all central federal depositories of criminal records that the petitioner has reason to believe have records or files that are subject to expunction.

Sec. 2. The court shall set a hearing on the matter and shall give reasonable notice of the hearing to each official or agency or other entity named in the petition, and such entity may be represented by the attorney responsible for providing such agency with legal representation in other matters.

Sec. 3. If the court finds that the petitioner is entitled to expunction of any records and files that are the subject of the petition, it shall enter an order directing expunction and directing any state agency that sent information concerning the arrest to a central federal depository to request such depository to return all records and files subject to the order of expunction. The clerk of the court shall send a certified copy of the order to each official or agency or other entity of this state or of any political subdivision of this state named in the petition that there is reason to believe has any records or files that are subject to the order. The clerk shall also send a certified copy of the order to any central federal depository of criminal records that there is reason to believe has any of the records, together with an explanation of the effect of the order and a request that the records in possession of the depository, including any information with respect to the proceeding under this article, be destroyed or returned to the court.

Sec. 4. (a) If the state establishes that the petitioner is still subject to conviction for an offense arising out of the transaction for which he was arrested because the statute of limitations has not run and there is reasonable cause to believe that the state may proceed against him for the offense, the court may provide in its order that the law enforcement agency and the prosecuting attorney responsible for investigating the offense may retain any records and files that are necessary to the investigation.

(b) Unless the petitioner is again arrested for or charged with an offense arising out of the transaction for which he was arrested, the provisions of Articles 55.03 and 55.04 of this code apply to files and records retained under this section.

ASP Sec. 5. (a) On receipt of the order, each official or agency or other entity named in the order shall:

- (1) return all records and files that are subject to the expunction order to the court or, if removal is impracticable, obliterate all portions of the record or file that identify the petitioner and notify the court of its action; and
- (2) delete from its public records all index references to the records and files that are subject to the expunction order.

(b) The court may give the petitioner all records and files returned to it pursuant to its order.

(c) If an order of expunction is issued under this article, the court records concerning the expunction proceeding are not open for inspection by anyone except the petitioner unless the order permits retention of a record under Section 4 of this article and the petitioner is again arrested for or charged with an offense arising out of the transaction for which he was arrested.

[Added by Acts 1977, 65th Leg., p. 1880, ch. 747, § 1, eff. Aug. 29, 1977.]

Art. 55.03. Effect of Expunction

After entry of an expunction order:

- (1) the release, dissemination, or use of the expunged records and files for any purpose is prohibited;
- (2) except as provided in Subdivision 3 of this article, the petitioner may deny the occurrence of the arrest and the existence of the expunction order; and
- (3) the petitioner or any other person, when questioned under oath in a criminal proceeding about an arrest for which the records have been expunged, may state only that the matter in question has been expunged.

[Added by Acts 1977, 65th Leg., p. 1880, ch. 747, § 1, eff. Aug. 29, 1977.]

Art. 55.04. Violation of Expunction Order

Sec. 1. A person who acquires knowledge of an arrest while an officer or employee of the state or of any agency or other entity of the state or any political subdivision of the state and who knows of an order expunging the records and files relating to that arrest commits an offense if he knowingly releases, disseminates, or otherwise uses the records or files.

Sec. 2. A person who knowingly fails to return or to obliterate identifying portions of a record or file ordered expunged under this chapter commits an offense.

Sec. 3. An offense under this article is a Class B misdemeanor.

[Added by Acts 1977, 65th Leg., p. 1880, ch. 747, § 1, eff. Aug. 29, 1977.]

Art. 55.05. Notice of Right to Expunction

On release or discharge of an arrested person, the person responsible for the release or discharge shall give him a written explanation of his rights under this chapter and a copy of the provisions of this chapter.

[Added by Acts 1977, 65th Leg., p. 1880, ch. 747, § 1, eff. Aug. 29, 1977.]

PART II. MISCELLANEOUS PROVISIONS

Table with 2 columns: Chapter and Article. Rows include: 101. Collection of Money (1001), 102. Taxation of Costs (1009), 103. Costs Paid by the State (1018), 104. Costs Paid by Counties (1037), 105. Costs to be Paid by Defendant (1061)

The Texas Code of Criminal Procedure enacted in 1965, expressly saved from repeal certain enumerated articles which had theretofore appeared in the Code of Criminal Procedure of 1925, as amended and supplemented. See Article 54.02 of the 1965 Code.

Included in the articles saved from repeal were articles 944 through 951, 1009 through 1035, 1037 through 1056, 1058 through 1064, and 1075 through 1082. These articles are incorporated herein as Part II. Articles 944 through 951 have been renumbered as 1001 through 1008. The remainder appear under the same numbers assigned to them in the 1925 Code.

CHAPTER ONE HUNDRED ONE. COLLECTION OF MONEY

- Article
1001. Reports of Money Collected.
1002. Contents of Report.
1003. Report of Collections for County.
1004. What Officers to Report.
1005. Report to Embrace All Moneys.
1006. Money Collected Paid to Treasurer.
1007. Commissions on Collections.
1008. Commissions to Other Officers.

Art. 1001. Reports of Money Collected

All officers charged by law with collecting money in the name or for the use of the State shall report in writing under oath to the respective district courts of their several counties, on the first day of each term, the amounts of money that have come to their hands since the last term of their respective courts aforesaid.

[1925 C.C.P.]

Art. 1002. Contents of Report

Such report shall state:

- 1. The amount collected.
2. When and from whom collected.
3. By virtue of what process collected.
4. The disposition that has been made of the money.
5. If no money has been collected, the report shall so state.

[1925 C.C.P.]

Art. 1003. Report of Collections for County

A report, such as is required by the two preceding articles, shall also be made of all moneys collected for the county, which report shall be made to each regular term of the commissioners court for each county.

[1925 C.C.P.]

Art. 1004. What Officers to Report

The officers charged by law with the collection of money, within the meaning of the three preceding articles, and who are required to make the reports therein mentioned, are: District and county attorneys, clerks of the district and county courts, sheriffs, constables, and justices of the peace.

[1925 C.C.P.]

Art. 1005. Report to Embrace All Moneys

The moneys required to be reported embrace all moneys collected for the State or county other than taxes.

[1925 C.C.P.]

Art. 1006. Money Collected Paid to Treasurer

Money collected by an officer upon recognizances, bail bonds and other obligations recovered upon in the name of the State under any provision of this Code, and all fines, forfeitures, judgments and jury fees, collected under any provision of this Code, shall forthwith be paid over by the officers collecting the same to the county treasurer of the proper county, after first deducting therefrom the legal fees and commissions for collecting the same.
[1925 C.C.P.]

Art. 1007. Commissions on Collections

The district or county attorney shall be entitled to ten per cent of all fines, forfeitures or moneys collected for the State or county, upon judgments recovered by him; and the clerk of the court in which said judgments are rendered shall be entitled to five per cent of the amount of said judgments, to be paid out of the amount when collected.
[1925 C.C.P.]

Art. 1008. Commissions to Other Officers

The sheriff or other officer, except a justice of the peace or his clerk, who collects money for the State or county, except jury fees, under any provision of this Code, shall be entitled to retain five per cent thereof when collected.
[1925 C.C.P.; Acts 1929, 41st Leg., p. 240, ch. 105, § 1.]

**CHAPTER ONE HUNDRED TWO.
TAXATION OF COSTS**

Article

- 1009. Fee Books.
- 1010. Fee Book Shall Show What.
- 1010a. Receipt Books; Delivery Monthly to County Auditor; Penalty.
- 1011. Extortion.
- 1012. Costs Payable in Money.
- 1013. When Costs Payable.
- 1014. Bill of Costs to Accompany Appeal.
- 1015. Taxing After Payment.
- 1016. Costs Retaxed.
- 1017. Fee Book Evidence.

Art. 1009. Fee Books

Each clerk of a court, county judge, justice of the peace, sheriff, constable and marshal, shall keep a fee book and enter therein all fees charged for service rendered in any criminal action or proceeding; which book may be inspected by any person interested in such costs.
[1925 C.C.P.]

Art. 1010. Fee Book Shall Show What

The fee book shall show the number and style of the action or proceeding in which the costs are charged, and shall name the officer or person to whom such costs are due, and state each item of costs separately.
[1925 C.C.P.; Acts 1935, 44th Leg., p. 470, ch. 188.]

Art. 1010a. Receipt Books; Delivery Monthly to County Auditor; Penalty

Sec. 1. Each fee officer within this State collecting fines and fees in criminal cases shall be furnished, by the county, in addition to the fee books now provided by law, duplicate official receipts in book form, each of which receipts shall bear a distinct number, and a facsimile of the official seal of the county. Whenever any money is received by any such officer in his official capacity, to be applied on the payment of any fine or costs in any case, the person paying said money shall be given a receipt showing the amount, date, style of case, number of case and purpose for which paid, which receipt shall show the name of the person paying and the official signature of the receiving officer.

Sec. 2. At the close of each month's business the receipt book shall be delivered to the County Auditor and the County Auditor shall thoroughly check said receipt book to see that proper disposition has been made of the money collected, and after such audit, the receipt books shall be returned to the officer, if any portion of the book is unused, but if all the book is used it shall be retained by the County Auditor. Such books shall be open to public inspection.

Sec. 3. Any officer who shall fail or refuse to comply with any of the provisions of this Act shall be guilty of a misdemeanor, and upon conviction therefor, may be fined not to exceed Two Hundred Dollars (\$200.00), and may be removed from office upon petition of the County or District Attorney; and the principal of any office shall be responsible for the failure of his Deputies to comply herewith, insofar as the remedy of removal from office shall apply; but the Deputy so failing or refusing to comply herewith shall be liable for the fine herein provided.
[Acts 1935, 44th Leg., p. 470, ch. 188.]

Art. 1011. Extortion

No item of costs shall be taxed for a purported service which was not performed, or for a service for which no fee is expressly provided by law.
[1925 C.C.P.]

Art. 1012. Costs Payable in Money

All costs in criminal actions or proceedings are due and payable in money.
[1925 C.C.P.]

Art. 1013. When Costs Payable

No costs shall be payable by any person until there be produced, or ready to be produced, unto the person chargeable with the same, a written bill containing the items of such costs, signed by the officer to whom such costs are due or by whom the same are charged.
[1925 C.C.P.]

Art. 1014. Bill of Costs to Accompany Appeal

When a criminal action or proceeding is taken by appeal from one court to another, or whenever the same is in any other way transferred from one court to another, it shall be accompanied by a complete bill of all costs that have accrued therein, certified to and signed by the proper officer of the court from which the same is forwarded.

[1925 C.C.P.]

Art. 1015. Taxing After Payment

No further costs shall be taxed against or collected from a defendant after he has paid the costs taxed against him at the time of such payment, unless otherwise adjudged by the court upon a proper motion filed for that purpose.

[1925 C.C.P.]

Art. 1016. Costs Retaxed

Whenever costs have been erroneously taxed against a defendant, he may have the error corrected, and the costs properly taxed, upon filing a written motion for that purpose in the court in which the case is then or was last pending. Such motion may be made at any time within one year after the final disposition of the case in which the costs were taxed, and not afterward. Notice of such motion shall be given to each party to be affected thereby, as in the case of a similar motion in a civil action.

[1925 C.C.P.]

Art. 1017. Fee Book Evidence

The items of costs taxed in an officer's fee book shall be prima facie evidence of the correctness of such items.

[1925 C.C.P.]

CHAPTER ONE HUNDRED THREE. COSTS PAID BY THE STATE

Article

- 1018. Defendant Liable for Costs.
- 1019. Conviction for Misdemeanor.
- 1019a. Fees in Felony Cases Against Same Defendant.
- 1020. Fees in Examining Court.
- 1021. District Attorneys of Two or More Counties.
- 1022. If there are Several Defendants.
- 1023. Fees in Trust Cases.
- 1024. Attorney for Dallas and Harris Counties.
- 1025. Fees to District and County Attorneys.
- 1026. Fees of District Clerk.
- 1027. Officers Not to be Paid Fees until Case Finally Disposed Of.
- 1028. Sheriff Due Fees after Approval.
- 1029. Fees to Sheriff or Constable.
- 1030. Fees to Sheriff or Constable.
- 1030a. Fugitives from Justice; Allowance to Sheriffs and Deputies for Expenses.
- 1031. Services by Officer Other Than Sheriff.
- 1032. Sheriff Shall Not Charge Fees, When.
- 1033. Officer Shall Make Out Cost Bill.
- 1034. Judge to Examine Bill, etc.
- 1035. Duty of Comptroller.

Art. 1018. Defendant Liable for Costs

When the defendant is convicted, the costs and fees paid by the State under this title shall be a

charge against him, except when sentenced to death or to imprisonment for life, and when collected shall be paid into the State Treasury.

[1925 C.C.P.]

Art. 1019. Conviction for Misdemeanor

If the defendant is indicted for a felony and upon conviction his punishment is by fine or confinement in the county jail, or by both such fine and confinement in the county jail or convicted of a misdemeanor, no costs shall be paid by the State to any officer. All costs in such cases shall be taxed, assessed and collected as in misdemeanor cases.

[1925 C.C.P.; Acts 1931, 42nd Leg., p. 338, ch. 205, § 1.]

Art. 1019a. Fees in Felony Cases Against Same Defendant

In all felony cases where any officer is allowed fees payable by the State for services performed either before or after indictment, including examining trials before magistrates and habeas corpus proceedings, no officer shall be entitled to fees in more than five cases against the same defendant; provided, however, that where defendants are indicted and tried separately after severance of their cases, said officers shall be entitled to fees in five cases against each of said defendants, the same as if indicted and tried separately for separate offenses; provided further, that cases in which the same defendant has previously been indicted, tried, and convicted prior to the date of any act or acts for which said defendant is again apprehended, indicted, and/or tried shall not be computed in determining the number of cases against such defendant in which such officers are entitled to collect fees.

[Acts 1931, 42nd Leg., p. 334, ch. 200, § 1; Acts 1935, 44th Leg., p. 697, ch. 297, § 1.]

Art. 1020. Fees in Examining Court

In each case where a County Judge or a Justice of the Peace shall sit as an examining court in a felony case, they shall be entitled to the same fees allowed by law for similar services in misdemeanor cases to Justices of the Peace, and ten cents for each one hundred words for writing down the testimony, to be paid by the State, not to exceed Three and No/100 (\$3.00) Dollars, for all his services in any one case.

Sheriffs and Constables serving process and attending any examining court in the examination of any felony case, shall be entitled to such fees as are fixed by law for similar services in misdemeanor cases in County Court to be paid by the State, not to exceed Four and No/100 (\$4.00) Dollars in any one case, and mileage actually and necessarily traveled in going to the place of arrest, and for conveying the prisoner or prisoners to jail as provided in Articles 1029 and 1030, Code of Criminal Procedure, as the

facts may be, but no mileage whatever shall be paid for summoning or attaching witnesses in the county where case is pending. Provided no sheriff or constable shall receive from the State any additional mileage for any subsequent arrest of a defendant in the same case, or in any other case in an examining court or in any district court based upon the same charge or upon the same criminal act, or growing out of the same criminal transaction, whether the arrest is made with or without a warrant, or before or after indictment, and in no event shall he be allowed to duplicate his fees for mileage for making arrests, with or without warrant, or when two or more warrants of arrest or capias are served or could have been served on the same defendant on any one day.

District and County Attorneys, for attending and prosecuting any felony case before an examining court, shall be entitled to a fee of Five and no/100 (\$5.00) Dollars, to be paid by the State for each case prosecuted by him before such court. Such fee shall not be paid except in cases where the testimony of the material witnesses to the transaction shall be reduced to writing, subscribed and sworn to by said witnesses; and provided further that such written testimony of all material witnesses to the transaction shall be delivered to the District Clerk under seal, who shall deliver the same to the foreman of the grand jury and take his receipt therefor. Such foreman shall, on or before the adjournment of the grand jury, return the same to the clerk who shall receipt him and shall keep said testimony in the files of his office for a period of five years.

The fees mentioned in this Article shall become due and payable only after the indictment of the defendant for an offense based upon or growing out of the charge filed in the examining court and upon an itemized account, sworn to by the officers claiming such fees, approved by the Judge of the District Court, and said County or District Attorney shall present to the District Judge the testimony transcribed in the examining trial, who shall examine the same and certify that he has done so and that he finds the testimony of one or more witnesses to be material; and provided further that a certificate from the District Clerk, showing that the written testimony of the material witnesses has been filed with said District Clerk, in accordance with the preceding paragraph, shall be attached to said account before such District or County Attorney shall be entitled to a fee in any felony case for services performed before an examining court.

Only one fee shall be allowed to any officer mentioned herein for services rendered in an examining trial, though more than one defendant is joined in the complaint, or a severance is had. When defendants are proceeded against separately, who could have been proceeded against jointly, but one fee

shall be allowed in all cases that could have been so joined. No more than one fee shall be allowed to any officer where more than one case is filed against the same defendant for offenses growing out of the same criminal act or transaction. The account of the officer and the approval of the District Judge must affirmatively show that the provisions of this Article have been complied with.

[1925 C.C.P.; Acts 1933, 43rd Leg., p. 219, ch. 99.]

Art. 1021. District Attorneys of Two or More Counties

District Attorneys in all judicial districts composed of two counties or more, shall receive from the State as pay for their services the sum of \$500.00 per annum, and in addition thereto, shall receive from the State as pay for their services, the sum of \$20.00 for each day they attend the Session of the District Court in their respective districts in the necessary discharge of their official duties, and \$20.00 for each day used in necessarily going to and coming from the District Court in one county to the District Court in another county in their respective districts in the necessary discharge of their official duties, and in attending any Session of said Court; and \$20.00 per day for each day they represent the State at examining trials, inquest proceedings and habeas corpus proceedings in vacation; said \$20.00 per day to be paid upon the sworn account of the District Attorney, approved by the District Judge, who shall certify that the attendance of said District Court for the number of days mentioned in his account was necessary, after which said account shall be recorded in the Minutes of the District Court; provided that the maximum number of days for which compensation is allowed shall not exceed one hundred and seventy-five days in any one year. All commissions and fees allowed District Attorneys under the provisions hereof, in the districts composed of two or more counties, shall, when collected, be paid to the District Clerk of the County of his residence, who shall pay the same over to the State Treasurer.

[1925 C.C.P.; Acts 1927, 40th Leg., p. 350, ch. 236, § 1.]

Art. 1022. If there are Several Defendants

If there be more than one defendant in a case, and they are tried jointly, but one fee shall be allowed the district or county attorney. If the defendants sever, and are tried separately, a fee shall be allowed for each final conviction, except in habeas corpus cases, in which cases only one fee shall be allowed, without regard to the number of defendants or whether they are tried jointly or separately.

[1925 C.C.P.]

Art. 1023. Fees in Trust Cases

For every conviction obtained under the provisions of the anti-trust laws, the State shall pay to the county or district attorney in such prosecution the

sum of two hundred and fifty dollars. If both the county and district attorney shall serve together in such prosecution, such fee shall be divided between them as follows: One hundred dollars to the county attorney, and one hundred and fifty dollars to the district attorney.
[1925 C.C.P.]

Art. 1024. Attorney for Dallas and Harris Counties

In addition to the fees allowed by law to other district attorneys for other services, the Criminal District Attorney of Dallas county and the Criminal District Attorney of Harris county shall each receive the following fees:

For all convictions of felony when the defendant does not appeal or dies or escapes after appeal and before final judgment of the appellate court, or when the judgment is affirmed on appeal, thirty dollars for each felony other than felonious homicide, and forty dollars for each such homicide.

For representing the State in each case of habeas corpus where the applicant is charged with felony, twenty dollars.

[1925 C.C.P.]

Art. 1025. Fees to District and County Attorneys

In each county where there have been cast at the preceding presidential election 3000 votes or over, the district or county attorney shall receive the following fees:

For all convictions of felony when the defendant does not appeal, or dies or escapes after appeal and before final judgment of the appellate court, or when the judgment is affirmed on appeal, twenty-four dollars for each felony other than felonious homicide, and forty dollars for each such homicide.

For representing the State in each case of habeas corpus where the applicant is charged with felony, sixteen dollars.

In each county where less than 3000 such votes have been so cast, such attorney shall receive thirty dollars for each such conviction of felony other than homicide, and fifty dollars for each such conviction of felonious homicide, and twenty dollars for each such habeas corpus case.

[1925 C.C.P.]

Art. 1026. Fees of District Clerk

In each county where there have been cast at the preceding presidential election 3000 votes or over, the district clerk or criminal district clerk shall receive the following fees: Eight dollars for each felony case finally disposed of without trial or dismissed, or tried by jury whether the defendant be acquitted or convicted; eight cents for each one

hundred words in each transcript on appeal or change of venue; eighty cents for entering judgment in habeas corpus cases, and eight cents for each one hundred words for preparing transcript in habeas corpus cases. In no event shall the fees in habeas corpus cases exceed eight dollars in any one case. In each county where less than 3000 such votes have been so cast, such clerk shall receive ten dollars for each felony case so disposed of, and ten cents for each one hundred words in such transcripts, and one dollar for entering judgment in each habeas corpus. The district clerk of any county shall receive fifty cents for recording each account of the sheriff.

[1925 C.C.P.]

Art. 1027. Officers Not to be Paid Fees until Case Finally Disposed Of

In all cases where a defendant is indicted for a felony but under the indictment he may be convicted of a misdemeanor or a felony, and the punishment which may be assessed is a fine, jail sentence or both such fine and imprisonment in jail, the State shall pay no fees to any officer, except where the defendant is indicted for the offense of murder, until the case has been finally disposed of in the trial court. Provided the provisions of this Article shall not be construed as affecting in any way the provisions of Article 1019, Code of Criminal Procedure, as amended by Chapter 205, General Laws, Regular Session, Forty-second Legislature; Provided this shall not apply to examining trial fees to County Attorneys and/or Criminal District Attorneys.

[1925 C.C.P.; Acts 1931, 42nd Leg., p. 338, ch. 205; Acts 1933, 43rd Leg., p. 308, ch. 119.]

Art. 1028. Sheriff Due Fees after Approval

All fees accruing under the two succeeding articles shall be due and payable at the close of each term of the district court, after being duly approved, except as provided for in subdivisions 7 and 8 of said articles, which shall be paid when approved by the judge under whose order the writ was issued.

[1925 C.C.P.]

Art. 1029. Fees to Sheriff or Constable

In each county where there have been cast at the preceding presidential election 3000 votes or more, the sheriff and constable shall receive the following fees:

1. For executing each warrant of arrest or *capias*, for making arrest without warrant when so authorized by law, the sum of one dollar, and in all cases five cents per mile for each mile actually and necessarily traveled in going to the place of arrest; and for conveying each prisoner to jail, he shall receive the mileage provided in subdivision 4.

2. For summoning or attaching each witness, fifty cents.

3. For summoning a jury in each case where a jury is actually sworn in, two dollars.

4. For removing or conveying prisoners, for each mile going and coming, including guards and all other necessary expenses, when traveling by railroad, ten cents. When traveling otherwise than by railroad, fourteen cents; provided that where more than one prisoner is so conveyed or removed at the same time, in addition to the foregoing, he shall be allowed eight cents per mile for each additional prisoner.

5. For each mile the officer may be compelled to travel in executing criminal process, summoning or attaching witnesses, five cents; provided that in no case shall he be allowed to duplicate his mileage when two or more witnesses are named in the same or different writs in any case or series of cases against the same defendant, or in companion cases, or otherwise; when it is possible to serve process on them in the same neighborhood or vicinity during the same trip, he shall not charge mileage for serving such witnesses to or from the County seat, but shall charge only one mileage and for such additional miles only as are actually and necessarily travelled in summoning each additional witness.

6. For service of criminal process, not otherwise provided for, the sum of five cents a mile going and returning shall be allowed. If two or more persons are mentioned in the same or different writs, the rule prescribed in subdivision 5 shall apply.

7. For conveying witnesses attached by him to any court, or in habeas corpus proceedings out of his county, or when directed by the judge from any other county to the court where the case is pending, one dollar and fifty cents per day for each day actually and necessarily consumed in going to and returning from such courts, and his actual and necessary expenses by the nearest practical route, or nearest practical public conveyance, the amount to be stated by him in an account which shall show the place where the witnesses were attached, the distance to the nearest railroad station, and miles actually traveled to each court; if horses or vehicles are used, from whom hired and price paid and length of time consumed and paid out for feeding horses, and to whom; if meals and lodgings are provided from whom and when, and price paid; provided that officers shall not be entitled to receive exceeding fifty cents per meal, and thirty-five cents per night for lodging for any witness. No item for expenses shall be allowed, unless the officer present with his account to

the officer whose duty it is to approve the same, a written receipt for each item of account, except as to such items as are furnished by the officer himself. When meals and lodgings are furnished by the officer in person, conveying the witness, he shall be allowed to receive not exceeding twenty-five cents per meal, and twenty-five cents per night for lodging. Each said receipt shall be filed with the clerk of the court approving such accounts. Said accounts shall also show, before said officer shall be entitled to compensation for expenses of attached witnesses, that, before starting with said witnesses to the foreign court, he carried each of them before the magistrate nearest place of serving the attachment, giving his name and residence, and that said witness made oath in writing before said magistrate; certified copies of which shall be attached to the account, that they were unable to give bond for their appearance at court, or refused to give bond after having been advised by said officer of their right to do so. The officer shall also present to the court the affidavit of the witness to the same effect, or shall show that the witness refused to make the affidavit; and should it appear to the court that the witness is willing and able to give bond, the sheriff shall not be entitled to any compensation for conveying such witness. All accounts for fees in criminal cases, by sheriffs, shall be sworn to by the said officer, and shall state that said account is true, just and correct in every particular, and be presented to the judge, who shall during such term of court, carefully examine such account and, if found to be correct, in whole or in part, shall so certify and allow the same for such amount as he may find to be correct. If allowed by him in whole or in part, he shall so certify; and such account, with the affidavit of the sheriff, and certificate of the judge, shall be recorded by the district clerk in a book kept by him for that purpose, which shall constitute a part of the proceedings or minutes of the court. The clerk shall certify to the original account, and shall show that the same has been recorded, and said account shall then become due, and the same shall constitute a voucher on which the Comptroller is authorized to issue a warrant, if such account, when presented to the Comptroller, shall be accompanied by a certified copy under the hand and seal of the district clerk, of the returns made on the process for which such officer is claiming fees, corresponding to the amount so claimed in his account. The minutes of the court above provided for, or a certified copy thereof, may be used in evidence against the officer making the affidavit, for perjury, in case said affidavit shall be wilfully false. When

the officer receiving the writ for the attachment of such a witness shall take bond for the appearance of such witness, he shall be entitled to receive from the State one dollar for each bond so taken; but he shall be responsible to the court issuing said writ, that the said bond is in proper form, and has been executed by the witness with one or more good and solvent sureties; and said bond shall in no case be less than one hundred dollars. The Comptroller may require from such officer a certified copy of all such process before auditing any account. When no inquest or examining trial has been held at which sufficient evidence is taken upon which to find an indictment, which fact shall be certified by the grand jury, or when the grand jury shall state to the district judge that an indictment cannot be procured except upon testimony of nonresident witnesses, the district judge may have attachments issued to other counties for witnesses not to exceed the number for which the sheriff may receive pay as provided for by law, to testify before grand juries; provided, that the judge shall not approve the accounts of any sheriff for more than one witness to any one fact, nor more than three witnesses to any one case pending before the grand jury, in which case the sheriff shall receive the same compensation as he does for conveying attached witnesses before the court. Subdivision 7 of this article shall apply to the officers affected thereby in all counties in Texas.

8. For attending a prisoner on habeas corpus, for each day, four dollars, together with mileage as provided in subdivision 4 when removing such prisoner out of the county, under an order issued by a district or appellate judge.

[1925 C.C.P.; Acts 1933, 43rd Leg., p. 144, ch. 69.]

Art. 1030. Fees to Sheriff or Constable

In each county where there have been cast at the preceding presidential election less than 3000 votes, the sheriff or constable shall receive the following fees when the charge is a felony:

1. For executing each warrant of arrest or *capias*, or for making arrest without warrant, when authorized by law, the sum of one dollar; and five cents for each mile actually and necessarily traveled in going to place of arrest, and for conveying the prisoner or prisoners to jail, mileage, as provided for in subdivision 4 shall be allowed; provided, that in counties that have a population of less than forty thousand inhabitants, as shown by the preceding Federal census, the following fees shall apply: For executing each warrant of arrest or *capias*, or for making arrest without warrant, when authorized by law, three dollars and fifteen cents for each mile

actually and necessarily traveled in going to place of arrest, and for conveying prisoners to jail, mileage as provided for in subdivision 4 shall be allowed; and one dollar shall be allowed for the approval of a bond.

2. For summoning or attaching each witness, fifty cents; provided that in counties that have a population of less than forty thousand inhabitants, as shown by the preceding Federal census, the following fees shall apply: For summoning or attaching each witness, fifty cents, and where a bond is required of said witness, for the approval of said bond, one dollar.

3. For summoning jury in each case, where jury is actually sworn in, two dollars.

4. For removing a prisoner, for each mile going and coming, including guards and all other expenses, when traveling by railroad, ten cents; when traveling otherwise than by railroad, fifteen cents; provided, that when more than one prisoner is removed at the same time, in addition to the foregoing, he shall only be allowed ten cents a mile for each additional prisoner.

5. For each mile the officer may be compelled to travel in executing criminal process, summoning or attaching witnesses, five cents; provided that in no case shall he be allowed to duplicate his mileage when two or more witnesses are named in the same or different writs in any case, and he shall serve process on them in the same vicinity or neighborhood, during the same trip; he shall not charge mileage for serving such witness to and from the county seat, but shall only charge one mileage and for such additional miles only as are actually and necessarily traveled in summoning or attaching each additional witness. When process is sent by mail to any officer away from the county seat or returned by mail by such officer, he shall only be allowed to charge mileage for the miles actually traveled by him in executing such process, and the return of the officer shall show the character of the service and miles actually traveled in accordance with this subdivision; and his accounts shall show the facts; provided, that in counties that have a population of less than forty thousand inhabitants, as shown by the preceding Federal census, the following fees shall apply: For each mile the officer may be compelled to travel in executing criminal process, summoning or attaching witnesses, ten cents; provided, that in no case shall he be allowed to duplicate his mileage when two or more witnesses are named in the same or different writs in any case and he shall serve process on them in the same vicinity or neighborhood, during the same trip, he shall not charge mile-

age for serving such witness to and from the county seat, but shall only charge one mileage, and for such additional miles only as are actually and necessarily traveled in summoning or attaching each additional witness. When process is sent by mail to any officer away from the county seat or returned by mail by such officer, he shall only be allowed to charge mileage for the miles actually traveled by him in executing such process, and the return of the officer shall show the character of the service and the miles actually traveled in accordance with this subdivision; and his accounts shall show the facts.

6. To officers for service of criminal process not otherwise provided for, the sum of five cents a mile going and returning, shall be allowed; provided, if two or more persons are mentioned in the same or different writs, the rules prescribed in subdivision 5 shall apply; provided, that in counties that have a population of less than forty thousand inhabitants, as shown by the preceding Federal census, the following fees shall apply: To officers for service of criminal process not otherwise provided for, the sum of ten cents a mile going and returning shall be allowed; provided, if two or more persons are mentioned in the same or different writs, the rule prescribed in subdivision 5 shall apply.

7. For conveying a witness attached by him to any court, or grand jury, orin habeas corpus proceeding out of his county, or when directed by the judge from any other county, to the court where the case is pending, one dollar per day for each day actually and necessarily consumed in going and returning from such court, and his actual necessary expenses, by the nearest practicable route or nearest practicable public conveyance, the amount to be stated by him in an account, which shall show the place at which the witness was attached, the distance to the nearest railroad station, and miles actually traveled to reach the court; if horses or vehicles are used, from whom hired, and price paid, and length of time consumed, and the amount paid out for feeding horses, and to whom; if meals and lodging were provided, from whom and when and price paid; provided, that officers shall not be entitled to receive exceeding fifty cents per meal, and thirty-five cents per night for lodging for any witness. Said account shall also show, before said officer shall be entitled to compensation for expenses of attached witnesses, that, before starting with said witnesses to the foreign court, he carried each of them before the magistrate nearest the place of serving the attachment, giving his name and residence, and that said witness made oath in writing before such magistrate, certified copies of which

shall be attached to the account, that they were unable to give bond for their appearance at court, or refused to give bond after having been advised by said officer of their right to do so. The officer shall also present to the court the affidavit of the witness to the same effect or shall show that the witness refused to make the affidavit and, should it appear to the court that the witness was able and willing to give bond the sheriff shall not be entitled to any compensation for conveying such witness; and said account shall be sworn to by the officer, and shall state that said account is true, just and correct in every particular, and present same to the judge, who shall, during such term of court, carefully examine such account, and, if found to be correct, in whole or in part, shall so certify, and allow the same for such an amount as he may find to be correct; and, if by him allowed, in whole or in part, he shall so certify; and such account with the affidavit of the sheriff, and certificate of the judge, shall be recorded by the district clerk in a book to be kept by him for that purpose, which shall constitute a part of the proceedings or minutes of the court; and the clerk shall certify to the original account and shall show that the same has been so recorded; and said account shall then become due, and the same shall constitute a voucher, on which the Comptroller is authorized to issue a warrant; and such minutes of the court, or a certified copy thereof, may be used in evidence against the officer making the affidavit, for perjury, in case said affidavit shall be wilfully false. When the officer receiving a writ for the attachment of such witness shall take a bond for the appearance of any such witness he shall be entitled to receive from the State, one dollar for each bond so taken; but he shall be responsible to the court issuing said writ, that said bond is in proper form, and has been executed by the witness with one or more good or solvent securities; and said bond shall, in no case, be less than one hundred dollars. The Comptroller may require from such officer a certified copy of all such process before auditing any such account.

8. For attending a prisoner on habeas corpus, for each day, four dollars, together with mileage as provided in subdivision 5, when removing such prisoner out of the county under an order issued by a district or appellate judge.

[1925 C.C.P.]

Art. 1030a. Fugitives from Justice; Allowance to Sheriffs and Deputies for Expenses

Sec. 1. Every sheriff, or deputy sheriff, in any county of this State, who shall hereafter arrest, or cause to be arrested, any person, or persons indicted for a criminal offense of the grade of a felony, in the

county where such officer is the duly acting sheriff, or deputy sheriff, shall be paid the sum of five cents (5¢) per mile from the state line and return thereto, along the nearest practicable route, to the point where such person or persons has been, or will be, placed under arrest, and in addition thereto, such officer, or officers, shall be paid, not to exceed Five Dollars (\$5) per day, per person, for hotel bills, meals and other expenses necessarily contracted in the performance of such official duty.

Sec. 2. The Comptroller of Public Accounts of the State of Texas is authorized and directed to pay, out of any fund or funds, provided for such purpose, upon the presentment of a duly itemized and verified mileage, per diem and expense account of any such officer, approved by the District Judge of the District where such official duty was performed as provided in the preceding Section, all of such account due, provided that only one (1) claim for mileage shall be paid for any such trip, and further providing that not more than two (2) such officers shall draw per diem and expense accounts for one (1) of such trips.

Sec. 3. In the event the Comptroller of Public Accounts of the State of Texas certifies that no funds are available for the payment of such per diem mileage and expense account, as specified in the preceding Section, then upon presentment of such itemized account duly verified by such officer and approved by the District Judge of the Judicial District in which such county is located, the Commissioners Court is authorized, within its discretion, to pay out of any fund or funds not otherwise pledged, such mileage per diem and expense accounts.

Sec. 4. It is further specifically provided that if the county of the sheriff or deputy sheriff making said trip is operating on a fee basis and no State funds are available, then and in that event, the Commissioners Court is authorized, within its discretion, to pay out of any available funds the mileage and per diem not in excess of the amounts stated in Section 1 of this Act, to said sheriff or deputy sheriff from the county seat to the state line and return.

Sec. 5. The compensation herein provided for the sheriff or any deputy sheriff of the county shall be allowable to such officer as expenses of office, and shall not be included in his compensation, and/or salary paid him, as now authorized by law.

Sec. 6. The provisions of this Act shall be severable, and if any section, subsection, sentence, clause or word of the same shall be held unconstitutional, or invalid for any reason, the same shall not be construed to affect the validity of any of the remaining provisions of this Act. It is hereby declared as the legislative intent that this Act would have

been adopted, had such invalid provision not been included therein.

Sec. 7. It is not the intention of the Legislature by the passage of this Act to repeal any existing law providing for the reimbursement of traveling expenses and this Act is cumulative of all other statutes on this subject.

[1925 C.C.P.]

Art. 1031. Services by Officer Other Than Sheriff

When services have been rendered by any peace officer other than a sheriff, such as are enumerated in the two preceding articles, such officer shall receive the same fees therefor as are allowed the sheriff. The same shall be taxed in the sheriff's bill of costs, and noted therein as costs due such peace officer; and when received by such sheriff, he shall pay the same to such peace officer.

[Acts 1941, 47th Leg., p. 669, ch. 412.]

Art. 1032. Sheriff Shall Not Charge Fees, When

A sheriff shall not charge fees for arrests made by rangers, or mileage for prisoners transported by rangers, or mileage or other fees for transporting a witness under attachment issued from another county, unless such witness refuses to give bail for his appearance, or files an affidavit with such sheriff of his inability to give bail.

[1925 C.C.P.]

Art. 1033. Officer Shall Make Out Cost Bill

Before the close of each term of the district court, the district or county attorney, sheriff and clerk of said court shall each make out a bill of the costs claimed to be due them by the State, respectively, in the felony cases tried at that term; the bill shall show:

1. The style and number of each case.
2. The offense charged against the defendant.
3. The term of the court at which the case was disposed of.
4. The disposition of the case, and that the case was finally disposed of, and no appeal taken.
5. The name and number of defendants; and, if more than one, whether they were tried jointly or separately.
6. Where each defendant was arrested, or witness served, stating the county in which the service was made, giving distance and direction from county seat of county in which the process is served.
7. The court shall inquire whether there have been several prosecutions for a transaction that is but one offense in law. If there is more than one prosecution for the same transaction,

or a portion thereof, that could have been combined in one indictment against the same defendant, the judge shall allow fees to sheriffs, clerks and district and county attorneys in but one prosecution.

8. Where the defendants in a case have severed on the trial, the judge shall not allow the charges for service of process and mileage to be duplicated in each case as tried; but only such additional fees shall be allowed as are caused by the severance.

[1925 C.C.P.]

Art. 1034. Judge to Examine Bill, etc.

The District Judge, when any such bill is presented to him, shall examine the same carefully, and inquire into the correctness thereof, and approve the same, in whole or in part, or disapprove the entire bill, as the facts and law may require; and such approval shall be conditioned only upon, and subject to the approval of the State Comptroller as provided for in Article 1035 of this Code, and the Judge's approval shall so state therein; and such bill, with the action of the Judge thereon, shall be entered on the minutes of said Court; and immediately on the rising of said Court, the Clerk thereof shall make a certified copy from the minutes of said Court of said bill, and the action of the Judge thereon, and send same by registered letter to the Comptroller. Provided the bill herein referred to shall before being presented to such District Judge, be first presented to the County Auditor, if such there be, who shall carefully examine and check the same, and shall make whatever recommendations he shall think proper to be made to such District Judge relating to any item or the whole bill.

Fees due District Clerks for recording sheriff's accounts shall be paid at the end of said term; and all fees due District Clerks for making transcripts on change of venue and on appeal shall be paid as soon as the service is performed; and the Clerk's bill for such fees shall not be required to show that the case has been finally disposed of. Bills for fees for such transcripts shall be approved by the District Judge as above provided, and with the same conditions, and when approved shall be recorded as part of the minutes of the last preceding term of the Court. [1925 C.C.P.; Acts 1931, 42nd Leg., p. 239, ch. 143, § 1.]

Art. 1035. Duty of Comptroller

The Comptroller upon the receipt of such claim, and said certified copy of the minutes of said Court, shall closely and carefully examine the same, and, if he deems the same to be correct, he shall draw his warrant on the State Treasurer for the amount found by him to be due, and in favor of the officer entitled to the same. If the appropriation for paying such accounts is exhausted, the Comptroller shall

file the same away, if found to be correct, and issue a certificate in the name of the officer entitled to the same, stating herein the amount of the claim and the character of the services performed. All such claims or accounts not sent to or placed on file in the office of the Comptroller within twelve (12) months from the date the same becomes due and payable shall be forever barred.

[1925 C.C.P.; Acts 1931, 42nd Leg., p. 239, ch. 143, § 2.]

CHAPTER ONE HUNDRED FOUR. COSTS PAID BY COUNTIES

Article

- 1037. County Liable for Costs.
- 1038. Food and Lodging of Jurors.
- 1039. Juror May Pay His Own Expenses.
- 1040. Allowance to Sheriff for Prisoners.
- 1041. Guards and Matrons.
- 1041a. Chief Jailer or Turnkey.
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- 1042. Sheriff Reimbursed.
- 1043. Sheriff Shall Present Account.
- 1044. Judge Shall Examine Account.
- 1045. Judge Shall Give Sheriff Draft.
- 1046. Account for Keeping Prisoners.
- 1047. Court to Examine Account.
- 1048. Expenses of Prisoner from Another County.
- 1049. Draft to Sheriff.
- 1050. In Case of Change of Venue.
- 1051. Account in Change of Venue.
- 1052. Fees of Judge and Justice of the Peace.
- 1053. Inquest Fee.
- 1054. Pay for Inquest.
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Art. 1037. County Liable for Costs

Each county shall be liable for all expense incurred on account of the safe keeping of prisoners confined in jail or kept under guard, except prisoners brought from another county for safe keeping, or on habeas corpus or change of venue; in which cases, the county from which the prisoner is brought shall be liable for the expense of his safe keeping. [1925 C.C.P.]

Art. 1038. Food and Lodging of Jurors

The Sheriff of each County shall, with the approval of the Commissioners Court, provide food and lodging for jurors empaneled in a felony case and jurors so empaneled shall be paid as other jurors are paid, in addition to such food and lodging. [1925 C.C.P.; Acts 1953, 53rd Leg., p. 918, ch. 380, § 1.]

Art. 1039. Juror May Pay His Own Expenses

A juror may pay his own expenses and draw his script; but the county is responsible in the first place for all expense incurred by the sheriff in

providing suitable food and lodging for the jury, not to exceed two dollars a day.
[1925 C.C.P.]

Art. 1040. Allowance to Sheriff for Prisoners

For the safe keeping, support and maintenance of prisoners confined in jail or under guard, the sheriff shall be allowed the following charges:

1. For the safekeep of each prisoner for each day the sum of fifteen cents, not to exceed the sum of two hundred dollars per month.

2. For support and maintenance, for each prisoner for each day such an amount as may be fixed by the commissioners court, provided the same shall be reasonably sufficient for such purpose, and in no event shall it be less than forty cents per day nor more than seventy-five cents per day for each prisoner. The net profits shall constitute fees of office and shall be accounted for by the sheriff in his annual report as other fees now provided by law. The sheriff shall in such report furnish an itemized verified account of all expenditures made by him for feeding and maintenance of prisoners, accompanying such report with receipts and vouchers in support of such items of expenditure, and the difference between such expenditures and the amount allowed by the commissioners court shall be deemed to constitute the net profits for which said officer shall account as fees of office.

3. For necessary medical bill and reasonable extra compensation for attention to a prisoner during sickness, such an amount as the commissioners court of the county where the prisoner is confined may determine to be just and proper.

4. For reasonable funeral expenses in case of death.

[1925 C.C.P.]

Art. 1041. Guards and Matrons

The sheriff shall be allowed for each guard or matron necessarily employed in the safekeeping of prisoners Two Dollars and Fifty Cents (\$2.50) for each day. No allowance shall be made for the board of such guard or matron, nor shall any allowance be made for jailer or turnkey, except in counties having a population in excess of forty thousand (40,000) inhabitants according to the last preceding Federal Census. In such counties of forty thousand (40,000) or more inhabitants, the Commissioners Court may allow each jail guard, matron, jailer and turnkey Four Dollars and Fifty Cents (\$4.50) per day; provided that in counties having a population in excess of seventy thousand (70,000) inhabitants and less than two hundred and twenty thousand (220,000) inhabitants, according to the last preceding Federal Census, the Commissioners Court of such counties may allow each jail guard, jailer, matron and turn-

key a salary of not to exceed One Hundred and Eighty-seven Dollars and Fifty Cents (\$187.50) per month; provided further that, in counties having a population in excess of two hundred and twenty thousand (220,000) inhabitants, according to the last preceding Federal Census, each jail guard, matron, jailer, jail bookkeeper and turnkey shall be paid not less than One Hundred and Seventy-five Dollars (\$175) per month.

[1925 C.C.P.; Acts 1937, 45th Leg., p. 7, ch. 7, § 1; Acts 1941, 47th Leg., p. 843, ch. 518, § 1; Acts 1945, 49th Leg., p. 205, ch. 158, § 1; Acts 1947, 50th Leg., p. 166, ch. 104, § 1.]

Art. 1041a. Chief Jailer or Turnkey

In all counties in this State having a population of one hundred and forty-five thousand (145,000) inhabitants and not more than three hundred thousand (300,000) inhabitants according to the last or any future Federal Census, the Commissioners Court shall allow the chief jailer and/or turnkey who has the care and custody of persons in the County Jail, not to exceed Eight Dollars (\$8) per day, and shall allow each assistant jailer and/or turnkey who has the care and custody of prisoners in the County Jail, not to exceed Six Dollars and Fifty Cents (\$6.50) per day, and not to exceed four (4) assistant jailers and/or turnkeys and a matron for each jail.

[Acts 1933, 43rd Leg., 1st C.S., p. 151, ch. 51, § 1; Acts 1947, 50th Leg., p. 1011, ch. 429, § 1.]

Art. 1041b. Vacations for Jailers, Jail Guards and Matrons

Every member of the sheriff's department assigned to duty as jailer, jail guard, or jail matron at any county jail in any city of more than twenty-five thousand (25,000) inhabitants shall be allowed fifteen (15) days vacation in each year with pay, not more than two (2) members to be on vacation at the same time; provided that the provisions of this Section of this Act shall not be applied to any such jailer, jail guard, or jail matron in any city of more than twenty-five thousand (25,000) inhabitants, unless such members shall have been regularly employed as such jailer, jail guard, or jail matron for a period of at least one year.

Each preceding Federal Census shall determine the population.

The sheriff having supervision of the county jail shall designate the days upon which each jailer, jail guard, or jail matron shall be allowed to be on vacation.

The sheriff having supervision of the county jail in any such city who violates any provision of this Article shall be fined not less than Ten Dollars (\$10) nor more than One Hundred Dollars (\$100).

[Acts 1937, 45th Leg., p. 247, ch. 129, § 1.]

Art. 1042. Sheriff Reimbursed

The sheriff shall pay the expenses of jurors impaneled in cases of felony (except when they are paid by the juror himself), the expenses of employing and maintaining a guard, and to support and take care of all prisoners, for all of which, he shall be reimbursed by the proper county according to the rates fixed in the two preceding articles.
[1925 C.C.P.]

Art. 1043. Sheriff Shall Present Account

At each term of the district court of his county, the sheriff may present to the district judge presiding his accounts for all expenses incurred by him for food and lodging of jurors in case of trials for felony during the term at which his account is presented. Such account shall state the number and style of the cases in which the jurors were impaneled, and specify by name each juror's expenses paid by such sheriff, and the number of days the same were paid, and shall be verified by the affidavit of such sheriff.
[1925 C.C.P.]

Art. 1044. Judge Shall Examine Account

Such account shall be carefully examined by the district judge; and he shall approve it, or so much thereof as he finds correct. He shall write his approval of said account, specifying the amount for which it is approved, date and sign the same officially, and shall cause the same to be filed in the office of the district clerk of the county liable therefor.
[1925 C.C.P.]

Art. 1045. Judge Shall Give Sheriff Draft

The district judge shall give the sheriff a draft upon the county treasurer of the proper county for the amount of each account allowed by him; and the same, when presented to such treasurer, shall be paid in like manner as jury certificates are paid.
[1925 C.C.P.]

Art. 1046. Account for Keeping Prisoners

At each regular term of the commissioners court, the sheriff shall present to such court his account verified by his affidavit for the expense incurred by him since the last account presented for the safe-keeping and maintenance of prisoners, including guards employed, if any. Such account shall state the name of each prisoner, each item of expense incurred on account of such prisoner, the date of each item, the name of each guard employed, the length of time employed and the purpose of such employment.
[1925 C.C.P.]

Art. 1047. Court to Examine Account

The commissioners court shall examine such account and allow the same, or so much thereof as is

reasonable and in accordance with law, and shall order a draft issued to the sheriff upon the county treasurer for the amount so allowed. Such account shall be filed and kept in the office of such court.
[1925 C.C.P.]

Art. 1048. Expenses of Prisoner from Another County

If the expenses incurred are for the safe-keeping and maintenance of a prisoner from another county, the sheriff shall make out a separate account therefor, and submit the same to the county judge of his county, who shall carefully examine the same, write thereon his approval for such amount as he finds correct and sign and date such approval officially.
[1925 C.C.P.]

Art. 1049. Draft to Sheriff

The account mentioned in the preceding article shall then be presented to the commissioners court of the county liable for the same, at a regular term of such court; and such court shall, if the charges therein be in accordance with law, order a draft issued to the sheriff upon the county treasurer for the amount allowed.
[1925 C.C.P.]

Art. 1050. In Case of Change of Venue

In all causes where indictments have been presented against persons in one county and such causes have been removed by change of venue to another county, and tried therein, the county from which such cause is removed shall be liable for all expenses incurred for pay for jurors in trying such causes.
[1925 C.C.P.]

Art. 1051. Account in Change of Venue

The county commissioners of each county at each regular meeting shall ascertain whether, since the last regular meeting, any person has been tried for crime upon a change of venue from any other county. If they find such to be the case they shall make out an account against such county from which such cause was removed showing the number of days the jury in such case was employed therein, and setting forth the amount paid for such jury service; such account shall then be certified to as correct by the county judge of such county, under his hand and seal, and be, by him, forwarded to the county judge of the county from which the said cause was removed; which account shall be paid in the same manner as accounts for the safe keeping of prisoners.
[1925 C.C.P.]

Art. 1052. Fees of Judge and Justice of the Peace

Five Dollars (\$5) shall be paid to the County Judge or Judge of the Court at Law and Four Dollars (\$4)

shall be paid to the Justice of the Peace for each criminal action tried and finally disposed of before him. Such Judge or Justices shall present to the Commissioners Court of his county at a regular term thereof a written account specifying each criminal action in which he claims such fee certified by such Judge or Justice to be correct and filed with the County Clerk. The Commissioners Court shall approve such account for such amounts as they find to be correct and order a draft to be issued on the County Treasurer in favor of such Judge or Justice for the amount due said Judge or Justice from the county. The Commissioners Court shall not however pay any account or trial fees in any case tried and in which an acquittal is had unless the State of Texas was represented in the trial of said cause by the County Attorney or his assistant, Criminal District Attorney or his assistant and the certificate of said Attorney is attached to said account certifying to the fact that said cause was tried, and the State of Texas was represented, and that in their judgment there was sufficient evidence in said cause to demand a trial of the same. All fees provided herein which are paid to officers who are compensated on a salary basis shall be paid into the Officers Salary Fund.

[1925 C.C.P.; Acts 1929, 41st Leg., 1st C.S., p. 155, ch. 55, § 1; Acts 1949, 51st Leg., p. 917, ch. 496, § 1; Acts 1953, 53rd Leg., p. 852, ch. 344, § 1.]

Art. 1053. Inquest Fee

A Justice of the Peace shall be entitled, for an inquest on a dead body, including certifying and returning the proceeding to the proper court, the sum of Ten Dollars (\$10), to be paid by the county. When an inquest is held over the dead body of a State penitentiary convict, the State shall pay the inquest fees allowed by law of all officers, upon the approval of the account therefor by the Commissioners Court of the county in which the inquest may be held and by the General Manager of the Texas Prison System.

[1925 C.C.P.; Acts 1947, 50th Leg., p. 745, ch. 369, § 5.]

Art. 1054. Pay for Inquest

Any officer claiming pay for services mentioned in the preceding article shall present to the commissioners court of the county, at a regular term of such court, an account therefor, verified by the affidavit of such claimant. If such account be found correct the court shall order a draft to issue upon the county treasurer in favor of such claimant for the amount due him. Such account shall be filed and kept in the office of the county clerk.

[1925 C.C.P.]

Art. 1055. Half Costs Paid Officers

The county shall not be liable to the officer and witness having costs in a misdemeanor case where

defendant pays his fine and costs. The county shall be liable for one-half of the fees of the officers of the Court, when the defendant fails to pay his fine and lays his fine out in the county jail or discharges the same by means of working such fine out on the county roads or on any county project. And to pay such half of costs, the County Clerk shall issue his warrant on the County Treasurer in favor of such officer to be paid out of the Road and Bridge Fund or other funds not otherwise appropriated.

[1925 C.C.P.; Acts 1937, 45th Leg., p. 1323, ch. 488, § 1; Acts 1939, 46th Leg., p. 143, § 1.]

Art. 1056. Repealed by Acts 1975, 64th Leg., p. 1353, ch. 510, § 2, eff. Sept. 1, 1975

See, now, Civil Statutes, Art. 2122.

Art. 1057. Repealed by Acts 1945, 49th Leg., p. 371, ch. 239, § 4

Art. 1058. Pay of Bailiffs

Each grand jury bailiff appointed as such bailiff shall receive as compensation for his services the sum of Five (\$5.00) Dollars for each day he may serve, and each riding grand jury bailiff appointed in counties of a population of one hundred fifty thousand (150,000) or more, according to the last Federal Census, shall receive as compensation for his services the sum of Six (\$6.00) Dollars for each day he may serve, and shall further receive One (\$1.00) Dollar per day for automobile expense and upkeep; provided, however, that not more than ten (10) such bailiffs shall be employed at any one time; and providing further, that the sheriff or deputy sheriff attending any County or District Court in counties of over three hundred fifty thousand (350,000), according to the last preceding Federal Census shall be paid the sum of Six (\$6.00) Dollars for each day the sheriff or deputy sheriff shall serve in any of such said courts as bailiffs, and One (\$1.00) Dollar per day as automobile expense and upkeep for each day he may use said automobile.

The compensation herein provided for shall be paid from the General or Jury Fund of the county affected, as may be determined by the Commissioners Court thereof, upon sworn accounts showing the Court in which or the Grand Jury for which, said Bailiff, Sheriff, or Deputy Sheriff serves, with a statement showing the dates on which the service was performed and the amounts due. No such claim shall be paid until approved by the foreman of the Grand Jury or the Judge of the Court for which the service was performed, and said claim shall be presented to the Commissioners Court or to the County Auditor in counties having a County Auditor, and shall be allowed in the manner provided by law for so much thereof as may be found due, and no warrant in payment of the amount due shall be

paid unless countersigned by the County Auditor, if any.

[1925 C.C.P.; Acts 1927, 40th Leg., p. 320, ch. 217, § 1; Acts 1927, 40th Leg., 1st C.S., p. 154, ch. 54, § 1; Acts 1931, 42nd Leg., p. 222, ch. 130, § 1; Acts 1935, 44th Leg., p. 476, ch. 192, § 1; Acts 1947, 50th Leg., p. 781, ch. 388, § 1.]

Art. 1058a. Bailiffs of Court of Civil Appeals

That the Commissioners court of any county, having a population of 210,000 or more, in which is located a Court of Civil Appeals having its quarters in the County Court House, is authorized to pay out of its General Fund, not exceeding fifty dollars per month, to the Bailiff of such Court of Civil Appeals, or other employee of said Court designated by it, as additional compensation for his services as Custodian of the Court Room, Judges Chambers and Library of such Court of Civil Appeals.

[Acts 1927, 40th Leg., 1st C.S., p. 154, ch. 54, § 1.]

Art. 1059. Certificates for Pay

The amount due jurors and bailiffs shall be paid by the county treasurer, upon the certificate of the proper clerk or the justice of the peace, stating the service, when and by whom rendered, and the amount due therefor.

[1925 C.C.P.]

Art. 1060. Receivable for Taxes

Drafts drawn and certificates issued under the provisions of this chapter may be transferred by delivery, and shall without further action or acceptance by any authority, except registration by the county treasurer, be receivable from the holder thereof at par for all county taxes.

[1925 C.C.P.]

CHAPTER ONE HUNDRED FIVE. COSTS TO BE PAID BY DEFENDANT

1. IN DISTRICT AND COUNTY COURTS

Article

- 1061. District and County Attorneys.
- 1062. Joint Defendants.
- 1063. Attorney Appointed.
- 1064. Fees of District and County Clerks.
- 1065. County Clerks in Counties of 53,500 to 53,800; Temporary Support Orders; Fee.

2. JURY AND TRIAL FEES

- 1075. Jury Fee in Justice Court.
- 1076. Several Defendants.
- 1077. Jury Fee Collected.

3. WITNESS FEES

- 1078. Fees of Witnesses.
- 1079. Taxed Against Defendant.
- 1080. No Fees Allowed.
- 1081. Witness Record.
- 1082. Witness Liable for Costs.

4. CRIMINAL JUSTICE PLANNING FUND

Article

- 1083. Criminal Justice Planning Fund.

1. IN DISTRICT AND COUNTY COURTS

Art. 1061. District and County Attorneys

District and county attorneys shall be allowed the following fees in cases tried in the district or county courts, or a county court at law, to be taxed against the defendant:

For every conviction under the laws against gaming when no appeal is taken, or when, on appeal, the judgment is affirmed, Fifteen Dollars (\$15.00);

For every other conviction in cases of misdemeanor, where no appeal is taken, or when, on appeal the judgment is affirmed, Fifteen Dollars (\$15.00).

[1925 C.C.P.; Acts 1955, 54th Leg., p. 1112, ch. 410, § 1.]

Art. 1062. Joint Defendants

Where several defendants are tried together, but one fee shall be allowed and taxed in the case for the district or county attorney. Where the defendants sever and are tried separately, a fee shall be allowed and taxed for each trial.

[1925 C.C.P.]

Art. 1063. Attorney Appointed

An attorney appointed by the court to represent the State in the absence of the district or county attorney shall be entitled to the fee allowed by law to the district or county attorney.

[1925 C.C.P.]

Art. 1064. Fees of District and County Clerks

(1) The clerks of the county courts, county courts at law and district courts shall be allowed the following fees:

(a) A fee of Fifteen Dollars (\$15.00) in each cause filed in said courts: for filing complaints, information, for docketing and taxing costs for each defendant, for issuing original writs, issuing subpoenas, for swearing and impaneling a jury, receiving and recording verdict, for filing each paper entered in this cause, for swearing witnesses and for all other clerical duties in connection with such cause in county and district courts.

(b) A fee of One Dollar (\$1.00) per page or part of a page, to be paid at the time each order is placed, for issuing each certified copy, transcript or any other paper authorized, permitted, or required, to be issued by said county clerk or clerk of county courts or clerk of district courts.

[1925 C.C.P.; Acts 1967, 60th Leg., p. 2010, ch. 743, § 1, eff. Aug. 28, 1967.]

Art. 1065. County Clerks in Counties of 53,500 to 53,800; Temporary Support Orders; Fee

In any county having a population of not less than 53,500, nor more than 53,800, according to the last preceding federal census, the clerk of the county court is entitled to a fee of \$5 for the administrative costs of handling temporary support orders issued pursuant to Article 604, Penal Code of Texas, 1925, as amended. The fee shall be taxed against the defendant at the time the order is entered against him.

[Acts 1971, 62nd Leg., p. 2371, ch. 732, § 1, eff. June 8, 1971.]

2. JURY AND TRIAL FEES

Art. 1075. Jury Fee in Justice Court

If the defendant is convicted in a criminal action tried by a jury in a justice court, a jury fee of three dollars shall be taxed against him.

[1925 C.C.P.]

Art. 1076. Several Defendants

Only one jury fee shall be taxed against several defendants tried jointly. A jury fee shall be taxed in each trial if they sever and are tried separately.

[1925 C.C.P.]

Art. 1077. Jury Fee Collected

A jury fee shall be collected as other costs in a case, and the officer collecting it shall forthwith pay it to the county treasurer of the county where the conviction was had.

[1925 C.C.P.]

3. WITNESS FEES

Art. 1078. Fees of Witnesses

Witnesses in criminal cases shall be allowed one dollar and fifty cents a day for each day they are in attendance upon the court, and six cents for each mile they may travel in going to or returning from the place of trial.

[1925 C.C.P.]

Art. 1079. Taxed Against Defendant

Upon conviction, the costs accruing from the attendance of witnesses shall be taxed against the defendant, upon the affidavit of such witness, or of some credible person, stating the number of days that such witness has attended upon the court in the case, and the number of miles he has traveled in going to and returning from the place of trial. The affidavit shall be filed with the papers in the case.

[1925 C.C.P.]

Art. 1080. No Fees Allowed

No fees shall be allowed to a person as witness fee unless such person has been subpoenaed, attached or recognized as a witness in the case.

[1925 C.C.P.]

Art. 1081. Witness Record

Each clerk of the district and county court or county court at law, and each justice of the peace, shall keep a book, in which shall be entered the number and style of each criminal action in their respective courts, and the name of each witness subpoenaed, attached or recognized to testify therein, showing whether on the part of the State or the defendant.

[1925 C.C.P.]

Art. 1082. Witness Liable for Costs

In any criminal case where a witness has been subpoenaed and fails to attend, he shall be liable for the costs of an attachment, unless good cause be shown to the court why he failed to obey the subpoena.

[1925 C.C.P.]

4. CRIMINAL JUSTICE PLANNING FUND

Art. 1083. Criminal Justice Planning Fund

Purpose

Sec. 1. The purpose of this Act is to create and establish a special fund to be known as the Criminal Justice Planning Fund to provide the State and local funds required by Public Law 90-351, Title I, Omnibus Crime Control and Safe Streets Act of 1968, as amended,¹ to provide for costs of court as the source of these funds, and to provide that the costs to be borne in part by those who necessitate the establishment and maintenance of the criminal justice system.

¹ 42 U.S.C.A. § 3701 et seq.

Creation

Sec. 2. There is hereby created and established a special fund to be known as the Criminal Justice Planning Fund.

Costs Upon Conviction in Certain Misdemeanor Cases; Traffic Violations

Sec. 3. (a) The sum of \$2.50 shall be taxed as costs of court, in addition to other taxable court costs, upon conviction in each misdemeanor case in which original jurisdiction lies in courts whose jurisdiction is limited to a maximum fine of \$200.00 only.

(b) Convictions arising under the traffic laws of this State are specifically included and are those defined in:

(1) Chapter 173, Acts of the 47th Legislature, Regular Session, 1941, as amended (Article

6687b, Vernon's Texas Civil Statutes), known as the "Driver's License Law"; and

(2) Chapter 421, Acts of the 50th Legislature, 1947, as amended (Article 6701d, Vernon's Texas Civil Statutes) known as the "Uniform Act Regulating Traffic on Highways," except laws regulating pedestrians and the parking of motor vehicles.

Costs Upon Conviction in Misdemeanor and Felony Cases

Sec. 4. The sum of \$5.00 shall be taxed as costs of court in addition to other taxable court costs, upon conviction in each misdemeanor case and the sum of \$10.00 shall be taxed as costs of court, in addition to other taxable court costs, upon conviction in each felony case in all cases in which original jurisdiction lies in courts whose jurisdiction is limited to fines and/or confinement in a jail or the department of corrections.

Collection of Costs

Sec. 5. The costs due the State under this Act shall be collected along with and in the same manner as other fines or costs are collected in the case.

Officers Collecting Costs; Separate Records; Deposits

Sec. 6. (a) The officer collecting the costs due under this Act in cases in municipal court shall keep separate records of the funds collected as costs under this Act, and shall deposit the funds in the municipal treasury.

(b) The officer collecting the costs due under this Act in justice, county and district courts shall keep separate records of the funds collected as costs under this Act, and shall deposit the funds in the county treasury.

(c) The officer collecting the costs due under this Act in county courts on appeal from justice or municipal courts shall keep separate records of the funds collected under this Act, and shall deposit the funds in the county treasury.

Custodians of Funds; Quarterly Remittance; Service Fee

Sec. 7. The custodians of the municipal and county treasuries with whom funds collected under this Act are deposited shall keep records of the amount of funds collected under this Act which are on deposit with them, and shall on the first day of January, April, July and October of each year remit to the Comptroller of Public Account funds collected under this Act during the preceding quarter. The municipal and county treasuries are hereby authorized to retain five percent (5%) of funds collected under this Act as a service fee for said collection.

Special Fund Deposits

Sec. 8. The Comptroller of Public Accounts shall deposit the funds received by him in a Special Fund to be known as the Criminal Justice Planning Fund.

Appropriation of Funds; Simultaneous Expenditure with Federal Funds

Sec. 9. The funds so deposited in the Criminal Justice Planning Fund are hereby appropriated to the expenditure of State and local matching funds required by Public Law 90-351, Title I, Omnibus Crime Control and Safe Streets Act of 1968 as amended by the Omnibus Crime Control Act of 1970 and determined by the appropriations of Congress to carry out the provisions of said Act. The expenditure of Criminal Justice Planning Funds shall be simultaneous with the expenditure of federal funds.

Appropriation of Unexpended Balance of Funds Authorized

Sec. 10. The Legislature may appropriate the unexpended balance of the Criminal Justice Planning Funds for the preceding biennium for the improvement and upgrading of the criminal justice system as defined in the aforementioned federal Act.

Officers Collecting Funds; Reports

Sec. 11. All officers collecting funds due as costs under this Act shall file the reports required under Articles 1001 and 1002, Code of Criminal Procedure, 1965.

[Acts 1971, 62nd Leg., p. 2855, ch. 935, §§ 1 to 11, eff. Aug. 30, 1971.]

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WATER CODE

TITLE 1. GENERAL PROVISIONS

CHAPTER 1. GENERAL PROVISIONS

SUBCHAPTER A. PURPOSE AND POLICY

§ 1.003. Public Policy

It is the public policy of the state to provide for the conservation and development of the state's natural resources, including:

(1) the control, storage, preservation, and distribution of the state's storm and floodwaters and the waters of its rivers and streams for irrigation, power, and other useful purposes;

(2) the reclamation and irrigation of the state's arid, semiarid, and other land needing irrigation;

(3) the reclamation and drainage of the state's overflowed land and other land needing drainage;

(4) the conservation and development of its forest, water, and hydroelectric power;

(5) the navigation of the state's inland and coastal waters; and

(6) the maintenance of a proper ecological environment of the bays and estuaries of Texas and the health of related living marine resources.

[Amended by Acts 1975, 64th Leg., p. 925, ch. 344, § 1, eff. June 19, 1975.]

TITLE 2. STATE WATER ADMINISTRATION

SUBTITLE A. EXECUTIVE AGENCIES

CHAPTER 5. TEXAS DEPARTMENT OF WATER RESOURCES

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OF THE COMMISSION

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- 5.357. Law Suits; Citation.

Acts 1977, 65th Leg., p. 2207, ch. 870, revised Title 2 of the Water Code, effective September 1, 1977. Sections 8 to 12 of the Act provided:

"Sec. 8. (a) On the effective date of this Act, the governor shall appoint the initial members to the Texas Water Commission.

"(b) The persons initially appointed to the commission shall be designated to serve by the governor as follows: one member of the commission to serve a two-year term, one member of the commission to serve a four-year term, and one member of the commission to serve a six-year term.

"(c) The initial members of the commission shall take office on September 1, 1977."

"Sec. 9. (a) The Texas Department of Water Resources and the Texas Water Commission, as provided in Section 1 of this Act, are created effective September 1, 1977, and the existing Texas Water Rights Commission and Texas Water Quality Board are abolished on September 1, 1977.

"(b) The department is the successor to the Texas Water Quality Board and Texas Water Rights Commission and incorporates the Texas Water Development Board and shall carry out their respective duties, responsibilities, and functions from the effective date of this Act as provided by law, including acts of this legislature.

"(c) The abolishment of the Texas Water Rights Commission shall not affect or impair

any act done or obligation, right, license, permit, or penalty accrued or existing under the authority of the prior law, and such law shall be treated as still remaining in force for the purpose of sustaining any proper action concerning such obligation, right, license, permit, or penalty. No action or proceeding commenced prior to the effective date of this Act shall be affected by its enactment.

"(d) The rights, powers, and duties delegated by law to the Texas Water Rights Commission which are not expressly assigned to the Texas Water Commission are expressly transferred to the Texas Department of Water Resources in accordance and consistent with Title 2, Subtitle A, Chapter 5, Subchapter B of this code.

"(e) The abolishment of the Texas Water Quality Board shall not affect or impair any act done or obligation, right, license, permit, water quality criteria, standard or requirement, or penalty accrued or existing under the authority of the prior law, and such law shall be treated as still remaining in force for the purpose of sustaining any proper action concerning such obligation, right, license, permit, water quality criteria, standard or requirement, or penalty. No action or proceeding commenced prior to the effective date of this Act shall be affected by its enactment.

"(f) The rights, powers, and duties delegated by law to the Texas Water Quality Board are expressly transferred to the Texas Department of Water Resources as is provided herein or in accordance and consistent with Title 2, Subtitle A, Chapter 5, Subchapter B of this code."

"Sec. 10. The members of the Texas Water Development Board serving as members of the board on the effective date of this Act shall continue in office until the expiration of their respective terms."

"Sec. 11. On September 1, 1977, all personnel, equipment, data, documents, facilities, and other items of the Texas Water Rights Commission, the Texas Water Development Board, and the Texas Water Quality Board shall be transferred to the Texas Department of Water Resources."

"Sec. 12. The officers and employees of the existing Texas Water Rights Commission, the Texas Water Development Board, and the Texas Water Quality Board shall cooperate fully with the reorganization."

WATER CODE

DISPOSITION TABLE

Showing where provisions of former Title 2 of the Water Code are now covered in revised Title 2.

Former Sections	Revised Sections	Former Sections	Revised Sections
5.001	11.001	5.128	11.129
5.002	11.002	5.129	11.130
5.003	11.003	5.130	11.131
5.004	11.004	5.131	11.132
5.005	11.005	5.132	11.133
5.021	11.021	5.133	11.134
5.022	11.022	5.134	11.135
5.023	11.023	5.135	11.136
5.024	11.024	5.136	11.137
5.025	11.025	5.137	11.138
5.026	11.026	5.1371	11.139
5.027	11.027	5.138	11.140
5.028	11.028	5.139	11.141
5.029	11.029	5.140	11.142
5.030	11.030	5.141	11.143
5.031	11.031	5.142	11.144
5.032	11.032	5.143	11.145
5.033	11.033	5.144	11.146
5.034	11.034	5.145	11.147
5.035	11.035	5.171	11.171
5.036	11.036	5.172	11.172
5.037	11.037	5.173	11.173
5.038	11.038	5.174	11.174
5.039	11.039	5.175	11.175
5.040	11.040	5.176	11.176
5.041	11.041	5.177	11.177
5.042	11.042	5.178	11.178
5.043	11.043	5.179	11.179
5.044	11.044	5.180	11.180
5.045	11.045	5.181	11.181
5.046	11.046	5.182	11.182
5.047	11.047	5.183	11.183
5.048	11.048	5.184	11.184
5.049	11.049	5.185	11.185
5.050	11.050	5.186	11.186
5.051	11.051	5.201	11.201
5.052	11.052	5.202	11.202
5.081	11.081	5.203	11.203
5.082	11.082	5.204	11.204
5.083	11.083	5.205	11.205
5.084	11.084	5.206	11.206
5.085	11.085	5.207	11.207
5.086	11.086	5.301	11.301
5.087	11.087	5.302	11.302
5.088	11.088	5.303	11.303
5.089	11.089	5.304	11.304
5.090	11.090	5.305	11.305
5.091	11.091	5.306	11.306
5.092	11.092	5.307	11.307
5.093	11.093	5.308	11.308
5.094	11.094	5.309	11.309
5.095	11.095	5.310	11.310
5.096	11.096	5.311	11.311
5.121	11.121	5.312	11.312
5.1211	11.122	5.313	11.313
5.122	11.123	5.314	11.314
5.123	11.124	5.315	11.315
5.124	11.125	5.316	11.316
5.125	11.126	5.317	11.317
5.126	11.127	5.318	11.318
5.127	11.128	5.319	11.319

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Former Sections	Revised Sections	Former Sections	Revised Sections
5.320	11.320	6.075	12.082
5.321	11.321	6.076	12.141
5.322	11.322	6.101	5.351
5.323	11.323	6.102	5.352
5.324	11.324	6.103	5.353
5.325	11.325	6.104	5.354
5.326	11.326	6.105	5.355
5.327	11.327	11.001	16.001
5.328	11.328		17.001
5.329	11.329	11.011	5.091
5.330	11.330	11.012	5.092
5.331	11.331	11.013	5.093
5.332	11.332	11.014	5.094
5.333	11.333	11.015	5.095
5.334	11.334	11.016	5.096
5.335	11.335	11.017	5.097
5.336	11.336	11.018	5.172
5.337	11.337	11.019	5.135
5.338	11.338	11.020	5.180
5.339	11.339	11.021	5.176
5.340	11.340	11.022	—
5.341	11.341	11.023	5.098
5.401	11.401	11.024(1)	5.174(c)
5.402	11.402	11.024(2)	16.137(b)
5.403	11.403		16.181(b)
5.404	11.404	11.025	5.131
5.405	11.405	11.026	5.055
5.406	11.406	11.061	5.171
5.407	11.407		16.011
5.408	11.408	11.062	16.012
5.409	11.409	11.063	16.013
6.001	12.001	11.064	16.014
6.011	5.221	11.065	16.015
6.012	5.222	11.066	16.016
6.013	5.224	11.067	16.017
6.014	—	11.068	16.018
6.015	5.223	11.069	16.019
6.016	5.223	11.070	16.021
6.017	5.225	11.071	5.173
6.018	5.226	11.072	16.020
6.019 to 6.025	—	11.101	16.051
6.026	5.266	11.102	16.052
6.051	5.261	11.103	16.053
6.052	5.267	11.104	16.054
6.053	5.268	11.105	16.055
6.054	12.014	11.106	16.056
6.055	5.262	11.107	16.057
6.056	12.013(a)	11.108	16.058
6.057	12.011	11.141	17.011
6.058	5.264	11.1411	17.011 note
6.059	5.265	11.142	17.012
6.060 to 6.062	—	11.143	17.013
6.063	12.015	11.144	17.014
6.064	12.016	11.145	17.015
6.065	12.017	11.146	17.016
6.066	—	11.147	17.017
6.067	12.012	11.148	17.018
6.068	12.111	11.149	17.019
6.069	12.112	11.150	17.020
6.070	12.113	11.151	17.021
6.071	12.114	11.152	17.022
6.072	5.052(a)	11.153	17.023
6.073	12.051	11.154	17.024
6.0731	12.052	11.155	17.025
6.074	12.081	11.156	17.026

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Former Sections	Revised Sections	Former Sections	Revised Sections
11.157	17.027	11.408	Repealed
11.158	17.028	11.409	17.128
11.159	17.029	11.410	17.129
11.160	17.030	11.411	17.130
11.161	17.031	11.412	17.131
11.162	17.032	11.413	17.132
11.163	17.033	11.414	17.133
11.164	17.034	11.415	17.134
11.201	17.071	11.416	17.135
11.202	17.072	11.417	17.136
11.203	17.073	11.418	17.137
11.204	17.074	11.419	17.138
11.205	17.075	11.420	17.139
11.206	17.076	11.451	16.231
11.207	17.077	11.452	16.232
11.208	17.078	11.453	16.233
11.209	17.079	11.454	16.234
11.210	17.080	11.455	16.235
11.211	17.081	11.456	16.236
11.212	17.082	11.457	16.237
11.213	17.083	11.458	16.238
11.214	17.084	11.501	16.271
11.215	17.085	11.502	16.272
11.216	17.086	11.503	16.273
11.217	17.087	11.601	17.171
11.218	17.088	11.602	17.172
11.251	16.091	11.603	17.173
11.252	16.092	11.604	17.174
11.301	16.131	11.605	17.175
11.302	16.132	11.606	17.176
11.303	16.133	11.607	17.177
11.304	16.134	11.608	17.178
11.305	16.135	11.609	17.179
11.306	16.136	11.610	17.180
11.307	16.137	12.001	
11.308	16.138	to	
11.309	16.139	12.067	Prec. 12.001 note
11.310	16.140	14.001	18.001
11.311	16.141	14.002	18.002
11.351	16.181	14.011	18.011
11.352	16.182	14.012	18.012
11.353	16.183	14.013	18.013
11.354	16.184	14.014	18.014
11.355	16.185	14.015	18.015
11.356	16.186	14.016	18.016
11.357	16.187	14.017	18.017
11.3571	[16.1871]	14.018	18.018
11.358	16.188	14.019	18.019
11.359	16.189	14.020	18.020
11.360	16.190	14.021	18.021
11.361	16.191	14.022	18.022
11.362	16.192	14.023	
11.363	16.193	14.041	18.051
11.364	16.194	14.042	18.052
11.365	16.195	14.043	18.053
11.366	16.196	14.044	18.054
11.367	16.197	14.045	18.055
11.368	16.198	14.046	18.056
11.401	17.121	14.061	18.081
11.402	17.122	14.062	18.082
11.403	17.123	14.063	18.083
11.404	17.124	14.064	18.084
11.405	17.125	14.0641	[18.0841]
11.406	17.126	14.065	18.085
11.407	17.127	14.066	18.086

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Former Sections	Revised Sections	Former Sections	Revised Sections
14.067	18.087	21.096	[Blank]
14.068	18.088	21.097	26.044
14.069	18.089	21.0971	26.045
14.070	18.090	21.098	26.046
14.071	18.091	21.099	[26.047]
14.091	18.121	21.101	[26.048]
14.0911	[18.1211]	21.201	26.081
14.092	18.122	21.202	26.082
14.093	18.123	21.203	26.083
14.101	18.151	21.204	26.084
14.102	18.152	21.2041	26.085
14.111	18.171	21.205	26.086
14.112	18.172	21.206	[26.087]
21.001	—	21.251	26.121
21.002	26.003	21.252	26.122
21.003	26.001	21.253	26.123
21.004	26.002	21.254	26.124
21.005	—	21.255	26.125
21.006	—	21.256	26.126
21.021 to 21.031	—	21.257	26.127
21.032	5.177	21.258	26.128
21.033	5.051	21.259	26.129
21.034	5.178	21.260	26.130
21.035	—	21.261	26.131
21.036	5.052(a)	21.262	26.132
21.037	5.052(b)	21.263	26.133
21.038	5.053	21.264	26.134, Repealed
21.039	5.055	21.265	26.135
21.040	5.054	21.351	26.171
21.061	26.011	21.352	26.172
21.062	26.012	21.353	26.173
21.063	26.013	21.354	26.174
21.064	26.014	21.355	26.175
21.065	26.015	21.356	26.176
21.066	26.016	21.357	26.177
21.067	26.017	21.451	5.351
21.068	26.018	21.551	26.211
21.069	5.131	21.552	26.212
21.070	26.019	21.553	26.213
21.071	26.0191	21.5531	26.214
21.072	26.020	21.554	26.215
21.073	26.021	21.555	26.216
21.074	26.022	21.556	26.217
21.075	26.023	21.557	26.218
21.076	26.024	21.558	26.219
21.077	26.025	21.559	26.220
21.078	26.026	21.560	26.221
21.079	26.027	21.561	26.222
21.080	26.028	21.563	26.224
21.081	26.029	21.562	26.223
21.082	26.030	21.564	26.225
21.083	26.031	21.601	17.221
21.084	26.032	21.602	17.222
21.085	26.033	21.603	17.223
21.086	26.034	21.604	17.224
21.087	26.035	21.605	17.225
21.088	26.036	21.606	17.226
21.089	26.037	21.607	17.227
21.0891	Repealed	21.608	17.228
21.090	26.038	21.609	17.229
21.091	26.039	21.610	17.230
21.092	26.040	21.611	—
21.093	26.041	21.612	17.231
21.094	26.042	21.613	17.232
21.095	26.043		

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Former Sections	Revised Sections	Former Sections	Revised Sections
21.614	17.233	24.013	29.013
21.615	17.234	24.014	29.014
21.616	17.235	24.015	29.015
21.617	17.236	24.016	29.016
21.701	17.271	24.017	29.017
21.702	17.272	24.018	29.018
21.703	17.273	24.019	29.019
21.704	17.274	24.020	29.020
21.705	17.275	24.021	29.021
21.706	17.276	24.031	29.031
21.707	17.277	24.032	29.032
21.708	17.278	24.033	29.033
21.709	17.279	24.041	29.041
21.710	17.280	24.042	29.042
21.711	17.281	24.043	29.043
21.712	17.282	24.044	29.044
21.713	17.283	24.045	29.045
21.714	—	24.046	29.046
21.715	17.284	25.001	30.001
21.801	26.261	25.002	30.002
21.802	26.262	25.003	30.003
21.803	26.263	25.004	30.004
21.804	26.264	25.005	30.005
21.805	26.265	25.021	30.021
21.806	26.266	25.022	30.022
21.807	26.267	25.023	30.023
21.808	26.268	25.024	30.024
22.001	27.001	25.025	30.025
22.002	27.002	25.026	30.026
22.011	27.011	25.027	30.027
22.012	27.012	25.028	30.028
22.013	27.013	25.029	30.029
22.014	27.014	25.030	30.030
22.015	27.015	25.031	30.031
22.016	27.016	25.032	30.032
22.017	27.017	25.033	30.033
22.018	27.018	25.034	30.034
22.019	27.019	25.035	30.035
22.031	27.031	25.051	30.051
22.032	27.032	25.052	30.052
22.033	27.033	25.053	30.053
22.034	27.034	25.054	30.054
22.051	27.051	25.055	30.055
22.052	27.052	25.056	30.056
22.053	27.053	25.057	30.057
22.054	27.054	25.058	30.058
22.055	27.055	25.059	30.059
22.056	27.056	25.060	30.060
22.101	27.101	25.061	30.061
22.102	27.102	25.062	30.062
22.103	27.103	25.063	30.063
22.104	27.104	25.064	30.064
23.001	28.001	25.065	30.065
23.002	28.002	25.066	30.066
23.003	28.003	25.101	30.101
23.004	28.004	25.102	30.102
24.001	29.001	25.103	30.103
24.001	29.002	25.104	30.104
24.011	29.011	25.105	30.105
24.012	29.012	25.106	30.106

SUBCHAPTER A. GENERAL PROVISIONS

§ 5.001. Definitions

In this chapter:

- (1) "Department" means the Texas Department of Water Resources.
- (2) "Board" means the Texas Water Development Board.
- (3) "Commission" means the Texas Water Commission.
- (4) "Executive director" means the executive director of the Texas Department of Water Resources.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.002. Scope of Chapter

The powers and duties enumerated in this chapter are the general powers and duties of the department and those incidental to the conduct of its business. The department has other specific powers and duties as prescribed in other sections of this code and other laws of this state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 5.003 to 5.010 reserved for expansion]

SUBCHAPTER B. ORGANIZATION OF THE TEXAS DEPARTMENT OF WATER RESOURCES

§ 5.011. Declaration of Policy

The Texas Department of Water Resources is the agency of the state given primary responsibility for implementing the provisions of the constitution and laws of this state relating to water. To assure that fundamental safeguards of the constitution are enjoyed by persons subject to the jurisdiction of the department, this title of the code provides for the formal separation of the legislative, executive, and judicial functions of the department and creates an office of public interest within the department.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.012. Department as Agency of the State; Division of Department by Functions

(a) The Texas Department of Water Resources is an administrative agency of the state and is responsible for carrying out the legislative, executive, and judicial functions provided in this title and delegated to it by the constitution and other laws of this state.

(b) With respect to the department, the terms "legislative," "executive," and "judicial" mean those functions of the department that most closely resemble the same functions of the three branches of the state government.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.0121. Application of Sunset Act

The Texas Department of Water Resources is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1985.

[Added by Acts 1977, 65th Leg., p. 1848, ch. 735, § 2.118, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

§ 5.013. Legislative Functions

The legislative functions of the department are vested in the Texas Water Development Board. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.014. Executive Functions

(a) The executive functions of the department are vested in the executive director.

(b) The executive director shall employ a deputy director, subject to the approval of the board. In the absence of the executive director, the deputy director shall assume the executive director's duties and functions.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.015. Judicial Functions

The judicial functions of the department are vested in the Texas Water Commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.016. General Duties and Responsibilities; Interpretation

(a) The board, the executive director, and the commission shall carry out their respective powers and duties as provided by law and in a manner that respects the separation of governmental functions.

(b) The board, commission, or executive director shall act in the name of and for the department, and duly authorized acts of the board, commission, or executive director are to be considered as acts of the department.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.017. Construction of Title

This title shall be liberally construed to allow the board, the executive director, and the commission to carry out their powers and duties in a manner that respects the separation of governmental functions.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.018. Purpose of Act

Consistent with the objectives of the Joint Advisory Committee on Government Operations, the purpose of this Act is to assign the duties, responsibil-

ities, and functions of the Texas Water Quality Board and Texas Water Rights Commission to a new department, and it is not the intention of this Act to make any substantive changes in the laws of the State of Texas.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 5.019 to 5.050 reserved for expansion]

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 5.051. Funds From Other State Agencies

Any state agency that has statutory responsibilities for water pollution or water quality control and that receives a legislative appropriation for these purposes may transfer to the department any amount mutually agreed on by the department and the agency, subject to the approval of the governor. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.052. Copies of Documents, Proceedings, Etc.

(a) Except as otherwise specifically provided in this code and subject to the specific limitations provided in this code, on application of any persons, the department shall furnish certified or other copies of any proceeding or other official record or of any map, paper, or document filed with the board or commission. A certified copy with the seal of the department or commission as appropriate and the signature of the chairman of the board or commission or the executive director or chief clerk of the commission is admissible as evidence in any court or administrative proceeding.

(b) The board shall provide in its rules the fees that will be charged for copies and is authorized to furnish copies, certified or otherwise, to a person without charge when the furnishing of the copies serves a public purpose. Other statutes concerning fees for copies of records do not apply to the department, except that the fees set by the board for copies prepared by the board shall not exceed those prescribed in Article 3913, Revised Civil Statutes of Texas, 1925, as amended.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.053. Documents, Etc., State Property; Open for Inspection

All information, documents, and data collected by the department in the performance of its duties are the property of the state. Records, reports, data, or other information obtained relative to or from sources or potential sources of discharges of water pollutants shall be available to the public during

regular office hours; except that, if a showing satisfactory to the executive director is made by any person that such records, reports, data, or other information (other than effluent data) would divulge methods or processes entitled to protection as trade secrets, then the department shall consider such records, reports, data, or other information as confidential. Nothing in this chapter shall be construed to make confidential any effluent data, including effluent data in records, reports, or other information, and including effluent data in permits, draft permits, and permit applications. Any records, data, or other information considered confidential may be disclosed or transmitted to officers, employees, or authorized representatives of the State of Texas or of the United States with responsibilities in water pollution control; provided such disclosure or transmittal is made only after adequate written assurance is given to the executive director that the confidentiality of the disclosed or transmitted records, data, or other information will be afforded all reasonable protection allowed by law by the receiving officer, employee or authorized representative on behalf of, and under the authority of, the receiving agency or political entity. The executive director shall not disclose or transmit records, data, or other information considered confidential if he has reason to believe the recipient will not protect their confidentiality to the most reasonable extent provided by law.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 21.038 by Acts 1977, 65th Leg., p. 1640, ch. 644, § 1.

§ 5.054. Seal

The department shall have a seal bearing the words "Texas Department of Water Resources" encircling the oak and olive branches common to other official seals.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.055. Reports to Governor

The department shall make biennial reports in writing to the governor and the members of the legislature. Each report shall include a statement of the activities of the board, commission, and executive director and their respective or joint recommendations for necessary and desirable legislation.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 5.056 to 5.090 reserved for expansion]

SUBCHAPTER D. TEXAS WATER DEVELOPMENT BOARD

§ 5.091. State Agency

The Texas Water Development Board is an agency of the state and shall exercise the legislative func-

tions of the department as defined herein.
 [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.0911. Application of Sunset Act

The Texas Water Development Board is subject to the Texas Sunset Act,¹ but it is not abolished under that Act. The board shall be reviewed under the Texas Sunset Act during the period in which state agencies abolished effective September 1 of 1985 and of every 12th year after 1985 are reviewed.

[Added by Acts 1977, 65th Leg., p. 1848, ch. 735, § 2.117, eff. Aug. 29, 1977.]
¹ Civil Statutes, art. 5429k.

§ 5.092. Members of the Board; Appointment

(a) The board is composed of six members who are appointed by the governor with the advice and consent of the senate.

(b) The governor shall make the appointments in such a manner that each member is from a different section of the state and has no conflict of interest prohibited by state or federal law.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.093. Officers of State; Oath

Each member of the board is an officer of the state as that term is used in the constitution, and each member shall qualify by taking the official oath of office.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.094. Terms of Office

(a) The members of the board hold office for staggered terms of six years, with the terms of two members expiring every two years. Each member holds office until his successor is appointed and has qualified.

(b) No person appointed to the board may serve for more than two six-year terms.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.095. Board Officers

(a) The governor shall designate one member as chairman of the board to serve at the will of the governor.

(b) The members of the board shall elect a vice-chairman every two years. The board shall fill a vacancy in the office of vice-chairman for the remainder of the unexpired term.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.096. Board Meetings

(a) The board shall meet at least once each month on a day and at a place within the state selected by

it, subject to recesses at the discretion of the board. The chairman or two board members may call a special meeting at any time by giving notice to the other members.

(b) The chairman or in his absence the vice-chairman shall preside at all meetings of the board.

(c) A majority of the members constitute a quorum to transact business.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.097. Compensation; Expenses

A member is entitled to receive an amount as provided in the General Appropriations Act for each day he serves in the performance of his duties, together with travel and other necessary expenses.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.098. Seal

The board shall have a seal bearing the words "Texas Water Development Board" encircling the oak and olive branches common to other official seals.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 5.099 to 5.130 reserved for expansion]

SUBCHAPTER E. GENERAL POWERS AND DUTIES OF THE BOARD

§ 5.131. Rules

(a) The board shall make any rules necessary to carry out the powers and duties under the provisions of this code and other laws of this state.

(b) The executive director and the commission may recommend to the board for its consideration any rules that they consider necessary.

(c) Rules shall be adopted in the manner provided in the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.132. General Policy

The board, in the rules, shall establish and approve all general policy of the department.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.133. Budget Approval

The board shall examine and approve all budget recommendations for the department that are to be

transmitted to the legislature. The commission may provide as a supplement to those recommendations statements of particular concern to the commission. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.134. Advisory Councils

The board may create and consult with advisory councils, including councils for the environment, councils for public information, or any other councils which the board may consider appropriate.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.135. Appointment

The board shall appoint an executive director of the department to serve at the will of the board. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 5.136 to 5.170 reserved for expansion]

SUBCHAPTER F. EXECUTIVE DIRECTOR

§ 5.171. General Responsibilities of the Executive Director

The executive director shall manage the administrative affairs of the department and shall exercise the executive functions of the department, including the execution of the rules, orders, and decisions of the department.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.172. Administrative Organization of Department

The executive director may organize and reorganize the administrative sections and divisions of the department in a manner and in a form that will achieve the greatest efficiency and effectiveness. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.173. Appearances at Hearings

The position of and information developed by the department shall be presented by the executive director or his designated representative at hearings of the board and the commission and at hearings held by federal, state, and local agencies on matters affecting the public's interest in the state's water resources, including matters that have been determined to be policies of the state. The executive director shall be named a party in hearings before the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.174. Contracts

(a) The executive director, on behalf of the department, may negotiate with and with the consent of the board enter into contracts with the United States or any of its agencies for the purpose of carrying out the powers, duties, and responsibilities of the department.

(b) The executive director, on behalf of the department, may negotiate with and with the consent of the board enter into contracts or other agreements with states and political subdivisions of this state or any other entity for the purpose of carrying out the powers, duties, and responsibilities of the department.

(c) The executive director, on behalf of the department, shall obtain the approval of the attorney general as to the legality of a resolution of the board authorizing state ownership in a project.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.175. Enforcement

The executive director may enforce the terms and conditions of any permit, certified filing, certificate of adjudication, order, standard, or rule by injunction or other appropriate remedy in a court of competent jurisdiction.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.176. Travel Expenses

The executive director shall be entitled to receive actual and necessary travel expenses. Other employees of the department are entitled to receive travel expenses as provided in the General Appropriations Act.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.177. Employee Moving Expenses

If provided by the legislative appropriation, the department may pay the costs of transporting and delivering the household goods and effects of employees transferred by the executive director from one permanent station to another when, in the judgment of the executive director, the transfer will serve in the best interest of the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.178. Gifts and Grants

The executive director may apply for, request, solicit, contract for, receive, and accept money and other assistance from any source to carry out the powers and duties under this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.179. Applications and Other Documents

(a) An application, petition, or other document requiring action of the department shall be presented to the executive director and handled as provided in this code and in the rules of the department.

(b) After an application, petition, or other document is processed requiring action by the commission, it shall be presented to the commission for consideration of filing. If accepted for filing by the commission, if required by law, the commission shall set a hearing date and issue appropriate notice.

(c) After an application is processed requiring action by the board, it shall be presented to the board for action as required by law and the rules.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.180. Development Fund Manager

The executive director, with the approval of the board, shall appoint the development fund manager who shall perform all duties required of that position by this code and the executive director.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.181. Public Interest Office

(a) There is created an office of public interest to insure that the department promotes the public's interest and is responsive to citizens. Public interest includes but is not limited to environmental quality and consumer protection.

(b) The office shall be headed by a public interest advocate appointed by the commission and the board. The executive director may submit the names and qualifications of candidates for public interest advocate to the board and commission. The board and commission shall meet jointly for the purpose of appointing or dismissing the public interest advocate by a majority vote of each body.

(c) The advocate shall represent the public interest and be a party to all proceedings before the department.

(d) The office shall be adequately staffed to carry out its function under this code.

(e) No ruling, decision, or other act of the board or the commission may be appealed by the advocate. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 5.182 to 5.220 reserved for expansion]

SUBCHAPTER G. TEXAS WATER COMMISSION

§ 5.221. Creation of Commission

The Texas Water Commission is created as an agency of the state and shall exercise the judicial functions of the department.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.2211. Application of Sunset Act

The Texas Water Commission is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished effective September 1, 1985.

[Added by Acts 1977, 65th Leg., p. 1849, ch. 735, § 2.119, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

§ 5.222. Members of Commission; Appointment

(a) The commission is composed of three members who are appointed by the governor with the advice and consent of the senate.

(b) The governor shall make the appointments in such a manner that each member is from a different section of the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.223. Officers of State; Oath

Each member of the commission is an officer of the state as that term is used in the constitution, and each member shall qualify by taking the official oath of office.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.224. Terms of Office

(a) The members of the commission hold office for staggered terms of six years, with the terms of one member expiring every two years. Each member holds office until his successor is appointed and has qualified.

(b) No person appointed to the commission may serve for more than two six-year terms.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.225. Full-Time Service

Each member of the commission shall serve on a full-time basis.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.226. Officers; Meetings

(a) The governor shall designate the chairman of the commission. He shall serve as chairman until the governor designates a different chairman.

(b) The chairman may designate another commissioner to act for him in his absence.

(c) The chairman shall preside at the meetings and hearings of the commission.

(d) The commission shall hold regular meetings and all hearings at times specified by a commission order and entered in its minutes. The commission may hold special meetings at the times and places in the state that the commission decides are appropriate.

ate for the performance of its duties. The chairman or acting chairman shall give the other members reasonable notice before holding a special meeting.

(e) A majority of the commission is a quorum. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.227. Chief Clerk

(a) The commission shall employ a chief clerk who shall assist the commission in carrying out its duties under this code.

(b) The chief clerk shall issue notice of public hearings held under the authority of the commission. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 5.228 to 5.260 reserved for expansion]

SUBCHAPTER H. GENERAL POWERS AND DUTIES OF THE COMMISSION

§ 5.261. Scope of Subchapter

The powers and duties enumerated in this subchapter are the general powers and duties of the commission and those incidental to the conduct of its business. The commission has other specific powers and duties as prescribed in other sections of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.262. Rules

(a) The commission shall adopt reasonable procedural rules to be followed in a commission hearing.

(b) Rules shall be adopted in the manner provided in the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.263. Applications and Other Documents

Applications and other documents to be filed with the commission for final action under this code shall be filed with the executive director and handled in the manner provided in this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.264. Hearings; Recess, Etc.

The commission may recess any hearing or examination from time to time and from place to place. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.265. Power to Administer Oaths

Each member of the commission, the chief clerk, or a hearing examiner may administer oaths in any hearing or examination on any matter submitted to the commission for action.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.266. Seal

The commission shall adopt an official seal.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.267. Commission to be Knowledgeable

The commission shall be knowledgeable of the water courses of the state and of the needs of the state concerning the use, storage, and conservation of water and of the need to maintain the quality of water in the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.268. Conservation and Quality of Water

The commission shall administer the law so as to promote the judicious use and the maximum conservation and protection of quality of water.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 5.269 to 5.310 reserved for expansion]

SUBCHAPTER I. OFFICE OF HEARING EXAMINERS

§ 5.311. Creation of Office

Within the commission there is created an office of hearing examiners to assist the commission in carrying out its powers and duties under this code. The office of hearing examiners is independent of the board, the executive director, and the divisions of the board and is under the exclusive control of the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.312. Organization of Office of Hearing Examiners

(a) The office of hearing examiners shall be under the direction of the chief hearing examiner.

(b) The chief hearing examiner and all assistant hearing examiners employed in the office of hearing examiners shall be attorneys licensed to practice law in this state and shall be employed by the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.313. Delegation of Responsibility

(a) The commission may delegate to a hearing examiner the responsibility to hear any matter before the commission.

(b) A hearing examiner shall prepare for and hold any hearing as directed by the commission and shall report to the commission on the hearing in the manner provided by law.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 5.314 to 5.350 reserved for expansion]

SUBCHAPTER J. JUDICIAL REVIEW

§ 5.351. Judicial Review of Department Acts

(a) A person affected by a ruling, order, decision, or other act of the department may file a petition to review, set aside, modify, or suspend the act of the department.

(b) A person affected by a ruling, order, or decision of the department must file his petition within 30 days after the effective date of the ruling, order, or decision. A person affected by an act other than a ruling, order, or decision must file his petition within 30 days after the date the department performed the act.

(c) Orders, decisions, or other actions of the board pursuant to Subchapters E and F of Chapter 16¹ and Chapter 17 of this code are not subject to appeal.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ Sections 16.131 et seq., 16.181 et seq.

§ 5.352. Remedy for Executive Director, Commission, or Board Inaction

A person affected by the failure of the executive director, commission, or board to act in a reasonable time on an application to appropriate water or to perform any other duty with reasonable promptness may file a petition to compel the executive director, commission, or board to show cause why it should not be directed by the court to take immediate action.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.353. Diligent Prosecution of Suit

The plaintiff shall prosecute with reasonable diligence any suit brought under Section 5.351 or 5.352 of this code. If the plaintiff does not secure proper service of process or does not prosecute his suit within one year after it is filed, the court shall presume that the suit has been abandoned. The court shall dismiss the suit on a motion for dismissal made by the attorney general unless the plaintiff

after receiving due notice can show good and sufficient cause for the delay.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.354. Venue

A suit instituted under Section 5.351 or 5.352 of this code must be brought in the district court of Travis County.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.355. Appeal of District Court Judgment

A judgment or order of a district court in a suit brought for or against the department is appealable as are other civil cases in which the district court has original jurisdiction.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.356. Appeal by Executive Precluded

No ruling, order, decision, or other act of the board or the commission may be appealed by the executive director.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 5.357. Law Suits; Citation

Law suits filed by and against the board, commission, or executive director shall be in the name of the department. In suits against the department, board, commission, or executive director, citation may be served on the executive director or deputy director.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Chapters 6 to 10 reserved for expansion]

SUBTITLE B. WATER RIGHTS

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Acts 1977, 65th Leg., p. 2207, ch. 870, revised Title 2 of the Water Code, effective September 1, 1977. For disposition of provisions of former Title 2 in the revised Title, see Disposition Table preceding § 5.001.

SUBCHAPTER A. GENERAL PROVISIONS

§ 11.001. Vested Rights Not Affected

(a) Nothing in this code affects vested private rights to the use of water, except to the extent that provisions of Subchapter G of this chapter might affect these rights.

(b) This code does not recognize any riparian right in the owner of any land the title to which passed out of the State of Texas after July 1, 1895. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.002. Definitions

In this chapter and in Chapter 12 of this code:

- (1) "Commission" means the Texas Water Commission.
- (2) "Board" means the Texas Water Development Board.
- (3) "Executive director" means the executive director of the Texas Department of Water Resources.
- (4) "Department" means the Texas Department of Water Resources.
- (5) "Beneficial use" means use of the amount of water which is economically necessary for a purpose authorized by this chapter, when reasonable intelligence and reasonable diligence are used in applying the water to that purpose.
- (6) "Water right" means a right acquired under the laws of this state to impound, divert, or use state water.
- (7) "Appropriator" means a person who has made beneficial use of any water in a lawful manner under the provisions of any act of the legislature before the enactment of Chapter 171, General Laws, Acts of the 33rd Legislature, 1913, as amended, and who has filed with the State Board of Water Engineers a record of his appropriation as required by the 1913 Act, as amended, or a person who makes or has made beneficial use of any water within the limitations of a permit lawfully issued by the commission or one of its predecessors.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.003. Streams That Form Boundaries Included

This chapter applies to all streams or other sources of water supply lying upon or forming a part of the boundaries of this state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.004. Department to Receive Certified Copies of Judgments, Etc.

When any court of record renders a judgment, decree, or order affecting the title to any water right, claim, appropriation, or irrigation facility or affecting any matter over which the department is given supervision by law, the clerk of the court shall immediately transmit to the department a certified copy of the judgment, decree, or order.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.005. Applicability to Works Under Federal Reclamation Act

This chapter applies to the construction, maintenance, and operation of irrigation works constructed in this state under the federal reclamation act, as amended (43 U.S.C. Sec. 371 et seq.), to the extent that this chapter is not inconsistent with the federal act or the regulations made under that act by the secretary of the interior.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 11.006 to 11.020 reserved for expansion]

SUBCHAPTER B. RIGHTS IN STATE WATER

§ 11.021. State Water

(a) The water of the ordinary flow, underflow, and tides of every flowing river, natural stream, and lake, and of every bay or arm of the Gulf of Mexico, and the storm water, floodwater, and rainwater of every river, natural stream, canyon, ravine, depression, and watershed in the state is the property of the state.

(b) Water imported from any source outside the boundaries of the state for use in the state and which is transported through the beds and banks of any navigable stream within the state or by utilizing any facilities owned or operated by the state is the property of the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.022. Acquisition of Right to Use State Water

The right to the use of state water may be acquired by appropriation in the manner and for the purposes provided in this chapter. When the right to use state water is lawfully acquired, it may be taken or diverted from its natural channel.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.023. Purposes for Which Water May be Appropriated

(a) State water may be appropriated, stored, or diverted for:

- (1) domestic and municipal uses, including water for sustaining human life and the life of domestic animals;
- (2) industrial uses, meaning processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric;
- (3) irrigation;
- (4) mining and recovery of minerals;
- (5) hydroelectric power;
- (6) navigation;
- (7) recreation and pleasure;
- (8) stock raising;
- (9) public parks; and
- (10) game preserves.

(b) State water also may be appropriated, stored, or diverted for any other beneficial use.

(c) Unappropriated storm water and floodwater may be appropriated to recharge underground fresh-water bearing sands and aquifers in the portion of the Edwards underground reservoir located within Kinney, Uvalde, Medina, Bexar, Comal, and Hays counties if it can be established by expert testimony that an unreasonable loss of state water will not occur and that the water can be withdrawn at a later time for application to a beneficial use. The normal or ordinary flow of a stream or watercourse may never be appropriated, diverted, or used by a permittee for this recharge purpose.

(d) When it is put or allowed to sink into the ground, water appropriated under Subsection (c) of this section loses its character and classification as storm water or floodwater and is considered percolating groundwater.

(e) The amount of water appropriated for each purpose mentioned in this section shall be specifically appropriated for that purpose, subject to the preferences prescribed in Section 11.024 of this code.

(f) The water of any arm, inlet, or bay of the Gulf of Mexico may be changed from salt water to sweet or fresh water and held or stored by dams, dikes, or other structures and may be taken or diverted for any purpose authorized by this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 5.023 by Acts 1977, 65th Leg., p. 249, ch. 116, § 1.

§ 11.024. Appropriation: Preferences

In order to conserve and properly utilize state water, the public welfare requires not only recogni-

tion of beneficial uses but also a constructive public policy regarding the preferences between these uses, and it is therefore declared to be the public policy of this state that in appropriating state water preference shall be given to the following uses in the order named:

- (1) domestic and municipal uses, including water for sustaining human life and the life of domestic animals;
- (2) industrial uses, meaning processes designed to convert materials of a lower order of value into forms having greater usability and commercial value, including the development of power by means other than hydroelectric;
- (3) irrigation;
- (4) mining and recovery of minerals;
- (5) hydroelectric power;
- (6) navigation;
- (7) recreation and pleasure; and
- (8) other beneficial uses.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.025. Scope of Appropriative Right

A right to use state water under a permit or a certified filing is limited not only to the amount specifically appropriated but also to the amount which is being or can be beneficially used for the purposes specified in the appropriation, and all water not so used is considered not appropriated. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.026. Perfection of an Appropriation

No right to appropriate water is perfected unless the water has been beneficially used for a purpose stated in the original declaration of intention to appropriate water or stated in a permit issued by the commission or one of its predecessors.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.027. Rights Between Appropriators

As between appropriators, the first in time is the first in right.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.028. Exception

Any appropriation made after May 17, 1931, for any purpose other than domestic or municipal use is subject to the right of any city or town to make further appropriations of the water for domestic or municipal use without paying for the water. However, this section does not apply to any stream which constitutes or defines the international boundary between the United States of America and the Republic of Mexico.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.029. Title to Appropriation by Limitation

When an appropriator from a source of water supply has used water under the terms of a certified filing or a permit for a period of three years, he acquires title to his appropriation by limitation against any other claimant of water from the same source of water supply and against any riparian owner on the same source of water supply.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.030. Forfeiture of Appropriation

If any lawful appropriation or use of state water is wilfully abandoned during any three successive years, the right to use the water is forfeited and the water is again subject to appropriation.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.031. Annual Report

(a) Not later than March 1 of every year, every person who takes water during the preceding calendar year from a stream or reservoir shall submit a written report to the department on a form prescribed by the department. The report shall contain all information required by the department to aid in administering the water law and in making inventory of the state's water resources. However, with the exception of public utilities and political subdivisions which furnish water for municipal uses, no report is required of persons who take water solely for domestic or livestock purposes.

(b) A person who fails to file an annual report with the department as required by this section is liable to a penalty of \$25, plus \$1 per day for each day he fails to file the statement after March 1. However, the maximum penalty under this section is \$150. The state may sue to recover the penalty. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.032. Records

(a) A person who owns and operates a system of waterworks used for a purpose authorized by this code shall keep a detailed record of daily operations so that the quantity of water taken or diverted each calendar year can be determined.

(b) If the water is used for irrigation, the record must show the number of acres irrigated, the character of the crops grown, and the yield per acre. No survey is required to determine the exact number of acres irrigated.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.033. Eminent Domain

The right to take water necessary for domestic and municipal supply purposes is primary and funda-

mental, and the right to recover from other uses water which is essential to domestic and municipal supply purposes is paramount and unquestioned in the policy of the state. All political subdivisions of the state and constitutional governmental agencies exercising delegated legislative powers have the power of eminent domain to be exercised as provided by law for domestic, municipal, and manufacturing uses and for other purposes authorized by this code, including the irrigation of land for all requirements of agricultural employment.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.034. Reservoir Site: Land and Rights-of-Way

An appropriator who is authorized to construct a dam or reservoir is granted the right-of-way, not to exceed 100 feet wide, and the necessary area for the site, over any public school land, university land, or asylum land of this state and the use of the rock, gravel, and timber on the site and right-of-way for construction purposes, after paying compensation as determined by the commission. An appropriator may acquire the reservoir site and rights-of-way over private land by contract.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.035. Condemnation of Private Property

(a) An appropriator may obtain rights-of-way over private land and may obtain the land necessary for pumping plants, intakes, headgates, and storage reservoirs by condemnation.

(b) The party obtaining private property by condemnation shall cause damages to be assessed and paid for as provided by the statutes of this state relating to eminent domain.

(c) If the party exercising the power granted by this section is not a corporation, district, city, or town, he shall apply to the department for the condemnation.

(d) The executive director shall have the proposed condemnation investigated. After the investigation, the commission may give notice to the party owning the land proposed to be condemned and hold a hearing on the proposed condemnation.

(e) If after a hearing the commission determines that the condemnation is necessary, the executive director may institute condemnation proceedings in the name of the State of Texas for the use and benefit of the party who applied for the condemnation and all others similarly situated.

(f) The parties at whose instance a condemnation suit is instituted shall pay the costs of the suit and condemnation in proportion to the benefits received by each party as fixed by the commission. Before using any of the condemned rights or property, a

party receiving the rights or property shall pay the amount of costs fixed by the commission.

(g) If, after the costs of the condemnation proceedings have been paid, a party seeks to take the benefits of the condemnation proceedings, he shall apply to the department for the benefits. The commission may grant the application and fix the fees and charges to be paid by the applicant.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.036. Conserved or Stored Water: Supply Contract

(a) A person, association of persons, corporation, or water improvement or irrigation district having in possession and control any storm water, floodwater, or rainwater that is conserved or stored as authorized by this chapter may contract to supply the water to any person, association of persons, corporation, or water improvement or irrigation district having the right to acquire use of the water.

(b) The price and terms of the contract shall be just and reasonable and without discrimination, and the contract is subject to the same revision and control as provided in this code for other water rates and charges. If any person uses the stored or conserved water without first entering into a contract with the party that conserved or stored it, the user shall pay for the use at a rate determined by the commission to be just and reasonable, subject to court review as in other cases.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.037. Water Suppliers: Rules and Regulations

Every person, association of persons, corporation, or irrigation district conserving or supplying water for any of the purposes authorized by this chapter shall make and publish reasonable rules and regulations relating to:

- (1) the method of supply;
- (2) the use and distribution of the water; and
- (3) the procedure for applying for the water and paying for it.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.038. Rights of Owners of Land Adjoining Canal, Etc.

(a) A person who owns or holds a possessory interest in land adjoining or contiguous to a canal, ditch, flume, lateral, dam, reservoir, or lake constructed and maintained under the provisions of this chapter and who has secured a right to the use of water in the canal, ditch, flume, lateral, dam, reservoir, or lake is entitled to be supplied from the canal, ditch, flume, lateral, dam, reservoir, or lake with water for irrigation of the land and for mining, milling, manu-

facturing, development of power, and stock raising, in accordance with the terms of his contract.

(b) If the person, association of persons, or corporation owning or controlling the water and the person who owns or holds a possessory interest in the adjoining land cannot agree on a price for a permanent water right or for the use of enough water for irrigation of the person's land or for mining, milling, manufacturing, development of power, or stock raising, then the party owning or controlling the water, if he has any water not contracted to others, shall furnish the water necessary for these purposes at reasonable and nondiscriminatory prices.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.039. Distribution of Water During Shortage

(a) If a shortage of water in a water supply results from drouth, accident, or other cause, the water to be distributed shall be divided among all customers pro rata, according to the amount each may be entitled to, so that preference is given to no one and everyone suffers alike.

(b) Nothing in Subsection (a) of this section precludes the person, association of persons, or corporation owning or controlling the water from supplying water to a person who has a prior vested right to the water under the laws of this state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.040. Permanent Water Right

(a) A permanent water right is an easement and passes with the title to land.

(b) A written instrument conveying a permanent water right may be recorded in the same manner as any other instrument relating to a conveyance of land.

(c) The owner of a permanent water right is entitled to use water according to the terms of his contract. If there is no contract, the owner is entitled to use water at a just, reasonable, and nondiscriminatory price.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.041. Denial of Water: Complaint

(a) Any person entitled to receive or use water from any canal, ditch, flume, lateral, dam, reservoir, or lake or from any conserved or stored supply may present to the department a written petition showing:

- (1) that he is entitled to receive or use the water;
- (2) that he is willing and able to pay a just and reasonable price for the water;

(3) that the party owning or controlling the water supply has water not contracted to others and available for the petitioner's use; and

(4) that the party owning or controlling the water supply fails or refuses to supply the available water to the petitioner, or that the price or rental demanded for the available water is not reasonable and just or is discriminatory.

(b) If the petition is accompanied by a deposit of \$25, the executive director shall have a preliminary investigation of the complaint made and determine whether or not there are probable grounds for the complaint.

(c) If, after preliminary investigation, the executive director determines that probable grounds exist for the complaint, the commission shall enter an order setting a time and place for a hearing on the petition.

(d) The commission may require the complainant to make an additional deposit or execute a bond satisfactory to the commission in an amount fixed by the commission conditioned on the payment of all costs of the proceeding.

(e) At least 20 days before the date set for the hearing, the commission shall transmit by registered mail a certified copy of the petition and a certified copy of the hearing order to the person against whom the complaint is made.

(f) The commission shall hold a hearing on the complaint at the time and place stated in the order. It may hear evidence orally or by affidavit in support of or against the complaint, and it may hear arguments. On completion of the hearing, the commission shall render a written decision.

(g) If, after the preliminary investigation, the executive director determines that no probable grounds exist for the complaint, the executive director shall dismiss the complaint. The department may either return the deposit or pay it into the State Treasury.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.042. Delivering Water Down Banks and Beds

Under rules prescribed by the board, a person, association of persons, corporation, or water improvement or irrigation district supplying stored or conserved water under contract as provided in this chapter may use the bank and bed of any flowing natural stream in the state to convey the water from the place of storage to the place of use or to the diversion plant of the appropriator. The board shall prescribe rules for this purpose.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.043. Recordation of Conveyance of Irrigation Work

(a) A conveyance of a ditch, canal, or reservoir or other irrigation work or an interest in such an irrigation work must be executed and acknowledged in the same manner as a conveyance of real estate. Such a conveyance must be recorded in the deed records of the county in which the ditch, canal, or reservoir is located.

(b) If a conveyance of property covered by Subsection (a) of this section is not made in the prescribed manner, it is null and void against subsequent purchasers in good faith and for valuable consideration.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.044. Roads and Highways

(a) An appropriator has the right to construct ditches, canals, or other conveyances along or across all roads and highways necessary for the construction of waterworks. Bridges, culverts, or siphons shall be constructed at all road and highway crossings as necessary to prevent any impairment of the uses of the road or highway.

(b) If any public road, highway, or public bridge is located on the ground necessary for a damsite, reservoir, or lake, the commissioners court shall change the road and remove the bridge so that it does not interfere with the construction of the proposed dam, reservoir, or lake. The party desiring to construct the dam, reservoir, or lake shall pay the expense of moving the bridge or roadway.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.045. Ditches and Canals

An appropriator is entitled to construct ditches and canals along or across any stream of water.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.046. Return Unused Water

A person who takes or diverts water from a running stream for the purposes authorized by this code shall conduct surplus water back to the stream from which it was taken if the water can be returned by gravity flow and it is reasonably practicable to do so.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.047. Failure to Fence

If a person, association of persons, corporation, or water improvement or irrigation district that owns or controls a ditch, canal, reservoir, dam, or lake does not keep it securely fenced, there is no cause of action against the owner of livestock that trespass.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.048. Cost of Maintaining Irrigation Ditch

(a) If an irrigation ditch is owned or used by two or more persons, mutual or cooperative companies, or corporations, each party who has an interest in the ditch shall pay his proportionate share of the cost of operating and maintaining the ditch.

(b) If a person who owns a joint interest in a ditch refuses to do or to pay for his proportionate share of the work that is reasonably necessary for the proper maintenance and operation of the ditch, the other owners may, after giving him 10 days written notice, proceed themselves to do his share of the necessary work and recover from him the reasonable expense or value of the work or labor performed. The action for the cost of the work may be brought in any court having jurisdiction over the amount in controversy. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.049. Examination and Survey

A person may make any necessary examination and survey in order to select the most advantageous sites for a reservoir and rights-of-way to be used for any of the purposes authorized by this chapter, and for this purpose a person may enter the land or water of any other person.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.050. Tidewater Gates, Etc.

(a) An appropriator authorized to take water for irrigation, subject to the laws of the United States and the regulations made under its authority, may construct gates or breakwaters, dams, or dikes with gates, in waters wholly in this state, as necessary to prevent pollution of the fresh water of any river, bayou, or stream due to the ebb and flow of the tides of the Gulf of Mexico.

(b) The work shall be done in such a manner that navigation of vessels on the stream is not obstructed, and where any gate is used, the appropriator shall at all times keep a competent person at the gate to allow free navigation.

(c) A dam, dike, or breakwater constructed under this section may not be placed at any point except where Gulf tides ebb and flow and may not be constructed so as to obstruct the flow of fresh water to any appropriator or riparian owner downstream. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.051. Irrigation: Lien on Crops

(a) A person who constructs a ditch, canal, dam, lake, or reservoir for the purpose of irrigation and who leases, rents, furnishes, or supplies water to any person for irrigation, with or without a contract, has a preference lien superior to every other lien on the irrigated crops. However, when any irrigation dis-

trict or conservation and reclamation district obtains a water supply under contract with the United States, the board of directors of the district, by resolution entered in its minutes, with the consent of the secretary of the interior, may waive the preference lien in whole or in part.

(b) To enforce the lien, the lienholder has all the rights and remedies prescribed by Articles 5222 through 5239, Revised Civil Statutes of Texas, 1925. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.052. Activities Under the Federal Reclamation Act

The Secretary of the Interior of the United States is authorized to conduct any activities in this state necessary to perform his duties under the federal reclamation act, as amended (43 U.S.C. Section 371 et seq.).

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 11.053 to 11.080 reserved for expansion]

SUBCHAPTER C. UNLAWFUL USE,
DIVERSION, WASTE, ETC.

§ 11.081. Unlawful Use of State Water

(a) No person may wilfully take, divert, or appropriate any state water for any purpose without first complying with all applicable requirements of this chapter.

(b) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$100 or by confinement in the county jail for not more than six months or by both.

(c) A person commits a separate offense each day he continues to take, divert, or appropriate water in violation of this section.

(d) Possession of state water when the right to its use has not been acquired according to the provisions of this chapter is prima facie evidence of a violation of this section.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.082. Unlawful Use: Civil Penalty

(a) A person who wilfully takes, diverts, or appropriates state water without complying with the applicable requirements of this chapter is also liable to a penalty of not to exceed \$100 per day for each day he continues the taking, diversion, or appropriation.

(b) The state may recover the penalties prescribed in Subsection (a) of this section by suit brought for that purpose in a court of competent jurisdiction.

(c) An action to collect the penalty provided in this section must be brought within one year from the date of the alleged violation.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.083. Other Unlawful Taking

(a) No person may wilfully open, close, change, or interfere with any headgate or water box without lawful authority.

(b) No person may wilfully use water or conduct water through his ditch or upon his land unless he is entitled to do so.

(c) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor more than \$1,000 or by confinement in the county jail for not more than six months.

(d) The possession or use of water on his land by a person not entitled to the water by the provisions of this code is prima facie evidence of a violation of this section.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.084. Sale of Permanent Water Right Without a Permit

(a) No person may sell or offer to sell a permanent water right unless he has perfected a right to appropriate state water by a certified filing, or unless he has obtained a permit from the commission, authorizing the use of the water for the purposes for which the permanent water right is conveyed.

(b) A person who violates Subsection (a) of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$1,000 or by confinement in the county jail for not more than one year or by both.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.085. Interwatershed Transfers

(a) No person may take or divert any of the water of the ordinary flow, underflow, or storm flow of any stream, watercourse, or watershed in this state into any other natural stream, watercourse, or watershed to the prejudice of any person or property situated within the watershed from which the water is proposed to be taken or diverted.

(b) No person may transfer water from one watershed to another without first applying for and receiving a permit from the commission to do so. Before issuing such a permit, the commission shall hold a hearing to determine the rights that might be affected by the transfer. The commission shall give notice and hold the hearing in the manner prescribed by its procedural rules.

(c) A person who takes or diverts water in violation of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$500 or by confinement in the county jail for not more than six months.

(d) A person commits a separate offense each day he continues to take or divert water in violation of this section.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.086. Overflow Caused by Diversion of Water

(a) No person may divert or impound the natural flow of surface waters in this state, or permit a diversion or impounding by him to continue, in a manner that damages the property of another by the overflow of the water diverted or impounded.

(b) A person whose property is injured by an overflow of water caused by an unlawful diversion or impounding has remedies at law and in equity and may recover damages occasioned by the overflow.

(c) The prohibition of Subsection (a) of this section does not in any way affect the construction and maintenance of levees and other improvements to control floods, overflows, and freshets in rivers, creeks, and streams or the construction of canals for conveying water for irrigation or other purposes authorized by this code. However, this subsection does not authorize any person to construct a canal, lateral canal, or ditch that obstructs a river, creek, bayou, gully, slough, ditch, or other well-defined natural drainage.

(d) Where gullies or sloughs have cut away or intersected the banks of a river or creek to allow floodwaters from the river or creek to overflow the land nearby, the owner of the flooded land may fill the mouth of the gullies or sloughs up to the height of the adjoining banks of the river or creek without liability to other property owners.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.087. Diversion of Water on International Stream

(a) When storm water or floodwater is released from a dam or reservoir on an international stream and the water is designated for use or storage downstream by a specified user who is legally entitled to receive it, no other person may store, divert, appropriate, or use the water or interfere with its passage downstream.

(b) The board may make and enforce rules and orders to implement the provisions of this section, including rules and orders designed to:

(1) establish an orderly system for water releases and diversions in order to protect vested rights and to avoid the loss of released water;

(2) prescribe the time that releases of water may begin and end;

(3) determine the proportionate quantities of the released water in transit and the water that would have been flowing in the stream without the addition of the released water;

(4) require each owner or operator of a dam or reservoir on the stream between the point of release and the point of destination to allow free passage of the released water in transit; and

(5) establish other requirements the board considers necessary to effectuate the purposes of this section.

(c) Orders made by the commission to effectuate the board's regulations under this section need not be published, but the commission shall transmit a copy of every such order by certified mail to each diverter of water and to each reservoir owner on the stream between the point of release and the point of destination of the released water as shown by the records of the department.

(d) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$100 or by confinement in the county jail for not more than six months or by both. A person commits a separate offense each day he continues to violate this section. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.088. Destruction of Waterworks

(a) No person may wilfully cut, dig, break down, destroy, or injure or open a gate, bank, embankment, or side of any ditch, canal, reservoir, flume, tunnel or feeder, pump or machinery, building, structure, or other work which is the property of another, or in which another owns an interest, or which is lawfully possessed or being used by another, and which is used for irrigation, milling, mining, manufacturing, the development of power, domestic purposes, or stock raising, with intent to:

(1) maliciously injure a person, association, corporation, water improvement or irrigation district;

(2) gain advantage for himself; or

(3) take or steal water or cause water to run out or waste out of the ditch, canal, or reservoir, feeder, or flume for his own advantage or to the injury of a person lawfully entitled to the use of the water or the use or management of the ditch, canal, tunnel, reservoir, feeder, flume, machine, structure, or other irrigation work.

(b) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor more than \$1,000 or by confinement in the county jail for not more than two years or by both. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.089. Johnson Grass or Russian Thistle

(a) No person who owns, leases, or operates a ditch, canal, or reservoir or who cultivates land abutting a reservoir, ditch, flume, canal, wasteway, or lateral may permit Johnson grass or Russian thistle to go to seed on the waterway within 10 feet of the high-water line if the waterway crosses or lies on the land owned or controlled by him.

(b) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$25 nor more than \$500 or by confinement in the county jail for not less than 30 days nor more than six months or by both.

(c) The provisions of this section are not applicable in Tom Green, Sterling, Irion, Schleicher, McCullough, Brewster, Menard, Maverick, Kinney, Val Verde, and San Saba counties.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.090. Polluting and Littering

(a) No person may deposit in any canal, lateral, reservoir, or lake, used for a purpose named in this chapter, the carcass of any dead animal, tin cans, discarded buckets or pails, garbage, ashes, bailing or barbed wire, earth, offal, or refuse of any character or any other article which might pollute the water or obstruct the flow of a canal or similar structure.

(b) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor more than \$100 or by confinement in the county jail for not more than six months or by both.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.091. Interference With Delivery of Water Under Contract

(a) No person may wilfully take, divert, appropriate, or interfere with the delivery of conserved or stored water under Section 11.042 of this code.

(b) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$100 or by confinement in the county jail for not more than six months or by both.

(c) A person commits a separate offense each day he continues to violate this section.

(d) On the petition of any interested party, the district court of any county through which the water may pass shall enjoin any actual or threatened act prohibited by this section.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.092. Wasteful Use of Water

A person who owns or has a possessory right to land contiguous to a canal or irrigation system and who acquires the right by contract to use the water from it commits waste if he:

- (1) permits the excessive or wasteful use of water by any of his agents or employees; or
- (2) permits the water to be applied to anything but a beneficial use.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.093. Abatement of Waste as Public Nuisance

(a) A person who permits an unreasonable loss of water through faulty design or negligent operation of any waterworks using water for a purpose named in this chapter commits waste, and the commission may declare the works causing the waste to be a public nuisance. The commission may take the necessary action to abate the nuisance. Also, any person who may be injured by the waste may sue in the district court having jurisdiction over the works causing the waste to have the operation of the works abated as a public nuisance.

(b) In case of a wasteful use of water defined by Section 11.092 of this code, the commission shall declare the use to be a public nuisance and shall act to abate the nuisance by directing the person supplying the water to close the water gates of the person wasting the water and to keep them closed until the commission determines that the unlawful use of water is corrected.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.094. Penalty for Use of Works Declared Public Nuisance

(a) No person may operate or attempt to operate any waterworks or irrigation system or use any water under contract with any waterworks or irrigation system that has been previously declared to be a public nuisance.

(b) A person who violates any provision of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$1,000 or by confinement in the county jail for not more than one year or by both.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.095. Penalty for Waste

A person who wilfully or knowingly commits waste as provided in Section 11.092 or 11.093(a) of this code is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$500 or by confinement in the county jail for not more than 90 days or by both.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.096. Obstruction of Navigable Streams

(a) No person may obstruct the navigation of any stream which can be navigated by steamboats, keelboats, or flatboats by cutting and felling trees or by building on or across the stream any dike, milldam, bridge, or other obstruction.

(b) A person who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$50 nor more than \$500.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 11.097 to 11.120 reserved for expansion]

SUBCHAPTER D. PERMITS TO USE
STATE WATER

§ 11.121. Permit Required

Except as provided in Section 11.142 of this code, no person may appropriate any state water or begin construction of any work designed for the storage, taking, or diversion of water without first obtaining a permit from the commission to make the appropriation.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.122. Amendments to Water Rights Required

(a) All holders of permits, certified filings, and certificates of adjudication issued under Section 11.323 of this code shall obtain from the commission authority to change the place of use, purpose of use, point of diversion, rate of diversion, acreage to be irrigated, or otherwise alter a water right.

(b) The board shall adopt rules to effectuate the provisions of this section.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.123. Permit Preferences

The commission shall give preference to applications in the order declared in Section 11.024 of this code and to applications which will effectuate the maximum utilization of water and are calculated to prevent the escape of water without contribution to a beneficial public service.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.124. Application for Permit

(a) An application to appropriate unappropriated state water must:

- (1) be in writing and sworn to;
- (2) contain the name and post-office address of the applicant;
- (3) identify the source of water supply;

(4) state the nature and purposes of the proposed use and the amount of water to be used for each purpose;

(5) state the location and describe the proposed facilities;

(6) state the time within which the proposed construction is to begin; and

(7) state the time required for the application of water to the proposed use.

(b) If the proposed use is irrigation, the application must also contain:

(1) a description of the land proposed to be irrigated; and

(2) an estimate of the total acreage to be irrigated.

(c) If the application is for a seasonal permit, under the provisions of Section 11.137 of this code, the application must also state the months or seasons of the year the water is to be used.

(d) If the application is for a temporary permit under the provisions of Section 11.138 of this code, the application must also state the period of the proposed temporary use.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.125. Map or Plat

(a) The application must be accompanied by a map or plat drawn on tracing linen on a scale not less than one inch equals 2,000 feet.

(b) The map or plat must show substantially:

(1) the location and extent of the proposed facilities;

(2) the location of the headgate, intake, pumping plant, or point of diversion by course and distance from permanent natural objects or landmarks;

(3) the location of the main ditch or canal and the locations of the laterals or branches of the main ditch or canal;

(4) the course of the water supply;

(5) the position, waterline, and area of all lakes, reservoirs, or basins intended to be used or created;

(6) the point of intersection of the proposed facilities with any other ditch, canal, lateral, lake, or reservoir; and

(7) the location of any ditch, canal, lateral, reservoir, lake, dam, or other similar facility already existing in the area, drawn in a different colored ink than that used to represent the proposed facilities, and the name of the owner of the existing facility.

(c) The map or plat must also contain:

(1) the name of the proposed facility or enterprise;

(2) the name of the applicant; and

(3) a certificate of the surveyor, giving the date of his survey, his name and post-office address, and the date of the application which the certificate accompanies.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.126. Department Requirements

(a) If the proposed taking or diversion of water for irrigation exceeds nine cubic feet per second, the executive director may require additional information as prescribed by this section.

(b) The executive director may require a continuous longitudinal profile, cross sections of the proposed channel, and the detail plans of any proposed structure, on any scales and with any definition the executive director considers necessary or expedient.

(c) If the application proposes construction of a dam greater than six feet in height either for diversion or storage, the executive director may also require filing a copy of all plans and specifications and a copy of the engineer's field notes of any survey of the lake or reservoir. No work on the project shall proceed until approval of the plans is obtained from the commission.

(d) If the applicant is a corporation, the commission may require filing a certified copy of its articles of incorporation, a statement of the names and addresses of its directors and officers, and a statement of the amount of its authorized capital stock and its paid-up capital stock.

(e) If the applicant is not a corporation, the commission may require filing a sworn statement showing the name and address of each person interested in the appropriation, the extent of his interest, and his financial condition.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.127. Additional Requirements: Drainage Plans

If the commission believes that the efficient operation of any existing or proposed irrigation system may be adversely affected by lack of adequate drainage facilities incident to the work proposed to be done by an applicant, the commission may require the applicant to submit plans for drainage adequate to guard against any injury which the proposed work may entail.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.128. Payment of Fee

If the applicant is not exempted from payment of the filing fee under Section 12.112 of this code, he shall pay the filing fee prescribed by Section 12.111(b) of this code at the time he files the applica-

tion. The commission shall not record, file, or consider the application until the executive director certifies to the commission that the fee is paid. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.129. Review of Application; Amendment

The commission shall determine whether the application, maps, and other materials comply with the requirements of this chapter and the rules of the board. The commission may require amendment of the application, maps, or other materials to achieve necessary compliance.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.130. Recording Applications

(a) The executive director shall have all applications for appropriations recorded in a well-bound book kept for that purpose in the department's office.

(b) The executive director shall have the applications indexed alphabetically in the name of:

- (1) the applicant;
- (2) the stream or source from which the appropriation is sought to be made; and
- (3) the county in which the appropriation is sought to be made.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.131. Examination and Denial of Application Without Hearing

(a) The commission shall make a preliminary examination of the application, and if it appears that there is no unappropriated water in the source of supply or that the proposed appropriation should not be allowed for other reasons, the commission may deny the application.

(b) If the commission denies the application under this section and the applicant elects not to proceed further, the commission may order any part of the fee submitted with the application returned to the applicant.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.132. Notice of Hearing

(a) The commission shall give notice of the hearing on the application as prescribed by this section.

- (b) In the notice, the commission shall:
- (1) state the name and address of the applicant;
 - (2) state the date the application was filed;
 - (3) state the purpose and extent of the proposed appropriation of water;

(4) identify the source of supply and the place where the water is to be stored or taken or diverted from the source of supply;

(5) specify the time and place of the hearing; and

(6) give any additional information the commission considers necessary.

(c) If the proposed use is for irrigation, the commission shall include in the notice a general description of the location and area of the land to be irrigated.

(d) The notice shall be published once a week for two consecutive weeks before the date stated in the notice for the hearing in some newspaper having a general circulation in the section of the state where the source of water is located.

(e) The commission shall also mail a copy of the notice by first-class mail, postage prepaid, to each claimant or appropriator of water from the source of water supply, the record of whose claim or appropriation has been filed in the office of the commission. The notice shall also be mailed by first-class mail, postage prepaid, to all navigation districts within the watershed concerned. The inadvertent failure of the commission to mail a notice to a navigation district which is not a claimant or appropriator of water does not prevent the hearing on the application.

(f) The notice shall be mailed and first published not less than 20 days before the date set for the hearing.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.133. Hearing

At the time and place stated in the notice, the commission shall hold a hearing on the application. Any person may appear at the hearing in person or by attorney or may enter his appearance in writing. Any person who appears may present objection to the issuance of the permit. The commission may receive evidence, orally or by affidavit, in support of or in opposition to the issuance of the permit, and it may hear arguments.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.134. Action on Application

(a) After the hearing, the commission shall make a written decision granting or denying the application. The application may be granted or denied in whole or in part.

(b) The commission shall grant the application only if:

- (1) the application conforms to the requirements prescribed by this chapter and is accompanied by the prescribed fee;

(2) unappropriated water is available in the source of supply; and

(3) the proposed appropriation:

(A) contemplates the application of water to any beneficial use;

(B) does not impair existing water rights or vested riparian rights; and

(C) is not detrimental to the public welfare.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.135. Issuance of Permit

(a) On approval of an application, the commission shall issue a permit to the applicant. The applicant's right to take and use water is limited to the extent and purposes stated in the permit.

(b) The permit shall be in writing and attested by the seal of the commission, and it shall contain substantially the following information:

(1) the name of the person to whom the permit is issued;

(2) the date the permit is issued;

(3) the date the original application was filed;

(4) the use or purpose for which the appropriation is to be made;

(5) the amount or volume of water authorized to be appropriated for each purpose;

(6) a general description of the source of supply from which the appropriation is proposed to be made;

(7) the time within which construction or work must begin and the time within which it must be completed; and

(8) any other information the board prescribes.

(c) If the appropriation is for irrigation, the commission shall also place in the permit a description and statement of the approximate area of the land to be irrigated.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.136. Recording of Permit

(a) The commission shall transmit the permit by registered mail to the county clerk of the county in which the appropriation is to be made.

(b) When the county clerk receives the permit and is paid the recording fee (as prescribed by Article 3930, Revised Civil Statutes of Texas, 1925, as amended), he shall file and record the permit in a well-bound book kept for that purpose. He shall index the permit alphabetically in the name of the applicant and of the stream or source of water supply. After he has recorded the permit, the county clerk shall deliver the permit, on demand, to the applicant.

(c) When the permit is filed in the office of the county clerk, it is constructive notice of:

(1) the filing of the application;

(2) the issuance of the permit; and

(3) all the rights arising under the filing of the application and the issuance of the permit.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.137. Seasonal Permits

(a) The commission may issue seasonal permits in the same manner that it issues regular permits. The provisions of this chapter governing issuance of regular permits apply to issuance of seasonal permits.

(b) The right to take, use, or divert water under seasonal permit is limited to the portion or portions of the calendar year stated in the permit.

(c) In a seasonal permit, the commission shall specify the conditions necessary to fully protect prior appropriations or vested rights on the stream.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.138. Temporary permits

(a) The commission may issue temporary permits for beneficial purposes to the extent that they do not interfere with or adversely affect prior appropriations or vested rights on the stream from which water is to be diverted under such temporary permit. The commission may, by appropriate order, authorize any member of the commission or its executive director to approve and issue temporary permits without notice and hearing if it appears to such issuing party that sufficient water is available at the proposed point of diversion to satisfy the requirements of the temporary permit as well as all existing rights. No temporary permit issued without notice and hearing shall authorize more than 10 acre-feet of water, nor may it be for a term in excess of one year.

(b) The commission may prescribe rules governing notice and procedure for the issuance of temporary permits.

(c) As between temporary permits, the one applied for first has priority.

(d) The commission may not issue a temporary permit for a period exceeding three calendar years.

(e) A temporary permit does not vest in its holder a permanent right to the use of water.

(f) A temporary permit expires and shall be cancelled by the commission in accordance with the terms of the permit.

(g) The board may prescribe by rule the fees to be paid for issuance of temporary permits, but no fee for issuance or extension of a temporary permit shall exceed \$500.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 5.137 by Acts 1977, 65th Leg., p. 319, ch. 152, § 1.

§ 11.139. Emergency Permits

(a) The commission may grant an emergency permit for the diversion and use of water for a period of not more than 30 days if it finds that emergency conditions exist which threaten the public health, safety, and welfare and which override the necessity to comply with established statutory procedures.

(b) An emergency permit may be granted for a period of not more than 30 days, and no extension or additional emergency permit may be granted at the expiration of the original permit.

(c) An emergency permit may be granted under this section without the necessity to comply with statutory and other procedures required for granting other permits issued by the commission.

(d) The board may prescribe rules and adopt fees which are necessary to carry out the provisions of this section.

(e) An emergency permit does not vest in the permittee any right to the diversion and use of water and shall expire and be cancelled in accordance with its terms.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.140. Permits for Storage for Project Development

The commission may issue permits for storage solely for the purpose of optimum development of projects. The commission may convert these permits to permits for beneficial use if application to have them converted is made to the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.141. Date of Priority

When the commission issues a permit, the priority of the appropriation of water and the claimant's right to use the water date from the date of filing of the application.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.142. Domestic and Livestock Reservoir-Permit Exemption

Without obtaining a permit, a person may construct on his own property a dam or reservoir to impound or contain not more than 200 acre-feet of water for domestic and livestock purposes.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.143. Domestic and Livestock Reservoir-Use for Other Purposes

(a) The owner of a dam or reservoir exempted under Section 11.142 of this code who desires to use water from the dam or reservoir for purposes other than domestic or livestock use shall obtain a permit

to do so. He may obtain a regular permit, a seasonal permit, or a permit for a term of years. He may elect to obtain the permit by proceeding under this section or under the other provisions of this chapter governing issuance of permits.

(b) If the applicant elects to proceed under this section, he shall submit to the department a sworn application, on a form furnished by the department, containing the following information:

(1) the name and post-office address of the applicant;

(2) the nature and purpose of the use and the amount of water to be used annually for each purpose;

(3) the major watershed and the tributary (named or unnamed) on which the dam or reservoir is located;

(4) the county in which the dam or reservoir is located;

(5) the approximate distance and direction from the county seat of the county to the location of the dam or reservoir;

(6) the survey or the portion of the survey on which the dam or reservoir is located and, to the best of the applicant's knowledge and belief, the distance and direction of the midpoint of the dam or reservoir from a corner of the survey, which information the executive director may require to be marked on an aerial photograph or map furnished by the department;

(7) the approximate surface area, to the nearest acre, of the reservoir when it is full and the average depth in feet when it is full; and

(8) the approximate number of square miles in the drainage area above the dam or reservoir.

(c) If the permit is sought for irrigation, the application must also specify:

(1) the total number of irrigable acres in the area;

(2) the number of acres to be irrigated within the area in any one year; and

(3) the approximate distance and direction of the land to be irrigated from the midpoint of the dam or reservoir.

(d) Before the commission may approve the application and issue the permit, it shall give notice and hold a hearing as prescribed by this section.

(e) In the notice, the commission shall:

(1) state the name and post-office address of the applicant;

(2) state the date the application was filed;

(3) state the purpose and extent of the proposed appropriation of water;

(4) identify the source of supply and the place where the water is stored; and

(5) specify the time and place of the hearing.

(f) The notice shall be published only once, at least 20 days before the date stated in the notice for the hearing on the application, in a newspaper having general circulation in the county where the dam or reservoir is located. At least 15 days before the date set for the hearing, the commission shall transmit a copy of the notice by first-class mail to each person whose claim or appropriation has been filed with the department and whose diversion point is downstream from that described in the application.

(g) The applicant shall pay the filing fee prescribed by Section 12.111(b) of this code at the time he files the application.

(h) The commission shall approve the application and issue the permit as applied for in whole or part if it determines that:

(1) there is unappropriated water in the source of supply;

(2) the applicant has met the requirements of this section;

(3) the water is to be used for a beneficial purpose;

(4) the proposed use is not detrimental to the public welfare or to the welfare of the locality; and

(5) the proposed use will not impair existing water rights.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.144. Approval for Alterations

All holders of permits and certified filings shall obtain the approval of the commission before making any alterations, enlargements, extensions, or other changes to any reservoir, dam, main canal, or diversion work on which a permit has been granted or a certified filing recorded. A detailed statement and plans for alterations or changes shall be filed with the department and approved by the commission before the alterations or changes are made. This section does not apply to the ordinary maintenance or emergency repair of the facility.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.145. When Construction Must Begin

(a) If a person's permit is for appropriation by direct diversion, he shall begin construction of the proposed facilities within 90 days after the date his permit is issued. He shall work diligently and continuously to the completion of the construction. The commission may, by entering an order of record, extend the time for beginning construction for a period not to exceed 12 months after the date the permit was issued.

(b) If the permit contemplates construction of a storage reservoir, construction shall begin within the time fixed by the commission, not to exceed two years after the date the permit is issued. The commission, by entering an order of record, may extend the time for beginning construction. The board may fix fees, not to exceed \$1,000, for extending the time to begin construction of reservoirs. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.146. Forfeitures and Cancellation of Permit for Inaction

(a) If a permittee fails to begin construction within the time specified in Section 11.145 of this code, he forfeits all rights to the permit, subject to notice and hearing as prescribed by this section.

(b) After beginning construction if the appropriator fails to work diligently and continuously to the completion of the work, the appropriation is subject to cancellation in whole or part, subject to notice and hearing as prescribed by this section.

(c) If the commission believes that an appropriation or permit should be declared forfeited under this section or any other sections of this code, it should give the appropriator or permittee 30 days notice and provide him with an opportunity to be heard.

(d) After the hearing, the commission by entering an order of record may cancel the appropriation in whole or part. The commission shall immediately transmit a certified copy of the cancellation order by certified mail to the county clerk of the county in which the permit is recorded. The county clerk shall record the cancellation order.

(e) If a permit has been issued for the use of water, the water is not subject to a new appropriation until the permit has been cancelled in whole or part as provided by this section.

(f) Except as provided by Subchapter E of this chapter, none of the provisions of this code may be construed as intended to impair, cause, or authorize or may impair, cause, or authorize the forfeiture of any rights acquired by any declaration of appropriation or by any permit if the appropriator has begun or begins the work and development contemplated by his declaration of appropriation or permit within the time provided by the law under which the declaration of appropriation was made or the permit was granted and has prosecuted or continues to prosecute it with all reasonable diligence toward completion.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.147. Effects of Permit on Bays and Estuaries

In its consideration of an application for a permit to store, take, or divert water, the commission shall

assess the effects, if any, of the issuance of the permit on the bays and estuaries of Texas.
 [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 11.148 to 11.170 reserved for expansion]

SUBCHAPTER E. CANCELLATION OF PERMITS, CERTIFIED FILINGS, AND CERTIFICATES OF ADJUDICATION FOR NONUSE

§ 11.171. Definitions

As used in this subchapter:

(1) "Other interested person" means any person other than a record holder who is interested in the permit or certified filing or any person whose direct interest would be served by the cancellation of the permit or certified filing in whole or part.

(2) "Certified filing" means a declaration of appropriation or affidavit that was filed with the State Board of Water Engineers under the provisions of Section 14, Chapter 171, General Laws, Acts of the 33rd Legislature, 1913, as amended.

(3) "Certificate of adjudication" means a certificate issued by the commission under Section 11.323 of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.172. General Principle

A permit, certified filing, or certificate of adjudication is subject to cancellation in whole or part for 10 years nonuse as provided by this subchapter.
 [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.173. Cancellation in Whole

If no part of the water authorized to be appropriated under a permit, certified filing, or certificate of adjudication has been put to beneficial use at any time during the 10-year period immediately preceding the cancellation proceedings authorized by this subchapter, then the appropriation is presumed to have been wilfully abandoned, and the permit, certified filing, or certificate of adjudication is subject to cancellation in whole as provided by this subchapter.
 [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.174. Department to Initiate Proceedings

When the department finds that its records do not show that any water has been beneficially used under a permit, certified filing, or certificate of adjudication during the past 10 years, the executive director shall initiate proceedings, terminated by

public hearing, to cancel the permit, certified filing, or certificate of adjudication.
 [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.175. Notice

(a) At least 30 days before the date of the hearing, the commission shall send notice of the hearing to the holder of the permit, certified filing, or certificate of adjudication being considered for cancellation. Notice shall be sent by certified mail, return receipt requested, to the last address shown by the records of the commission. The commission shall also send notice by regular mail to all other holders of permits, certified filings, certificates of adjudication, and claims of water rights pursuant to Section 11.303 of this code in the same watershed.

(b) The commission shall also have the notice of the hearing published once a week for two consecutive weeks, at least 30 days before the date of the hearing, in a newspaper published in each county in which diversion of water from the source of supply was authorized or proposed to be made and in each county in which the water was authorized or proposed to be used, as shown by the records of the commission. If in any such county no newspaper is published, then the notice may be published in a newspaper having general circulation in the county.
 [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.176. Hearing

The commission shall hold a hearing and shall give the holder of the permit, certified filing, or certificate of adjudication and other interested persons an opportunity to be heard and to present evidence that water has, or has not, been beneficially used for the purposes authorized by the permit, certified filing, or certificate of adjudication during the 10-year period.
 [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.177. Commission Finding; Action

At the conclusion of the hearing if the commission finds that no water has been beneficially used for authorized purposes during the 10-year period, the appropriation is deemed to have been wilfully abandoned, of no further force and effect, and the commission shall cancel the permit, certified filing, or certificate of adjudication.
 [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.178. Cancellation in Part

If some part of the water authorized to be appropriated under a permit, certified filing, or certificate of adjudication has not been put to beneficial use at

any time during the 10-year period immediately preceding the cancellation proceedings authorized by this subchapter, then the permit, certified filing, or certificate of adjudication is subject to partial cancellation, as provided by this subchapter, to the extent of the 10 years nonuse.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.179. Department May Initiate Proceedings

When the department finds that its records do not show proof that some portion of the water has been used during the past 10 years, the executive director may initiate proceedings, terminated by public hearing, to cancel the permit, certified filing, or certificate of adjudication in part.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.180. Notice

The commission shall give notice of the hearing as provided by Section 11.175 of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.181. Hearing

The commission shall hold a hearing and shall give the holder of the permit, certified filing, or certificate of adjudication and other interested persons an opportunity to be heard and to present evidence on any matter pertinent to the questions at issue.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.182. Commission Finding; Action

(a) At the conclusion of the hearing, the commission shall cancel the permit, certified filing, or certificate of adjudication to the extent that it finds that:

(1) any portion of the water appropriated under the permit, certified filing, or certificate of adjudication has not been put to an authorized beneficial use during the 10-year period;

(2) the holder has not used reasonable diligence in applying the unused portion of the water to an authorized beneficial use; and

(3) the holder has not been justified in the nonuse or does not then have a bona fide intention of putting the unused water to an authorized beneficial use within a reasonable time after the hearing.

(b) In determining what constitutes a reasonable time as used in Subsection (a)(3) of this section, the commission shall give consideration to:

(1) the expenditures made or obligations incurred by the holder in connection with the permit, certified filing, or certificate of adjudication;

(2) the purpose to which the water is to be applied;

(3) the priority of the purpose; and

(4) the amount of time usually necessary to put water to a beneficial use for the same purpose when diligently developed.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.183. Reservoir

If the holder of a permit, certified filing, or certificate of adjudication has facilities for the storage of water in a reservoir, the commission may allow him to retain the impoundment to the extent of the conservation storage capacity of the reservoir for domestic, livestock, or recreation purposes.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.184. Municipal Certified Filing

Regardless of other provisions of this subchapter, no portion of a certified filing held by a city, town, village, or municipal water district, authorizing the use of water for municipal purposes, shall be cancelled if water has been put to use under the certified filing for municipal purposes at any time during the 10-year period immediately preceding the institution of cancellation proceedings.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.185. Effect of Inaction

Failure to initiate cancellation proceedings under this subchapter does not validate or improve the status of any permit, certified filing, or certificate of adjudication in whole or in part.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.186. Subsequent Proceedings on Same Water Right

Once cancellation proceedings have been initiated against a particular permit, certified filing, or certificate of adjudication and a hearing has been held, further cancellation proceedings shall not be initiated against the same permit, certified filing, or certificate of adjudication within the five-year period immediately following the date of the hearing.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 11.187 to 11.200 reserved for expansion]

SUBCHAPTER F. ARTESIAN WELLS

§ 11.201. Artesian Well Defined

An artesian well is an artificial water well in which the water, when properly cased, will rise by

natural pressure above the first impervious stratum below the surface of the ground.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.202. Right to Drill Artesian Well

A person is entitled to drill an artesian well on his own land for domestic purposes or for stock raising without complying with the general provisions of this code regulating the use of water. However, he shall have the well properly and securely cased, and when water is reached containing mineral or other substances injurious to vegetation or agriculture, he shall have the well securely capped or its flow controlled so as not to injure another person's land or shall fill the well so as to prevent the water from rising above the first impervious stratum below the surface of the ground.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.203. Artesian Well: Drilling Record

(a) A person who drills an artesian well or has one drilled shall keep a complete and accurate record of the depth, thickness, and character of the different strata penetrated and when the well is completed shall transmit a copy of the record to the department by registered mail.

(b) A person who violates any provision of this section is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$100.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.204. Report of New Artesian Well

Within one year after an artesian well is drilled, the owner or operator shall transmit to the department a sworn report stating the result of the drilling operation, the use to which the water will be applied, and the contemplated extent of the use.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.205. Wasting Water From Artesian Well

(a) Unless the water from an artesian well is used for a purpose and in a manner in which it may be lawfully used on the owner's land, it is waste to wilfully cause or knowingly permit the water to run off the owner's land or to percolate through the stratum above which the water is found.

(b) It is not waste to use water from an artesian well, if suitable, for proper irrigation of trees on a street, road, or highway or for ornamental ponds or fountains or for the propagation of fish.

(c) A person who commits waste as defined in this section is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$500 or by

confinement in the county jail for not more than 90 days or by both.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.206. Improperly Cased Well: Nuisance

An artesian well that is not tightly cased, capped, and furnished with mechanical appliances that readily and effectively prevent water from flowing out of the well and running over the surface of the ground about the well or wasting through the strata through which it passes is a public nuisance and subject to abatement by the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.207. Annual Report

(a) Not later than March 1 of each year, a person who during any part of the preceding calendar year owned or operated an artesian well for any purpose other than domestic use shall file a report to the department on a form supplied by the department.

(b) The report shall state:

- (1) the quantity of water which was obtained from the well;
- (2) the nature of the uses to which the water was applied;
- (3) the change in the level of the well's water table; and
- (4) other information required by the department.

(c) If water from the well was used for irrigation, the report shall also state the acreage and yield of each crop irrigated.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 11.208 to 11.300 reserved for expansion]

SUBCHAPTER G. WATER RIGHTS
ADJUDICATION ACT

§ 11.301. Short Title

This subchapter may be cited as the Water Rights Adjudication Act.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.302. Declaration of Policy

The conservation and best utilization of the water resources of this state are a public necessity, and it is in the interest of the people of the state to require recordation with the commission of claims of water rights which are presently unrecorded, to limit the exercise of these claims to actual use, and to provide for the adjudication and administration of water rights to the end that the surface-water resources of

the state may be put to their greatest beneficial use. Therefore, this subchapter is in furtherance of the public rights, duties, and functions mentioned in this section and in response to the mandate expressed in Article XVI, Section 59 of the Texas Constitution and is in the exercise of the police powers of the state in the interest of the public welfare.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.303. Recordation and Limitation of Certain Water Rights Claims

(a) This section applies to:

- (1) claims of riparian water rights;
- (2) claims under Section 11.143 of this code to impound, divert, or use state water for other than domestic or livestock purposes, for which no permit has been issued;
- (3) claims of water rights under the Irrigation Acts of 1889 and 1895¹ which were not filed with the State Board of Water Engineers in accordance with the Irrigation Act of 1913,² as amended; and
- (4) other claims of water rights except claims under permits or certified filings.

(b) Any claim to which this section applies shall be recognized only if valid under existing law and only to the extent of the maximum actual application of water to beneficial use without waste during any calendar year from 1963 to 1967, inclusive. However, in any case where a claimant of a riparian right has prior to August 28, 1967, commenced or completed the construction of works designed to apply a greater quantity of water to beneficial use, the right shall be recognized to the extent of the maximum amount of water actually applied to beneficial use without waste during any calendar year from 1963 to 1970, inclusive.

(c) On or before September 1, 1969, every person claiming a water right to which this section applies shall file with the commission a statement setting forth:

- (1) the name and address of the claimant;
- (2) the location and the nature of the right claimed;
- (3) the stream or watercourse and the river basin in which the right is claimed;
- (4) the date of commencement of works;
- (5) the dates and volumes of use of water; and
- (6) other information the commission may require to show the nature and extent of the claim.

(d) A person who files a statement as provided in this section shall certify under oath that the statements made in support of his claim are true and correct to the best of his knowledge and belief.

(e) A claimant who desires recognition of a right based on use from 1968 to 1970, inclusive, as provided in Subsection (b) of this section shall file an additional sworn statement on or before July 1, 1971.

(f) The commission shall prescribe forms for the sworn statements required by this section, but use of the commission forms is not mandatory.

(g) On or before January 1, 1968, and June 1, 1969, the commission shall cause notice of the requirements of this section to be published once each week for two consecutive weeks in newspapers having general circulation in each county of the state and by first-class mail to each user of surface water who has filed a report of water use with the commission.

(h) On sworn petition, notice, and hearing as prescribed for applications for permits and upon finding of extenuating circumstances and good cause shown for failure to timely file, the commission may authorize the filing of the sworn statement or statements required by this section until entry of a preliminary determination of claims of water rights in accordance with Section 11.309 of this code which includes the area described in the petition or, if a preliminary determination has not been entered, until September 1, 1974.

(i) Since the filing of all claims to use public water is necessary for the conservation and best utilization of the water resources of the state, failure to file a sworn statement in substantial compliance with this section extinguishes and bars any claim of water rights to which this section applies.

(j) A sworn statement submitted under this section is binding on the person submitting it and his successors in interest, but is not binding on the commission or any other person in interest.

(k) Nothing in this section shall be construed to recognize any water right which did not exist before August 28, 1967.

(l) This section does not apply to use of water for domestic or livestock purposes.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ Acts 1889, 21st Leg., p. 100, ch. 88; Acts 1895, 24th Leg., p. 21, ch. 21.

² Acts 1913, 33rd Leg., p. 358, ch. 1.71.

§ 11.304. Adjudication of Water Rights

The water rights in any stream or segment of a stream may be adjudicated as provided in this subchapter:

- (1) on the commission's own motion;
- (2) on petition to the commission signed by 10 or more claimants of water rights from the source of supply; or
- (3) on petition of the board.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.305. Investigation

(a) Promptly after a petition is filed under Section 11.304 of this code, the commission shall investigate the facts and conditions necessary to determine whether the adjudication would be in the public interest. If the commission finds that an adjudication would be in the public interest, it shall enter an order to that effect, designating the stream or segment to be adjudicated. The executive director shall have an investigation made of the area involved in order to gather relevant data and information essential to the proper understanding of the claims of water rights involved. The results of the investigation shall be reduced to writing and made a matter of record in the commission's office.

(b) In connection with the investigation, the executive director shall have a map or plat made showing with substantial accuracy the course of the stream or segment and the location of reservoirs, diversion works, and places of use, including lands which are being irrigated or have facilities for irrigation.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.306. Notice of Adjudication

(a) The commission shall prepare a notice of adjudication which describes the stream or segment to be adjudicated and the date by which all claims of water rights in the stream or segment shall be filed with the commission. The date shall not be less than 90 days after the date the notice is issued.

(b) The notice shall be published once a week for two consecutive weeks in one or more newspapers having general circulation in the counties in which the stream or segment is located.

(c) The notice shall also be sent by first-class mail to each claimant of water rights whose diversion is within the stream or segment to be adjudicated, to the extent that the claimants can reasonably be ascertained from the records of the department.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.307. Filing of Sworn Claims

(a) Every person claiming a water right of any nature, except for domestic or livestock purposes, from the stream or segment under adjudication shall file a sworn claim with the commission within the time prescribed in the notice of adjudication, including any extensions of the prescribed time, setting forth:

(1) the name and post-office address of the claimant;

(2) the location and nature of the right claimed, including a description of any permit or certified filing under which the claim is made;

(3) the purpose of the use;

(4) a description of works and irrigated land; and

(5) all other information necessary to show the nature and extent of the claim.

(b) The commission shall prescribe forms for claims, but use of the commission forms is not mandatory.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.308. Hearings on Claims; Notice

The commission shall set a time and a place for hearing all claims. Not less than 30 days before commencement of the hearings, the commission shall give notice of the hearings by certified mail to all persons who have filed claims in accordance with Section 11.307 of this code, or this notice may be included in the notice of adjudication provided in Section 11.306 of this code. The hearings shall be conducted as provided in Section 11.337 of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.309. Preliminary Determination of Claims

(a) On completion of the hearings, the commission shall make a preliminary determination of the claims to water rights under adjudication.

(b) One copy of the preliminary determination shall be furnished without charge to each person who filed a claim in accordance with Section 11.307 of this code. Additional copies of the preliminary determination shall be made available for public inspection at convenient locations throughout the river basin, as designated by the commission. Copies shall also be made available to other interested persons at a reasonable price, based on the cost of reproduction.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.310. Evidence Open to Inspection

All evidence presented to or considered by the commission shall be open to public inspection for a period of not less than 60 days, as fixed by the commission, after the notice prescribed in Section 11.312 of this code is issued.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.311. Date for Filing Contests

The commission shall set a date for filing contests on the preliminary determination, which date shall not be less than 30 days after the period for public inspection of the evidence has closed.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.312. Notice of Preliminary Determination; Copies

(a) Promptly after the preliminary determination is made as provided in Section 11.309 of this code, the commission shall publish notice of the determination once a week for two consecutive weeks in one or more newspapers having general circulation in the river basin in which the stream or segment that is the subject of the adjudication is located.

(b) The commission shall also send notice by first-class mail to each claimant of water rights within the river basin in which the stream or segment is located, to the extent that the claimants can be reasonably ascertained from the records of the department.

(c) Each notice shall state:

(1) the place and the period of time that the preliminary determination and evidence presented to or considered by the commission will be open for public inspection;

(2) the locations throughout the river basin where copies of the preliminary determination will be available for public inspection;

(3) the method of ordering copies of the preliminary determination and the charge for copies;

(4) the date by which contests on the preliminary determination must be filed.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.313. Filing Contests

(a) Any water right claimant affected by the preliminary determination, including any claimant to water rights within the river basin but outside the stream or segment under adjudication, who disputes the preliminary determination may within the time for filing contests prescribed by the commission in the notice, including any extension of the time, file a written contest with the commission, stating with reasonable certainty the grounds of his contest.

(b) The statement filed to contest a preliminary determination must be verified by an affidavit of the contestant, his agent, or his attorney.

(c) If the contest is directed against the preliminary determination of the water rights of other claimants, a copy shall be served on each of these claimants or his attorney by certified mail, and proof of service shall be filed with the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.314. Hearing on Contest; Notice

After the time for filing contests has expired, the commission shall prepare a notice setting forth the part of the preliminary determination to which each contest is directed and the time and place of a

hearing on the contest. The notice shall be sent to each claimant of water rights within the river basin in which the stream or segment is located, to the extent that the claimants can be reasonably ascertained from the records of the commission. The hearing shall be conducted as provided in Section 11.337 of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.315. Final Determination

On completion of the hearings on all contests, the commission shall make a final determination of the claims to water rights under adjudication. The commission shall send a copy of the final determination and any modification of the final determination to each claimant whose rights are adjudicated and to each contesting party.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.316. Application for Rehearing

Within 30 days from the date of the final determination, any affected party may apply to the commission for a rehearing. Applications for rehearing which in the opinion of the commission are without merit may be denied without notice to other parties, but no application for rehearing shall be granted without notice to each claimant whose rights are adjudicated and to each contesting party.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.317. Filing Final Determination With District Court

(a) As soon as practicable after the disposition of all applications for rehearing, the commission shall file a certified copy of the final determination, together with all evidence presented to or considered by the commission, in a district court of any county in which the stream or segment under adjudication is located. However, if the stream or segment under adjudication includes all or parts of three or more counties and if 10 or more affected persons who appeared in the proceedings petition the commission to do so, the commission shall file the action in a convenient district court of a judicial district which is not within the river basin of the stream or segment under adjudication.

(b) The commission shall obtain an order from the court fixing a time not less than 30 days from the date of the order for the filing of exceptions to the final determination and also fixing a time not less than 60 days from the date of the order for the commencement of hearings on exceptions.

(c) The commission shall immediately give written notice of the court order by certified mail to all parties who appeared in the proceedings before the

commission. The commission shall file proof of the service with the court.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.318. Exceptions to Final Determination

(a) Any affected person who appeared in the proceeding before the commission may file exceptions to the final determination. An exception must state with a reasonable degree of certainty the grounds for the exception and must specify the particular paragraphs and pages of the determination to which the exception is taken.

(b) Three copies of the exceptions shall be filed in court, and a copy shall be served on the commission. The commission shall make copies of all exceptions available at a reasonable price, based on the cost of reproduction.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.319. Hearings on Exceptions

(a) The court shall hear any exceptions that have been filed. The commission and all affected persons who appeared in the proceedings before the commission are entitled to appear and be heard on the exceptions. The court may permit other parties in interest to appear and be heard for good cause shown.

(b) The court may conduct nonjury hearings and proceedings at any convenient location within the state. Actual expenses incurred by the court outside its judicial district shall be taxed as costs.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.320. Scope of Judicial Review

(a) In passing on exceptions, the court shall determine all issues of law and fact independently of the commission's determination. The substantial evidence rule shall not be used. The court shall not consider any exception which was not brought to the commission's attention by application for rehearing. The court shall not consider any issue of fact raised by an exception unless the record of evidence before the commission reveals that the question was genuinely in issue before the commission.

(b) A party in interest may demand a jury trial of any issue of fact, but the court may in its discretion have a separate trial with a separate jury of any such issue.

(c) The legislature declares that the provisions of this section are not severable from the remainder of this subchapter and that this subchapter would not have been passed without the inclusion of this section. If this section is for any reason held invalid, unconstitutional, or inoperative in any way, the holding applies to the entire subchapter so that the entire subchapter is null and void.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.321. Evidence

Any exception heard by the court without a jury may be resolved on the record of evidence before the commission, or the court may take additional evidence or direct that additional evidence be heard by the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.322. Final Decree

(a) After the final hearing, the court shall enter a decree affirming or modifying the order of the commission.

(b) The court may assess the costs as it deems just.

(c) An appeal may be taken from the decree of the court in the same manner and with the same effect as in other civil cases.

(d) The final decree in every water right adjudication is final and conclusive as to all existing and prior rights and claims to the water rights in the adjudicated stream or segment of a stream. The decree is binding on all claimants to water rights outside the adjudicated stream or segment of a stream.

(e) Except for domestic and livestock purposes or rights subsequently acquired by permit, a water right is not recognized in the adjudicated stream or segment of a stream unless the right is included in the final decree of the court.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.323. Certificate of Adjudication

(a) When a final determination of the rights to the waters of a stream has been made in accordance with the procedure provided in this subchapter and the time for a rehearing has expired, the commission shall issue to each person adjudicated a water right a certificate of adjudication, signed by the chairman and bearing the seal of the commission.

(b) In the certificate, the commission shall include:

- (1) a reference to the final decree;
- (2) the name and post-office address of the holder of the adjudicated right;
- (3) the priority, extent, and purpose of the adjudicated right and, if the right is for irrigation, a description of the irrigated land; and
- (4) all other information in the decree relating to the adjudicated right.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.324. Recordation of Certificate

(a) The commission shall transmit the certificate of adjudication or a true copy to the county clerk of each county in which the appropriation is made.

(b) On receipt of the recording fee from the holder of the certificate, the county clerk shall file and record the certificate in a well-bound book provided and kept for that purpose only. The clerk shall index the certificate alphabetically under the name of the holder of the certificate of adjudication and under the name of the stream or source of water supply.

(c) When a certificate of adjudication is filed and recorded as provided in this section, the county clerk shall deliver the certificate on demand to the holder. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.325. Water Divisions

The board shall divide the state into water divisions for the purpose of administering adjudicated water rights. Water divisions may be created from time to time as the necessity arises. The divisions shall be constituted to secure the best protection to the holders of water rights and the most economical supervision on the part of the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.326. Appointment of Watermaster

(a) The executive director may appoint one watermaster for each water division.

(b) A watermaster holds office until a successor is appointed. The executive director may remove a watermaster at any time.

(c) The executive director may employ assistant watermasters and other employees necessary to aid a watermaster in the discharge of his duties.

(d) In a water division in which the office of watermaster is vacant, the executive director has the powers of a watermaster.

(e) The executive director shall supervise and generally direct the watermaster in the performance of his duties. A watermaster is responsible to the executive director for the proper performance of his duties.

(f) A person dissatisfied with any action of a watermaster may apply to the executive director for relief.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.327. Duties of Watermaster

(a) A watermaster shall divide the water of the streams or other sources of supply of his division in accordance with the adjudicated water rights.

(b) A watermaster shall regulate or cause to be regulated the controlling works of reservoirs and diversion works in time of water shortage, as is necessary because of the rights existing in the streams of his division, or as is necessary to prevent

the waste of water or its diversion, taking, storage, or use in excess of the quantities to which the holders of water rights are lawfully entitled.

(c) A watermaster may regulate the distribution of water from any system of works that serves users whose rights have been separately determined.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.328. Watermaster's Notice Posted

If, in the performance of his duties, a watermaster regulates diversion works or the controlling works of reservoirs, he shall attach to the works a written notice, properly dated and signed, stating that the works have been properly regulated and are wholly under his control. The notice is legal notice to all parties interested in the diversion and distribution of the water served by the diversion works or reservoir.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.329. Compensation and Expenses of Watermaster

(a) The department shall pay the compensation and necessary expenses of a watermaster, assistant watermasters, and other necessary employees, but the holders of water rights that have been determined or adjudicated and are to be administered by the watermaster shall reimburse the department for the compensation and expenses.

(b) After the adjudication decree becomes final, the executive director shall notify each holder of water rights under the decree of the amount of compensation and expenses that will be required annually for the administration of the water rights so determined.

(c) The commission shall hold a public hearing to determine the apportionment of the costs of administration of adjudicated water rights among the holders of the rights. After a public hearing, the commission shall issue an order assessing the annual cost against the holders of water rights to whom the water will be distributed under the final decree. The commission shall equitably apportion the costs. The executive director may provide for payments in installments and shall specify the dates by which payments shall be made to the department.

(d) The executive director shall transmit all collections under this section to the State Treasurer.

(e) No water shall be diverted, taken, or stored by, or delivered to, any person while he is delinquent in the payment of his assessed costs.

(f) An order of the commission assessing costs remains in effect until the commission issues a further order. The commission may modify, revoke, or supersede an order assessing costs with a subsequent order. The commission may issue supplementary orders from time to time to apply to new diversions. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.330. Outlet for Free Passage of Water

The owner of any works for the diversion or storage of water shall maintain to the satisfaction of the commission a substantial headgate at the point of diversion, or a gate on each discharge pipe of a pumping plant, constructed so that it can be locked at the proper place by the watermaster, or a suitable outlet in a dam to allow the free passage of water that the owner of the dam is not entitled to divert or impound, the suitability of the outlet to be determined by the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.331. Measuring Devices

The commission may require the owner of any works for the diversion, taking, storage, or distribution of water to construct and maintain suitable measuring devices at points that will enable the watermaster to determine the quantities of water to be diverted, taken, stored, released, or distributed in order to satisfy the rights of the respective users.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.332. Installation of Flumes

The commission may order flumes to be installed along the line of any ditch if necessary for the protection of water rights or other property.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.333. Failure to Comply With Commission Directions

If the owner of waterworks using state water refuses or neglects to comply with the directions of the commission given pursuant to Section 11.330, 11.331, or 11.332 of this code, the commission, after 10 days notice or after a period of additional time that is reasonable under the circumstances, may order the watermaster to make adjustments of the control works to prevent the owner of the works from diverting, taking, storing, or distributing any water until he has fully complied with the order of the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.334. Suit Against Department for Injury

Any person who is injured by an act of the department under this subchapter may bring suit against the commission to review the action or to obtain an injunction. If the water right involved has been adjudicated as provided in this subchapter, the court shall issue an injunction only if it is shown that the department has failed to carry into effect the decree adjudicating the water right.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.335. Administration of Water Rights Not Adjudicated

(a) If any area in which water rights of record in the office of the department have not been adjudicated, the claimants of the rights and the commission may enter into a written agreement for their administration.

(b) An agreement made under authority of this section shall provide:

(1) the basis and manner of distribution of the water to which the agreement relates;

(2) the services of a special watermaster, and assistants if necessary, to carry out the agreement; and

(3) the allocation, collection, and payment of the annual costs of administration.

(c) An agreement to administer unadjudicated water rights shall be recorded in the offices of the department and of the county clerk of each county in which any of the works or lands affected by the agreement are located.

(d) The administration of water rights by agreement is governed by the provisions of this subchapter except as regards allocation and payment of the expenses of the administration.

(e) No agreement authorized by this section impairs any vested right to the use of water or creates any additional rights to the use of water.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.336. Administration of Permits Issued After Adjudication

Permits, other than temporary permits, that are issued by the commission to appropriate water from an adjudicated stream or segment are subject to administration in the same manner as is provided in this subchapter for adjudicated water rights.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.337. Hearings: Notice and Procedure

(a) The commission shall give notice of a hearing or other proceeding it orders under this subchapter in the manner prescribed in the procedural rules of the commission, unless this subchapter specifically provides otherwise.

(b) In any proceeding in any part of the state, the commission may:

(1) take evidence, including the testimony of witnesses;

(2) administer oaths;

(3) issue subpoenas and compel the attendance of witnesses in the same manner as subpoenas are issued out of the courts of the state;

(4) compel witnesses to testify and give evidence; and

(5) order the taking of depositions and issue commissions for the taking of depositions in the same manner as depositions are obtained in civil actions.

(c) Evidence may be taken by a duly appointed reporter before the commission or before an authorized representative who has the power to administer oaths.

(d) If a person neglects or refuses to comply with an order or subpoena issued by the commission or refuses to testify on any matter about which he may be lawfully interrogated, the commission may apply to a district court of the county in which the proceeding is held to punish him in the manner provided by law for such disobedience in civil actions.

(e) The commission may adjourn its proceedings from time to time and from place to place.

(f) When a proceeding before the commission is concluded, the commission shall render a decision as to the matters concerning which the proceeding was held.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.338. Cancellation of Water Rights

Nothing in this subchapter recognizes any abandoned or cancelled water right or impairs in any way the power of the commission under general law to forfeit, cancel, or find abandoned any water right, including adjudicated water rights.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.339. Underground Water Not Affected

This subchapter does not apply to underground water as defined in Chapter 52 of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.340. Abatement of Certain Civil Suits

(a) Nothing in this subchapter prevents or precludes a person who claims the right to divert water from a stream from filing and prosecuting to a conclusion a suit against other claimants of the right to divert or use water from the same stream. However, if the commission has ordered a determination of water rights as provided in this subchapter or if the commission orders such a determination within 90 days after notice of the filing of a suit, the suit shall be abated on the motion of the commission or any party in interest as to any issues involved in the water rights determination.

(b) If a suit is abated as provided in Subsection (a) of this section, the court may grant or continue any temporary relief necessary to preserve the status quo pending a final determination of the water rights involved.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.341. Limitation on Actions

This subchapter does not affect any action or proceeding instituted before August 28, 1967, or any right accrued before that date except those specifically provided for in this subchapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 11.342 to 11.400 reserved for expansion]

SUBCHAPTER H. COURT-APPOINTED WATERMASTER

§ 11.401. Scope of Subchapter

The provisions of this subchapter apply to a suit if:

(1) the state is a party;

(2) the purpose of the suit is to determine the right of the parties to divert or use water of a surface stream; and

(3) rights are asserted to use water in, or divert water to, not more than four counties.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.402. Appointment and Authority of Watermaster

(a) A court having jurisdiction over a suit described in Section 11.401 of this code may appoint a watermaster with power to allocate and distribute, under the supervision of the court, the water taken into judicial custody.

(b) The court may not appoint a watermaster with authority to act both upstream and downstream from an existing reservoir on any surface stream of the state. However, once a watermaster is appointed, the construction of a new reservoir does not invalidate his appointment or restrict his authority over that portion of the stream contemplated by the original order of appointment.

(c) Under terms and conditions prescribed by the court, the watermaster may incur necessary expenses, appoint necessary deputies and assistants, and perform duties and assume responsibilities delegated to him by the court.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.403. Compensation of Watermaster

The court shall fix the compensation of the watermaster and his staff.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.404. Expenses and Assessment of Costs of Watermaster

(a) The trial court shall assess the costs and expenses of the watermaster and his staff against all persons receiving an allocation of the water in judicial custody. The court shall assess the costs and expenses monthly or at other time intervals ordered by the court.

(b) The court shall assess the costs and expenses on the basis of:

- (1) acreage;
- (2) acre-feet of allocated water;
- (3) per capita; or
- (4) any other formula the court, after notice and hearing, determines to be the most equitable.

(c) During the pendency of an appeal, the trial court, in its discretion, may assess costs against some parties on one basis and against other parties on another basis.

(d) The costs and expenses are not to be taxed as ordinary court costs, but are to be considered costs necessary to protect the rights and privileges of the parties receiving allocations of water during the litigation and are to be paid by those parties. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.405. Failure to Pay Assessed Costs

If the costs and expenses assessed are not paid within the time prescribed by the court, the court after notice and hearing may withdraw or limit allocations of water to any party failing or refusing to pay his share until all costs and expenses assessed against him are paid in full.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.406. Judicial Custody of Water During Appeal

If a party appeals the judgment of the trial court, that court may retain custody of the water which it has previously taken into judicial custody and over which it has appointed a watermaster. Until final judgment is entered in the case, the trial court has exclusive jurisdiction to administer, allocate, and distribute the water retained in its custody, as provided in Section 11.407 of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.407. Allocation and Distribution of Water During Appeal

During the pendency of an appeal, the trial court shall limit the allocation and distribution of the water in its custody to the parties adjudicated to have a valid right to use the water. However, if

any party prosecutes an appeal and files a supersedeas bond, the trial court shall make any necessary adjustments in the water allocations and allocate to that party the same amount of water that he received during the proceedings in the trial court. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.408. Retention of Watermaster During Appeal

During the pendency of an appeal, the trial court may retain the watermaster in office with the same authority he had during the trial proceedings.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 11.409. Violations of Court Orders

If a party violates any order of the trial court either during trial proceedings or during an appeal, the trial court may limit or withdraw his allocation of water until he corrects the violation to the satisfaction of the court.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

CHAPTER 12. PROVISIONS GENERALLY APPLICABLE TO WATER RIGHTS

SUBCHAPTER A. GENERAL PROVISIONS

Section 12.001. Definitions.

SUBCHAPTER B. GENERAL POWERS AND DUTIES RELATING TO WATER RIGHTS

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- 12.013. Rate-Fixing Power.
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- 12.051. Federal Projects.
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- 12.081. Continuing Right of Supervision of Districts Created Under Article III, Section 52 and Article XVI, Section 59 of the Texas Constitution.
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- 12.111. Fees.
- 12.112. Fees: Exemptions.
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SUBCHAPTER F. PENALTIES

Section

12.141. Violations of Rules, Orders, Certified Filings, and Permits.

Acts 1977, 65th Leg., p. 2207, ch. 870, revised Title 2 of the Water Code, effective September 1, 1977. For disposition of provisions of former Title 2 in the revised Title, see Disposition Table preceding § 5.001.

Former Chapter 12, Texas Offshore Terminal Commission, as added by Acts 1972, 62nd Leg., 4th C.S., p. 31, ch. 14, § 1, and amended by Acts 1977, 65th Leg., p. 1842, ch. 735, § 2.074, was deleted from Title 2 of the Water Code as revised by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1.

SUBCHAPTER A. GENERAL PROVISIONS

§ 12.001. Definitions

The definitions contained in Subchapter A, Chapter 11 of this code apply to this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 12.002 to 12.010 reserved for expansion]

SUBCHAPTER B. GENERAL POWERS AND DUTIES RELATING TO WATER RIGHTS

§ 12.011. Permit Applications

The department shall receive, administer, and act on all applications for permits and permit amendments:

- (1) to appropriate public water for beneficial use or storage; or
- (2) to construct works for the impoundment, storage, diversion, or transportation of public water.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 12.0111. Application of Sunset Act

The Texas Offshore Terminal Commission is subject to the Texas Sunset Act; and unless continued in existence as provided by that Act the commission is abolished, and this chapter expires effective September 1, 1983.

[Added by Act 1977, 65th Leg., p. 1842, ch. 735, § 2.074, eff. Aug. 29, 1977.]

§ 12.012. Evaluation of Outstanding Permits

The department shall actively and continually evaluate outstanding permits and certified filings and shall carry out measures to cancel wholly or partially the certified filings and permits that are subject to cancellation.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 12.013. Rate-Fixing Power

(a) The commission shall fix reasonable rates for the furnishing of raw or treated water for any purpose mentioned in Chapter 11 or 12 of this code.

(b) The term "political subdivision" when used in this section means incorporated cities, towns or villages, counties, river authorities, water districts, and other special purpose districts.

(c) The commission in reviewing and fixing reasonable rates for furnishing water under this section may use any reasonable basis for fixing rates as may be determined by the commission to be appropriate under the circumstances of the case being reviewed; provided, however, the commission may not fix a rate which a political subdivision may charge for furnishing water which is less than the amount required to meet the debt service and bond coverage requirements of that political subdivision's outstanding debt.

(d) The commission's jurisdiction under this section relating to incorporated cities, towns, or villages shall be limited to water furnished by such city, town, or village to another political subdivision on a wholesale basis.

(e) The commission may establish interim rates and compel continuing service during the pendency of any rate proceeding.

(f) The commission may order a refund or assess additional charges from the date a petition for rate review is received by the commission of the difference between the rate actually charged and the rate fixed by the commission, plus interest at the statutory rate.

(g) No action or proceeding commenced prior to January 1, 1977, before the Texas Water Rights Commission shall be affected by the enactment of this section.

(h) Nothing herein contained shall affect the jurisdiction of the Public Utility Commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 6.056 by Acts 1977, 65th Leg., p. 1650, ch. 647, § 1.

§ 12.014. Use of Department Surveys; Policy

The commission shall make use of surveys, studies, and investigations conducted by the staff of the department in order to ascertain the character of the principal requirements of the district regional division of the watershed areas of the state for beneficial uses of water, to the end that distribution of the right to take and use state water may be more equitably administered in the public interest, that privileges granted for recognized uses may be economically coordinated so as to achieve the maximum of public value from the state's water resources, and that the distinct regional necessities for water control and conservation and for control of harmful floods may be recognized.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 12.015. Power to Condemn Works

(a) The commission may condemn existing works if their existence or operation may, in the judgment of the commission, become a public menace or dangerous to life and property.

(b) In all cases of proposed condemnation, the commission shall notify the interested party of the contemplated action and shall specify a time for him to appear and be heard.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 12.016. Power to Inspect

The executive director or his authorized agent may inspect any impoundment, diversion, or distribution works during construction to determine whether or not they are being constructed in a safe manner and whether or not they are being constructed according to the order of the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 12.017. Power to Enter Land

Any member or employee of the department may enter any person's land, natural waterway, or artificial waterway for the purpose of making an investigation that would, in the judgment of the executive director, assist the department in the discharge of its duties.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 12.018 to 12.050 reserved for expansion]

SUBCHAPTER C. PROJECTS

§ 12.051. Federal Projects

(a) In this section:

(1) "Federal project" means an engineering undertaking or work to construct, enlarge, or extend a dam, lake, reservoir, or other water-storage or flood-control work or a drainage, reclamation, or canalization undertaking or any combination of these financed in whole or in part with funds of the United States.

(2) "Engineering report" means the plans, data, profiles, maps, estimates, and drawings prepared in connection with a federal project.

(3) "Federal agency" means the Corps of Engineers of the United States Army, the Bureau of Reclamation of the Department of Interior, the Soil Conservation Service of the Department of Agriculture, the United States Section of the International Boundary and Water Commission, or any other agency of the United States, the function of which includes the conservation, development, retardation by impounding, control,

or study of the water resources of Texas or the United States.

(b) When the governor receives an engineering report submitted by a federal agency seeking the governor's approval of a federal project, he shall immediately forward the report to the department for its study concerning the feasibility of the federal project.

(c) The board shall hold a public hearing to receive the views of persons and groups who might be affected by the proposed federal project. The board shall publish notice of the time, date, place, nature, and purpose of the public hearing once each week for two consecutive weeks before the date stated in the notice in a newspaper having general circulation in the section of the state where the federal project is to be located or the work done.

(d) After hearing all the evidence both for and against approval of the federal project, the board shall enter its order approving or disapproving the feasibility of the federal project, and the order shall include the board's reasons for approval or disapproval.

(e) In determining feasibility, the board shall consider, among other relevant factors:

(1) the effect of the federal project on water users on the stream as certified by the commission;

(2) the public interest to be served;

(3) the development of damsites to the optimum potential for water conservation;

(4) the integration of the federal project with other water conservation activities;

(5) the protection of the state's interests in its water resources; and

(6) the engineering practicality of the federal project, including cost of construction, operation, and maintenance.

(f) The board shall forward to the governor a certified copy of its order. The board's finding that the federal project is either feasible or not feasible is final, and the governor shall notify the federal agency that the federal project has been either approved or disapproved.

(g) The provisions of this section do not apply to the state soil conservation board as long as that board is designated by the governor as the authorized state agency having supervisory responsibility to approve or disapprove of projects designed to effectuate watershed-protection and flood-prevention programs initiated in cooperation with the United States Department of Agriculture.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 12.052. Dam Safety

(a) The department shall make and enforce rules and orders and shall perform all other acts necessary to provide for the safe construction, maintenance, repair, and removal of dams located in this state.

(b) Rules and orders made by the board shall be made after proper notice and hearing as provided in the rules of the board.

(c) If the owner of a dam that is required to be constructed, reconstructed, repaired, or removed in order to comply with the rules and orders promulgated under Subsection (a) of this section wilfully fails or refuses to comply within the 30-day period following the date of the commission's order to do so or if a person wilfully fails to comply with any rule or other order issued by the commission under this section within the 30-day period following the effective date of the order, he is liable to a penalty of not more than \$1,000 a day for each day he continues to violate this section. The state may recover the penalty by suit brought for that purpose in the district court of Travis County.

(d) Nothing in this section or in rules or orders made by the department shall be construed to relieve an owner or operator of a dam or reservoir of the legal duties, obligations, or liabilities incident to ownership or operation.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 12.053 to 12.080 reserved for expansion]

SUBCHAPTER D. WATER DISTRICTS

§ 12.081. Continuing Right of Supervision of Districts Created Under Article III, Section 52 and Article XVI, Section 59 of the Texas Constitution

(a) The powers and duties of all districts and authorities created under Article III, Section 52 and Article XVI, Section 59 of the Texas Constitution are subject to the continuing right of supervision of the State of Texas by and through the department or its successor, and this supervision may include but is not limited to the authority to:

(1) inquire into the competence, fitness, and reputation of the officers and directors of any district;

(2) require, on its own motion or on complaint by any person, audits or other financial information, inspections, evaluations, and engineering reports;

(3) issue subpoenas for witnesses to carry out its authority under this subsection;

(4) institute investigations and hearings using examiners appointed by the commission; and

(5) issue rules necessary to supervise the districts.

(b) The provisions of this section shall not apply to any river authority encompassing 10 or more counties which was not subject to the continuing right of supervision of the State of Texas by and through the commission or its predecessors on June 10, 1969. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 12.082. Duty to Investigate Fresh Water Supply District Projects

(a) In this section:

(1) "District" means fresh water supply district.

(2) "Designated agent" means any licensed engineer selected by the executive director to perform the functions specified in this section.

(b) The department shall investigate and report on the organization and feasibility of all districts created under Chapter 53 of this code which issue bonds under the provisions of that chapter.

(c) A district that wants to issue bonds for any purpose shall submit to the department a written application for investigation, together with a copy of the engineer's report and a copy of the data, profiles, maps, plans, and specifications made in connection with the engineer's report.

(d) The executive director or his designated agent shall examine the application and other information and shall visit the project and carefully inspect it. The executive director or his designated agent may ask for and shall be supplied with additional data and information requisite to a reasonable and careful investigation of the project and proposed improvements.

(e) The executive director or his designated agent shall file with the commission written suggestions for changes and improvements and shall furnish a copy of the suggestions to the board of the district. If the commission finally approves or refuses to approve the project or the issuance of bonds for the improvements it shall make a full written report, file it in its office, and furnish a copy of the report to the board of the district.

(f) During the course of construction of the project and improvements, no substantial alterations shall be made in the plans and specifications without the approval of the executive director. The executive director or his designated agent has full authority to inspect the improvements at any time during construction to determine if the project is being constructed in accordance with approved plans and specifications.

(g) If the executive director finds that the project is not being constructed in accordance with the approved plans and specifications, the executive director immediately shall notify in writing by certified mail each member of the board of the district

and its manager. If, within 10 days after the notice is mailed, the board of the district does not take steps to insure that the project is being constructed in accordance with the approved plans and specifications, the executive director shall give written notice of that fact to the attorney general.

(h) After the attorney general receives the notice, he may bring an action for injunctive relief, or he may bring quo warranto proceedings against the directors. Venue for either of these actions is exclusively in the district of Travis County.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 12.083. Districts; Creation, Investigations and Bonds

(a) The commission succeeds to the duties and responsibilities of the Texas Water Rights Commission with regard to the creation of districts as defined by Section 50.001(1) of this code and to approve or disapprove the issuance of the bonds of all such districts.

(b) The executive director shall investigate and report on the organization and feasibility of all districts as defined by Section 50.001(1) of this code. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 12.084 to 12.110 reserved for expansion]

SUBCHAPTER E. FEES

§ 12.111. Fees

(a) The department shall charge and collect the fees prescribed by this section. The executive director shall make a record of fees prescribed when due and shall render an account to the person charged with the fees. Each fee is a separate charge and is in addition to other fees unless provided otherwise.

(b) The fee for filing an application or petition is \$25 plus the cost of required notice.

(c) The fee for recording an instrument in the office of the commission is \$1 per page.

(d) The fee for the use of water for irrigation is 50 cents per acre to be irrigated.

(e) The fee for the use of water for a steam or gas power plant or for cooling, condensing, or steam purposes is \$1 for each indicated horsepower.

(f) The fee for impounding water, except under Section 11.142 of this code, is 50 cents per acre-foot of storage, based on the total holding capacity of the reservoir at normal operating level, provided that no additional fee shall be charged for recreational use for any impoundments of water now or hereafter permitted by the state or exempted from permit by statute.

(g) The fee for other uses of water not specifically named in this section is \$1 per acre-foot.

(h) A fee charged under this section for one use of water under a permit from the commission may not exceed \$5,000. The fee for each additional use of water under a permit for which the maximum fee is paid may not exceed \$1,000.

(i) The fees prescribed by Subsections (d) through (g) of this section are one-time fees, payable when the application for an appropriation is made. However, if the total fee for a permit exceeds \$1,000, the applicant shall pay one-tenth of the fee when the application is filed, one-tenth within 30 days after notice is mailed to him that the permit is granted, and the balance before he begins to use water under the permit. If the applicant does not pay all of the amount owed before he begins to use water under the permit, his permit is annulled.

(j) When a permit is annulled, the matter shall revert to the status of a pending, filed application and, upon the payment of use fees as provided by this subsection together with sufficient postage fees for mailing notice of hearing, the commission shall set the application for hearing and proceed as provided by this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text for this section incorporates the amendment to former § 6.068 by Acts 1977, 65th Leg., p. 835, ch. 312, § 1.

Sections 2, 3, and 4 (in part) of Acts 1977, 65th Leg., p. 836, ch. 312, provided:

"Sec. 2. (a) All permits issued prior to the effective date of this Act by the Texas Water Rights Commission or its predecessors are validated, ratified, approved, and confirmed insofar as, but only insofar as, the validity and priority of any such permits may be affected by any failure to pay or any failure to pay timely the fees prescribed by applicable statute.

"(b) If the Texas Water Rights Commission determines that any fees prescribed by applicable statute have not been paid in connection with any permit issued prior to the effective date of this Act by the commission or its predecessors, the commission shall submit a written statement of charges to the permittee. If such charges are not paid in full within 30 days of receipt of the statement by the permittee, then this section is not applicable for the validation, ratification, approval, or confirmation of the permit."

"Sec. 3. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

"Sec. 4. Due to the fact that the Texas Water Rights Commission and its predecessor agencies were charged with the responsibility to collect fees for the use and benefit of the state, and failing to do so violated the principles of the Constitution of Texas relating to the alienation and use of property of the public, and placed numerous public agencies, state and federal, in the position of having made substantial investments in major dams and reservoirs without the benefit of a permit, the same having been annulled by operation of law, create an emergency

§ 12.112. Fees: Exemptions

The board and the Parks and Wildlife Commission are exempted from payment of any filing, recording, or use fees required by this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 12.113. Disposition of Fees, Etc.

(a) The department shall immediately deposit in the State Treasury the fees and charges it collects.

(b) The department shall deposit all costs collected under Subchapter F, Chapter 11 of this code¹ in the

State Treasury to the credit of the water rights administration fund, from which the department shall pay all expenses necessary to efficiently administer and perform the duties described in Sections 11.325 through 11.335 of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹Section 11.201 et seq.

§ 12.114. Disposition of Fees Pending Determination

The department shall hold all fees, except filing fees, which are paid with an application until the commission finally determines whether the application should be granted. If the application is not granted, the department shall return the fees to the applicant.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 12.115 to 12.140 reserved for expansion]

SUBCHAPTER F. PENALTIES

§ 12.141. Violations of Rules, Orders, Certified Filings, and Permits

(a) Any person, association of persons, corporation, water improvement district, or irrigation district, or any agent, officer, employee, or representative of any of these named entities who wilfully violates any of the rules or orders promulgated by the board or any of the terms and conditions contained in declarations of appropriations (certified filings) and permits to appropriate water is liable to a civil penalty of not more than \$100 a day for each day that the violation continues to take place.

(b) An action to collect the penalty provided in this section must be brought within two years from the date of the alleged violation.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Chapters 13 to 15 reserved for expansion]

SUBTITLE C. WATER DEVELOPMENT

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Acts 1977, 65th Leg., p. 2207, ch. 870, revised Title 2 of the Water Code, effective September 1, 1977. For disposition of provisions of former Title 2 in the revised Title, see Disposition Table preceding § 5.001.

SUBCHAPTER A. GENERAL PROVISIONS

§ 16.001. Definitions

In this chapter:

- (1) "Board" means the Texas Water Development Board.
- (2) "Commission" means the Texas Water Commission.
- (3) "Chairman" means the chairman of the Texas Water Development Board.
- (4) "Executive director" means the executive director of the Texas Department of Water Resources.
- (5) "Department" means the Texas Department of Water Resources.
- (6) "Political subdivision" means a county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution and including any interstate compact commission to which the state is a party.
- (7) "Project" means any engineering undertaking or work to conserve and develop surface or subsurface water resources of the state, including the control, storage, and preservation of its storm water and floodwater and the water of its rivers and streams for all useful and lawful purposes by the acquisition, improvement, extension, or construction of dams, reservoirs, and other water storage projects, including underground storage projects, filtration and water treatment plants including any system necessary to transport water from storage to points of distribution, or from storage to filtration and treatment plants, including facilities for trans-

porting water therefrom to wholesale purchasers, by the acquisition, by purchase of rights in underground water, by the drilling of wells, or for any one or more of these purposes or methods.

(8) "Bonds" means all Texas Water Development Bonds now or hereafter authorized by the Texas Constitution.

(9) "Waste" has the same meaning as provided in Section 26.001 of this code.

(10) "Water development bonds" means the Texas Water Development Bonds authorized by Section 49-c, as amended, and Section 49-d, as amended, of Article III of the Texas Constitution.

(11) "Lending rate" means an amount of interest calculated when one-half of one percent is added to the weighted average net effective interest rate on the three most recent issues of bonds issued under this chapter.

(12) "Net effective interest rate" means the rate of interest computed by dividing the total value of all interest coupons attached to the bonds included in an issue issued under this chapter, after deducting all premiums and adding all discounts involved, by the total number of years from the date of issuance to the date of maturity of each bond included in the issue.

(13) "State facility" means a project in which the board has acquired an ownership interest.

(14) "Acquisition of a state facility" means the act or series of actions by the board in making payment for a state facility.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 11.001 by Acts 1977, 65th Leg., p. 671, ch. 254, § 1.

[Sections 16.002 to 16.010 reserved for expansion]

SUBCHAPTER B. DUTIES OF THE EXECUTIVE DIRECTOR

§ 16.011. General Responsibilities of the Executive Director

The executive director shall determine the responsibilities of each administrative division of the department and its staff in carrying out the authority, duties, and functions provided in this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.012. Studies, Investigations, Surveys

(a) The executive director shall make studies, investigations, and surveys of the occurrence, quantity, quality, and availability of the surface water and groundwater of this state. For these purposes the

staff shall collect, receive, analyze, and process basic data concerning the water resources of the state.

(b) The executive director shall:

- (1) determine suitable locations for future water facilities, including reservoir sites;
- (2) locate land best suited for irrigation;
- (3) make estimates of the cost of proposed irrigation works and the improvement of reservoir sites;
- (4) examine and survey reservoir sites; and
- (5) investigate the effects of fresh water inflows upon the bays and estuaries of Texas.

(c) The executive director shall keep full and proper records of his work, observations, data, and calculations, all of which are the property of the state.

(d) In performing his duties under this section, the executive director shall assist the commission in carrying out the purposes and policies stated in Section 12.014 of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.013. Engineering, Hydrologic, and Geologic Functions

The executive director shall advise and assist the board and the commission with regard to engineering, hydrologic, and geologic matters concerning the water resources of the state. The executive director shall evaluate, prepare, and publish engineering, hydrologic, and geologic data, information, and reports relating to the water resources of the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.014. Silt Load of Streams, Etc.

The executive director shall determine the silt load of streams, make investigations and studies of the duty of water, and make surveys to determine the water needs of the distinct regional divisions of the watershed areas of the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.015. Studies of Underground Water Supply

The executive director may make studies and investigations of the physical characteristics of water-bearing formations and of the sources, occurrence, quantity, and quality of the underground water supply of the state and may study and investigate feasible methods to conserve, preserve, improve, and supplement this supply. The work shall first be undertaken in areas where, in the judgment of the board, the greatest need exists, and in determining the need, the board shall consider all beneficial uses essential to the general welfare of the state. Water-bearing formations may be explored by coring or

other mechanical or electrical means when the area to be investigated has more than a local influence on water resources.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.016. Pollution of Red River Tributaries

Within the limits of available money and facilities, the executive director shall study salt springs, gypsum beds, and other sources of natural pollution of the tributaries of the Red River and shall study means of eliminating this natural pollution and preventing it from reaching the Red River.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.017. Topographic and Geologic Mapping

The executive director shall carry out the program for topographic and geologic mapping of the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.018. Soil Resource Planning

The executive director may contract with the State Soil Conservation Board for joint investigation and research in the field of soil resource planning. The State Soil Conservation Board may appoint a representative to advise and work with the executive director.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.019. Cooperative Agreements

With the approval of the board, the executive director may negotiate and execute contracts with persons or with federal, state, or local agencies for joint or cooperative studies and investigations of the occurrence, quantity, and quality of the surface water and groundwater of the state; the topographical mapping of the state; and the collection, processing, and analysis of other basic data relating to the development of the water resources of the state and for the administration and performance of these contracts.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.020. Master Plans of Districts, Etc.

The executive director shall review and analyze master plans and other reports of conservation districts, river authorities, and state agencies and shall make its recommendations to the board or the commission in all cases where approval of the board or commission is required by law or is requested by a district, authority, or agency.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.021. Centralized Data Bank

The executive director shall create a centralized data bank incorporating all hydrological data collected by state agencies.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 16.022 to 16.050 reserved for expansion]

SUBCHAPTER C. PLANNING

§ 16.051. State Water Plan

(a) The executive director shall prepare, develop, and formulate a comprehensive state water plan.

(b) The plan shall define and designate river basins and watersheds as separate units for the purpose of water development and interwatershed transfers.

(c) The executive director shall be governed in his preparation of the plan by a regard for the public interest of the entire state. The executive director shall direct his efforts toward the orderly development and management of water resources in order that sufficient water will be available at a reasonable cost to further the economic development of the entire state.

(d) The executive director shall also give consideration in the plan to the effect of upstream development on the bays, estuaries, and arms of the Gulf of Mexico and to the effect of the plan on navigation.
[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.052. Interbasin Water Transfer

The executive director shall not prepare or formulate a plan which contemplates or results in the removal of surface water from the river basin of origin if the water supply involved will be required for reasonably foreseeable water supply requirements within the river basin of origin during the next ensuing 50-year period, except on a temporary, interim basis.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.053. Hearing on Preliminary Plan

(a) After the executive director completes his preliminary planning of the water resources development within a river basin, he shall hold a public hearing, after notice, at some central location within the river basin. If the proposed plan involves the transfer of water from one basin to another, the hearing shall be held at some location convenient to the areas affected.

(b) The executive director shall present the proposed plan of development and hear evidence for and against the plan.

(c) After the hearing, the executive director shall consider the effect the plan will have on the present and future development, economy, general welfare, and water requirements of the river basin or the areas affected.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.054. Hearing on Completed State Water Plan

When the executive director has prepared and examined the completed preliminary plan, the board shall hold a public hearing on the plan to determine whether or not it gives adequate consideration to the protection of existing water rights in this state and whether or not it takes into account modes and procedures for the equitable adjustment of water rights affected by the plan. After the hearing, the board may formally adopt the state water plan. A majority vote is necessary for adoption.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.055. Effect of Plan

(a) The state water plan, as formally adopted by the board, shall be a flexible guide to state policy for the development of water resources in this state.

(b) The commission shall take the plan into consideration in matters coming before it but is not bound by the plan.

(c) Nothing in the state water plan or any amendment or modification of the plan affects any vested right existing before August 30, 1965.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.056. Amendment of Plan

(a) The board shall amend or modify the plan as experience and changed conditions require after holding a public hearing on any amendment or modification in the manner and for the purposes provided by Section 16.054 of this code.

(b) Any amendment or modification adopted by the board becomes a part of the plan.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.057. Federal Assistance in Financing Plan

The executive director may take all necessary action to qualify for federal assistance in financing the development and improvement of the plan.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.058. Studies of Bays and Estuaries

The executive director shall carry out comprehensive studies of the effects of fresh water inflows upon the bays and estuaries of Texas. The studies shall include the development of methods of providing and maintaining the ecological environment

thereof suitable to their living marine resources. The studies shall be completed and the results published by December 31, 1979. The General Land Office, the Parks and Wildlife Department, and the Texas Coastal and Marine Council are authorized and directed to assist and cooperate in all possible ways with the department in this undertaking. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 16.059 to 16.090 reserved for expansion]

SUBCHAPTER D. COOPERATION WITH FEDERAL GOVERNMENT

§ 16.091. Designation of Department

The department is designated as the state agency to cooperate with the Corps of Engineers of the United States Army and the Bureau of Reclamation of the United States Department of the Interior in the planning of water resource development projects in this state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.092. Local Sponsors for Projects

(a) When a project is proposed for planning or development by the department, the Corps of Engineers of the United States Army, or the Bureau of Reclamation of the United States Department of the Interior, any political subdivision may apply to the executive director for designation as the cooperating local sponsor of the project.

(b) In the application the applicant shall:

- (1) describe the purposes of the project;
- (2) state the reasons for the application, the contemplated use of water the applicant might derive from the project if a permit for the use is subsequently granted by the commission; and
- (3) cite the contributions the applicant is prepared to make to the planning or development of the project.

(c) No application for designation as a local sponsor shall cover more than one proposed project.

(d) The commission shall prescribe the form to be used in applications for designation as cooperating local sponsor. Before accepting the application, the commission may require that the applicant complete the prescribed form.

(e) Before making any designation of local sponsorship, the commission shall set the application for hearing and give public notice of the hearing. Any interested party may appear and be heard for or against the designation of the applicant as project sponsor.

(f) More than one cooperating local sponsor may be designated for each project, but each applicant must comply with the provisions of this section.

(g) After a public hearing, the commission, by written order, shall grant or reject the application and shall state its reasons. The commission may set a reasonable time period for any sponsorship designation.

(h) In granting any future permit for use of water stored in a project for which it has designated a local sponsor, the commission shall fully recognize that sponsor's contributions to the planning and development of the project.

(i) To the extent that no local cooperator is prepared to undertake local sponsorship of a federal project in whole or part or to the extent that the board has an interest in the project, the board may be designated as sponsor of the project or as an additional cooperating sponsor.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 16.093 to 16.130 reserved for expansion]

SUBCHAPTER E. ACQUISITION AND DEVELOPMENT OF FACILITIES

§ 16.131. Authorized Projects

The board may use the development fund for projects including the design, acquisition, lease, construction, reconstruction, development, or enlargement in whole or part of any existing or proposed project.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.132. Joint Ventures

The board may act singly or in a joint venture in partnership with any person or entity, including any agency or political subdivision of this state, or with another state or its political subdivisions, or with the United States, or with a foreign nation, to the extent permitted by law.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.133. Permits Required

The board shall obtain permits from the commission for the storage, transportation, and application to beneficial use of water in reservoirs and associated works constructed by the board.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.134. Storing Water

The board may use any reservoir acquired, leased, constructed, reconstructed, developed, or enlarged by it under this chapter to store unappropriated state water and other water acquired by the state. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.135. Board Findings

Before the board may acquire storage facilities in any reservoir, the board shall find affirmatively that:

- (1) it is reasonable to expect that the state will recover its investment in the facilities;
- (2) the cost of the facilities exceeds the current financing capabilities of the area involved, and the facilities cannot be reasonably financed by local interests without state participation;
- (3) the public interest will be served by acquisition of the facilities; and
- (4) the facilities to be constructed or reconstructed contemplate the optimum development of the site which is reasonably reserved under all existing circumstances of the site.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.136. Facilities Wanted by Political Subdivision

The board shall not acquire any facility to the extent that the board finds that the political subdivision:

- (1) is willing and reasonably able to finance the acquisition of the facility;
- (2) has qualified by obtaining the necessary permit; and
- (3) has proposals that are consistent with the objectives of the state water plan.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.137. Contracts: General Authority

(a) The board may execute contracts to the full extent that contracts are constitutionally authorized and not limited for the design, management, acquisition, lease, construction, reconstruction, development, enlargement, operation, or maintenance, singularly or in any combination, of any existing or proposed project.

(b) The board shall obtain the approval of the attorney general as to the legality of all contracts authorized under this subchapter to which the board is a party.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.138. Specific Contracts Authorized

Contracts authorized by Section 16.137 of this code shall include but are not limited to the following:

- (1) contracts secured by the general credit of the state which shall constitute general obligations of the state in the same manner and with the same effect as water development bonds, and principal and interest on these contracts shall be paid in the manner provided for pay-

ment of principal and interest on state bonds by the constitution;

(2) federal grants or grants from other sources;

(3) contracts which may be fully or partially secured by water purchase or repayment contracts executed by political subdivisions of the state for purchase of water and facilities necessary to supply present and future regional and local water requirements;

(4) contracts with any person, including but not limited to the United States, local public agencies, power cooperatives, and investor-owned utilities, for financing, constructing, and operating facilities to operate and deliver pumping energy required for projects; and

(5) contracts for goods and services necessary for the design, management, acquisition, lease, construction, reconstruction, development, enlargement, implementation, operation, or maintenance of any existing or proposed project or portion of the project.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.139. Contracts: Facilities Acquired for a Term of Years

If facilities are acquired for a term of years, the board may include in the contract provisions for renewal that will protect the state's investment.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.140. Maintenance Contracts

The board may execute contracts for the operation and maintenance of the state's interest in any project and may agree to pay reasonable operation and maintenance charges allocable to the state interest.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.141. Recreational Facilities

The board may execute contracts with the United States and with state agencies and political subdivisions and with others to the extent authorized for the development and operation of recreational facilities at any project in which the state has acquired an interest. Income received by the board under these contracts may be used for the same purposes as income from the sale of water. The legislature may appropriate money for the development and operation of recreational facilities at projects in which the state has acquired an interest.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 16.142 to 16.180 reserved for expansion]

SUBCHAPTER F. SALE OR LEASE OF FACILITIES

§ 16.181. Board May Sell or Lease Projects

(a) The board may sell, transfer, or lease, to the extent of its ownership, a project acquired, constructed, reconstructed, developed, or enlarged with money from the water development account.

(b) The board shall obtain the approval of the attorney general as to the legality of all contracts authorized under this subchapter to which the board is a party.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.182. Permit Required

Before the board grants the application to buy, receive, or lease the facilities, the applicant shall first secure a permit for water use from the commission. If the facilities are to be leased, the permit may be for a term of years.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.183. Permit: Paramount Consideration of Commission

In passing on an application for a permit under this subchapter whether it proposes a use of water inside or outside the watershed of the impoundment, the commission shall give paramount consideration to recouping the state's investment in order to protect the public interest and promote the general welfare.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.184. Contract Must be Negotiated

The commission shall not issue the permit until the applicant has executed a contract with the board for acquisition of the facilities.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.185. Reservoir Land

The board may lease acquired reservoir land until construction of the dam is completed without the necessity of a permit issued by the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.186. Price of Sale

(a) The price of the sale or transfer of a state facility acquired prior to September 1, 1977, other than a facility acquired under a contract with the United States, shall be the sum of the direct cost of acquisition, plus an amount of interest calculated when one-half of one percent is added to the weighted average effective interest rate in effect at the date of sale or transfer of the state facility times the

amount of board money disbursed for the acquisition times the number of years and fraction of a year from the date or dates of purchase or acquisition to the date or dates of sale or transfer, plus the board's cost of operating and maintaining the facility from the date of acquisition to the date of sale or transfer, less any payments received by the board from the lease of the facility or the sale of water from it.

(b) The price of the sale or transfer of a state facility acquired on or subsequent to September 1, 1977, other than a facility acquired under a contract with the United States, shall be the sum of the direct cost of acquisition, plus an amount of interest calculated by multiplying the lending rate in effect at the date of acquisition by the amount of board money disbursed for the acquisition times the number of years and fraction of a year from the date or dates of the purchase or acquisition to the date or dates of the sale or transfer of the state facility, plus the board's cost of operating and maintaining the facility from the date of acquisition to the date of sale or transfer, less any payments received by the board from the lease of the facility or the sale of water from it.

(c) The purchaser of the board's interest in a state facility shall also assume, to the extent disclosed by the board at or prior to the sale, any and all direct, conditional, or contingent liabilities of the board attributed to the project in direct relation to the percentage of the project acquired by the purchaser.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 11.356 by Acts 1977, 65th Leg., p. 671, ch. 254, § 2.

§ 16.187. Price of Sale: Facilities Acquired under Contracts with the United States

(a) The price of the sale or transfer of a facility acquired prior to September 1, 1977, under a contract with the United States shall be the sum of the direct cost of acquisition, plus an amount of interest calculated by adding one-half of one percent to the weighted average effective interest rate in effect at the date of the sale or transfer of the state facility times the amount of board money disbursed for the acquisition times the number of years and fraction of a year for which the board paid interest to the other party to the contract, plus the board's cost of operating and maintaining the facility from the date of acquisition to the date of the sale or transfer, less any payments received by the board from the lease of the facility or the sale of water from it.

(b) The price of the sale or transfer of a state facility acquired on or subsequent to September 1, 1977, under a contract with the United States shall be the sum of the direct cost of acquisition, plus an amount of interest calculated by multiplying the lending rate in effect at the time of acquisition by the amount of board money disbursed for the acqui-

sition of the facility times the number of years and fraction of a year from the date or dates of purchase or acquisition to the date or dates of sale or transfer, plus the board's cost of operating and maintaining the facility from the date of acquisition to the date of the sale or transfer of the facility, less any payments received by the board from the lease of the facility or the sale of water from it.

(c) If, in transferring any contract, the board remains in any way directly, conditionally, or contingently liable for the performance of any part of the contract, then the transferee, in addition to the payments prescribed by Subsection (a) or (b) of this section, as applicable, shall pay to the board annually one-half of one percent of the remaining amount owed to the other party to the contract, and shall continue these payments until the board is fully released from the contract.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 11.357 by Acts 1977, 65th Leg., p. 671, ch. 254, § 2.

[§ 16.1871.]¹ Acquisition Date

(a) If the board has made an initial payment prior to September 1, 1977, to acquire a state facility, other than a facility acquired under a contract with the United States, the state facility shall be deemed to have been acquired prior to September 1, 1977, for purposes of Section 11.356 of this code.² If the board makes its initial payment on or after September 1, 1977, to acquire a state facility, other than a facility acquired under a contract with the United States, the state facility shall be deemed to have been acquired on or after September 1, 1977, for purposes of Section 11.356 of this code.

(b) If the board has executed a contract with the United States prior to September 1, 1977, to purchase a state facility, the state facility shall be deemed to have been acquired prior to September 1, 1977, for purposes of Section 11.357³ of this code. If the board executes a contract with the United States on or after September 1, 1977, to purchase a state facility, the state facility shall be deemed to have been acquired on or after September 1, 1977, for purposes of Section 11.357 of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ Enacted as § 11.3571 by Acts 1977, 65th Leg., p. 673, ch. 254, § 3 and editorially reclassified.

² See, now, § 16.186.

³ See, now, § 16.187.

§ 16.188. Costs Defined

With reference to the sale of a state facility, "direct cost of acquisition" means the principal amount the board has paid or agreed to pay for a facility up to the date of sale, but does not include the board's cost of operating and maintaining the

facility from the date of acquisition to the date of the sale or transfer of the facility.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 11.358 by Acts 1977, 65th Leg., p. 671, ch. 254, § 2.

§ 16.189. Lease Payments

In leasing a state facility for a term of years, the board shall require annual payments not less than the total of:

- (1) the annual principal and interest requirements applicable to the debt incurred by the state in acquiring the facility; and
- (2) the state's annual cost for operation, maintenance, and rehabilitation of the facility.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.190. Sale or Lease: Condition Precedent

(a) No sale, transfer, or lease of a state facility is valid unless the board first makes the following affirmative findings:

- (1) that the applicant has a permit granted by the commission;
- (2) that the sale, transfer, or lease will contribute to the conservation and development of the water resources of the state; and
- (3) that the consideration for the sale, transfer, or lease is fair, just, and reasonable and in full compliance with the law.

(b) The consideration for any such sale or transfer may be either money or revenue bonds, which revenue bonds for the purposes hereof shall be deemed the same as money.

(c) The amount of money shall be equal to the price for purchasing the facilities as prescribed by the provisions of Section 16.187 of this code, or if revenue bonds constitute the consideration, the principal amount of revenue bonds shall be equal to the price for purchasing the facilities as prescribed by the provisions of Section 16.187 of this code, and such revenue bonds shall bear interest at the rate prescribed in Section 17.128 of this code with regard to bonds purchased with the proceeds of the Texas Water Development Fund.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.191. Disposition of Proceeds

(a) The money received from any sale, transfer, or lease of facilities as cash, or in the case of a sale or transfer involving revenue bonds, the money received as matured interest or principal on the bonds shall be used to pay the principal of and interest on water development bonds or to meet contractual obligations incurred by the board. The money shall be collected and credited to the proper special fund

as is money received in payment of principal and interest on loans to political subdivisions under this code, taking into consideration the manner in which the facilities were acquired.

(b) When enough money has been collected to pay all outstanding indebtedness, including the principal of all state bonds and contractual obligations and the full amount of interest to accrue on these debts, the board may use any further amounts received from the sale, transfer, or lease of facilities to acquire additional facilities or to provide assistance to political subdivisions for water supply projects.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.192. Sale of Stored Water

The board may sell any unappropriated public water of the state and other water acquired by the state that is stored by or for it. The price will be determined by the board.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.193. Permit

(a) The board may not sell the water stored in a facility to any person who has not obtained a permit from the commission. The rights of the applicant in the water are governed by the terms and conditions of the permit. The permit may be for a term of years.

(b) Whether the application for a permit involves a proposed use of water inside or outside the watershed of the impoundment, the commission shall give paramount consideration to recouping the state's investment in order to protect the public interest and promote the general welfare.

(c) The permit shall be conditioned on continued payment of the obligations assumed under the contract with the board and may provide for cancellation at any time on breach of the contract.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.194. Sale Contract: Provisions, Limitations

(a) The board may determine the consideration and other provisions to be included in water sale contracts, but the consideration and other provisions shall be fair, reasonable, and nondiscriminatory. The board may include charges for standby service, which means holding water and conservation storage space for use and for actual delivery of water.

(b) The board shall make the same determinations with respect to the sale of water as are required in Section 16.190 of this code with respect to the sale or lease of facilities.

(c) The board shall not compete with any political subdivision in the sale of water when this competition jeopardizes the ability of the political subdivi-

sion to meet obligations incurred to finance its own water supply projects.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.195. Emergency Releases of Water

Unappropriated water and other water of the state stored in any facility acquired by and under the control of the board may be released without charge to relieve any emergency condition arising from drought, severe water shortage, or public calamity, if the commission first determines the existence of the emergency and requests the board to release water.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.196. Preferences

The board shall give political subdivisions a preferential right, but not an exclusive right, to purchase, acquire, or lease facilities and to purchase water from facilities. Preferences shall be given in these respects in accord with the provisions of Section 11.123 of this code relating to preferences in the appropriation and use of state water. The board and the commission shall coordinate their efforts to meet these objectives and to assure that the public water of this state, which is held in trust for the use and benefit of the public, will be conserved, developed, and utilized in the greatest practicable measure for the public welfare.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.197. Lease of Land Prior to Project Construction

The board may lease tracts of land acquired for project purposes for a term of years for any purpose not inconsistent with ultimate project construction. The lease shall be scheduled to expire before initiation of project construction.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.198. Lease Contributions Equivalent to Taxes

The lease may provide for contribution by the lessee to units of local government of amounts equivalent to ad valorem taxes or special assessments.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 16.199 to 16.230 reserved for expansion]

SUBCHAPTER G. IMPROVEMENTS

§ 16.231. Purpose of Subchapter

The chief purpose of this subchapter is to provide for planning and marking out upon the ground all improvements necessary to reclaim for agricultural use all overflowed land, swampland, and other land in this state that is not suitable for agricultural use because of temporary or permanent excessive accumulation of water on or contiguous to the land. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.232. Surveys; Planning

The executive director shall have the staff perform all preliminary work required in the process of planning or marking out upon the ground the most practical, permanent, economical, and equitable improvements or systems of improvements, including levees, dikes, dams, canals, drains, waterways, reservoirs, and other improvements incidental to them. This work includes investigations, estimates, surveys, maps, reports, and publications, and any other work which is incidental to this. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.233. Design of Improvements or System of Improvements

Insofar as possible, the improvements shall be designed with primary consideration to the topographic and hydrographic conditions and in such a manner that each division of a project shall be a complete, united project forming a coordinate part of an ultimately finished series of projects so constituted that the successful operation of each united project shall coordinate with the successful operation of other projects within the same hydraulic influence. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.234. Location of Projects; Reports

The executive director may determine the location of the improvements or systems of improvements and the time and manner of making the results public. The department shall make records or publish reports describing the improvements or systems of improvements and shall file in its office all final results that are of value to the state. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.235. Cooperation With Other Agencies

In performing his functions, the executive director may confer with federal and state agencies and with political subdivisions and, with the approval of the board, may execute cooperative agreements with them. The executive director may cancel any such agreement on 10 days notice to the other party. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.236. Advice to Districts

The executive director shall confer with districts requesting technical advice on the adequate execution of proposed levee and drainage improvements. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.237. Districts to File Information With Department

Immediately before having its bonds approved by the attorney general, each drainage district and levee improvement district shall file with the department, on forms furnished by the department, a complete record showing each step in the organization of the district, the amount of bonds to be issued, and a description of the area and boundaries of the district, accompanied by plans, maps, and profiles of improvements and the district engineer's estimates and reports on them. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.238. Construction of Levee Without Approval of Plans

(a) No person, corporation, or levee improvement district may construct, attempt to construct, cause to be constructed, maintain, or cause to be maintained any levee or other such improvement on, along, or near any stream of this state that is subject to floods, freshets, or overflows so as to control, regulate, or otherwise change the floodwater of the stream without first obtaining approval of the plans by the commission.

(b) Any person, corporation, or levee improvement district who violates any provision of this section is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than \$100.

(c) At the request of the executive director, the attorney general shall file suit in a district court of Travis County to enjoin any violation or threatened violation of this section.

(d) This section does not apply to dams permitted by the commission. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 16.239 to 16.270 reserved for expansion]

SUBCHAPTER H. NAVIGATION FACILITIES

§ 16.271. Improvement of Streams and Canals and Construction of Facilities Within Cypress Creek Drainage Basin

The board may improve streams and canals and construct all waterways and other facilities necessary to provide for navigation within the Cypress Creek drainage basin which is located in the north-east portion of the state. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.272. Long-Term Contracts With the United States

The board may execute long-term contracts with the United States or any of its agencies for the acquisition and development of improvements and facilities under Section 16.271 of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.273. Temporary Authority to Act for District

The board may act in behalf of a local district or districts until they can take over the project or projects in accordance with the board's agreement with the district or districts in acting as the sponsor.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 16.274 to 16.310 reserved for expansion]

SUBCHAPTER I. FLOOD INSURANCE

§ 16.311. Short Title

This subchapter may be cited as the Flood Control and Insurance Act.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.312. Purpose

The State of Texas recognizes the personal hardships and economic distress caused by flood disasters since it has become uneconomic for the private insurance industry alone to make flood insurance available to those in need of such protection on reasonable terms and conditions. Recognizing the burden of the nation's resources, congress enacted the National Flood Insurance Act of 1968, as amended (42 U.S.C. Sections 4001 through 4127), whereby flood insurance can be made available through coordinated efforts of the federal government and the private insurance industry, by pooling risks, and the positive cooperation of state and local government. The purpose of this subchapter is to evidence a positive interest in securing flood insurance coverage under this federal program and to so procure for those citizens of Texas desiring to participate and in promoting the public interest by providing appropriate protection against the perils of flood losses and in encouraging sound land use by minimizing exposure of property to flood losses.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.313. Definitions

In this subchapter:

(1) "Political subdivision" means any political subdivision or body politic and corporate of the State of Texas and includes any county, river authority, conservation and reclamation district,

water control and improvement district, water improvement district, water control and preservation district, fresh water supply district, irrigation district, and any type of district heretofore or hereafter created or organized or authorized to be created or organized pursuant to the provisions of Article XVI, Section 59 or Article III, Section 52 of the Constitution of the State of Texas; "political subdivision" also means any interstate compact commission to which the State of Texas is a party, municipal corporation, or city whether operating under the Home Rule Amendment of the Constitution or under the General Law.

(2) "National Flood Insurance Act" means the National Flood Insurance Act of 1968, as amended (42 U.S.C. Sections 4001 through 4127), and the implementation and administration of the Act by the Secretary of the United States Department of Housing and Urban Development.

(3) "Secretary" means the Secretary of the United States Department of Housing and Urban Development.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.314. Cooperation of Texas Department of Water Resources

In recognition of the necessity for a coordinated effort at all levels of government, the department shall cooperate with the Federal Insurance Administrator of the United States Department of Housing and Urban Development in the planning and carrying out of state participation in the National Flood Insurance Program; however, the responsibility for qualifying for the National Flood Insurance Program shall belong to any interested political subdivision, whether presently in existence or created in the future.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.315. Political Subdivisions; Compliance With Federal Requirements

All political subdivisions are hereby authorized to take all necessary and reasonable actions to comply with the requirements and criteria of the National Flood Insurance Program, including but not limited to:

(1) making appropriate land use adjustments to constrict the development of land which is exposed to flood damage and minimize damage caused by flood losses;

(2) guiding the development of proposed future construction, where practicable, away from location which is threatened by flood hazards;

(3) assisting in minimizing damage caused by floods;

(4) authorizing and engaging in continuing studies of flood hazards in order to facilitate a constant reappraisal of the flood insurance program and its effect on land use requirements;

(5) engaging in floodplain management and adopting enforcing permanent land use and control measures consistent with the criteria established under the National Flood Insurance Act;

(6) declaring property, when such is the case, to be in violation of local laws, regulations, or ordinances which are intended to discourage or otherwise restrict land development or occupancy in flood-prone areas and notifying the secretary, or whomever he designates, of such property;

(7) consulting with, giving information to, and entering into agreements with the Department of Housing and Urban Development for the purpose of:

(A) identifying and publishing information with respect to all flood areas, including coastal areas; and

(B) establishing flood-risk zones in all such areas and making estimates with respect to the rates of probable flood-caused loss for the various flood-risk zones for each of these areas;

(8) cooperating with the secretary's studies and investigations with respect to the adequacy of local measures in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention;

(9) taking steps to improve the long-range management and use of flood-prone areas;

(10) purchasing, leasing, and receiving property from the secretary when such property is owned by the federal government and lies within the boundaries of the political subdivision pursuant to agreements with the Department of Housing and Urban Development or other appropriate legal representative of the United States Government;

(11) requesting aid pursuant to the entire authorization from the board;

(12) satisfying criteria adopted and promulgated by the department pursuant to the National Flood Insurance Program; and

(13) adopting permanent land use and control measures with enforcement provisions which are consistent with the criteria for land management and use adopted by the secretary.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.316. Coordination of Local, State, and Federal Programs by Department

(a) The department shall aid, advise, and coordinate the efforts of present and future political subdivisions endeavoring to qualify for participation in the National Flood Insurance Program.

(b) Pursuant to the National Flood Insurance Program and state and local efforts complementing the program, the department shall aid, advise, and cooperate with political subdivisions, the State Board of Insurance, and the United States Department of Housing and Urban Development when aid, advice, and cooperation are requested or deemed advisable by the board.

(c) The aforementioned aid may include but is not necessarily limited to:

(1) coordinating local, state, and federal programs relating to floods, flood losses, and floodplain management;

(2) evaluating the present structure of all federal, state, and political subdivision flood control programs within or adjacent to the state, including an assessment of the extent to which public and private floodplain management activities have been instituted;

(3) carrying out studies with respect to the adequacy of present public and private measures, laws, regulations, and ordinances in flood-prone areas as to land management and use, flood control, flood zoning, and flood damage prevention;

(4) evaluating all available engineering, hydrologic, and geologic data relevant to flood-prone areas and flood control in those areas; and

(5) carrying out floodplain studies and mapping programs of floodplains, flood-prone areas, and flood-risk zones.

(d) On the basis of such studies and evaluations, the department, to the extent of its capabilities, shall periodically identify and publish information and maps with respect to all floodplain areas, including the state's coastal area, which have flood hazards, and where possible aid the federal government in identifying and establishing flood-risk zones in all such areas.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.317. Cooperation of State Board of Insurance

Pursuant to the National Flood Insurance Program, the State Board of Insurance shall aid, advise, and cooperate with political subdivisions, the department, and the United States Department of Housing and Urban Development when such aid, advice, and cooperation are requested or deemed advisable by the State Board of Insurance.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.318. Rules

Political subdivisions which qualify for the National Flood Insurance Program, the State Board of Insurance, and the board may adopt and promulgate reasonable rules which are necessary for the orderly effectuation of the respective authorizations herein. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 16.319. Qualification

Political subdivisions wishing to qualify under the National Flood Insurance Program shall have the authority to do so by complying with the directions of the Department of Housing and Urban Development and by:

- (1) evidencing to the secretary a positive interest in securing flood insurance coverage under the National Flood Insurance Program; and
- (2) giving to the secretary satisfactory assurance that measures will have been adopted for the political subdivision which measures will be consistent with the comprehensive criteria for land management and use developed by the Department of Housing and Urban Development, and that the application and enforcement of such measures will commence as soon as technical information on floodways and on controlling elevations is available.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977; Acts 1977, 65th Leg., 1st C.S., p. 58, ch. 4, § 3, eff. Sept. 1, 1977.]

Section 2 of Acts 1977, 65th Leg., 1st C.S., p. 58, ch. 4, provided: "All proceedings and actions of any political subdivision as defined in the Flood Control and Insurance Act with respect to participation in and compliance with the National Flood Insurance Program under the Flood Control and Insurance Act are in all things and all respects ratified, confirmed, approved, and validated even though these proceedings and actions may not have occurred within the time limit provided in the Flood Control and Insurance Act; provided, however, that any proceeding or action taken under the Flood Control and Insurance Act by a political subdivision which took action to qualify under Section 9 of that Act after June 30, 1970, and before the effective date of this Act shall expire on the 60th day after the effective date of this Act unless the proceeding or action is reenacted by the governing body of the political subdivision after the effective date of this Act and before the 60th day after the effective date of this Act."

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Acts 1977, 65th Leg., p. 2207, ch. 870, revised Title 2 of the Water Code, effective September 1, 1977. For disposition of provisions of former Title 2 in the revised Title, see Disposition Table preceding § 5.001.

SUBCHAPTER A. GENERAL PROVISIONS

§ 17.001. Definitions

In this chapter:

- (1) "Board" means the Texas Water Development Board.
- (2) "Commission" means the Texas Water Commission.
- (3) "Executive director" means the executive director of the Texas Department of Water Resources.
- (4) "Department" means Texas Department of Water Resources.
- (5) "Political subdivision" means a county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution and including any interstate compact commission to which the state is a party.
- (6) "Project" means any engineering undertaking or work to conserve and develop surface or subsurface water resources of the state, in-

cluding the control, storage, and preservation of its storm water and floodwater and the water of its rivers and streams for all useful and lawful purposes by the acquisition, improvement, extension, or construction of dams, reservoirs, and other water storage projects, including underground storage projects, filtration and water treatment plants, including any system necessary to transport water from storage to points of distribution or from storage to filtration and treatment plants, including facilities for transporting water therefrom to wholesale purchasers by the acquisition, by purchase of rights in underground water, by the drilling of wells, or for any one or more of these purposes or methods.

(7) "Weighted average effective interest rate" means the rate of interest computed by dividing the total value of all coupons attached to the pertinent bonds issued under this chapter, after deducting all premiums and adding all discounts involved, by the total number of years from the date of issuance to the date of maturity of each bond previously issued.

(8) "Bonds" means all Texas Water Development Bonds now or hereafter authorized by the Texas Constitution.

(9) "Waste" has the same meaning as provided in Section 26.001 of this code.

(10) "Water development bonds" means the Texas Water Development Bonds authorized by Section 49-c, as amended, and Section 49-d, as amended, of Article III of the Texas Constitution.

(11) "Water quality enhancement bonds" means the Texas Water Development Bonds authorized by Section 49-d-1, as amended, of Article III of the Texas Constitution.

(12) "Lending rate" means an amount of interest calculated when one-half of one percent is added to the weighted average net effective interest rate on the three most recent issues of bonds issued under this chapter.

(13) "Net effective interest rate" means the rate of interest computed by dividing the total value of all interest coupons attached to the bonds included in an issue issued under this chapter, after deducting all premiums and adding all discounts involved, by the total number of years from the date of issuance to the date of maturity of each bond included in the issue.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 11.001 by Acts 1977, 65th Leg., p. 671, ch. 254, § 1.

[Sections 17.002 to 17.010 reserved for expansion]

SUBCHAPTER B. WATER DEVELOPMENT BONDS

§ 17.011. Issuance of Water Development Bonds

The board, by resolution, from time to time may provide for the issuance of negotiable bonds in an aggregate amount not to exceed \$400 million pursuant to the provisions of Article III, Section 49-c and Section 49-d, as amended, of the Texas Constitution, and the issuance of additional negotiable bonds in an aggregate amount not to exceed \$200 million pursuant to the provisions of Article III, Section 49-d-1, as amended, of the Texas Constitution.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 11.141 by Acts 1977, 65th Leg., p. 941, ch. 352, § 1.

§ 17.012. Description of Bonds

The bonds shall be on a parity and shall be called Texas Water Development Bonds. The board may issue them in one or several installments and shall date the bonds of each issue.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.013. Sale Price of Bonds

The board may not sell an installment or series of bonds for an amount less than the face value of all of the bonds comprising the installment or series with accrued interest from their date of issuance.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.014. Interest on Bonds

The bonds of each issue shall bear interest payable annually or semi-annually at the option of the board.

§ 17.015. Form, Denomination, Place of Payment

The board shall:

(1) determine the form of the bonds, including the form of any interest coupons to be attached;

(2) fix the denomination of the bonds; and

(3) fix the places of payment of the principal and interest.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.016. Maturity of Bonds

The bonds of each issue shall mature, serially or otherwise, not more than 50 years from their date of issuance.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.017. Redemption Before Maturity

In the resolution providing for the issuance of bonds, the board may fix the price, terms, and conditions for redemption of bonds before maturity.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.018. Registered and Bearer Bonds

The resolution may provide for registration of the bonds as to ownership, successive conversion and reconversion from registered to bearer bonds, and successive conversion and reconversion from bearer to registered bonds.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.019. Notice of Bond Sale

After the board decides to call for bids for the sale of bonds, the board shall publish an appropriate notice of the sale at least one time in one or more recognized financial publications of general circulation published within the state and one or more recognized financial publications published outside the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.020. Competitive Bids

The board shall sell the bonds only after competitive bidding to the highest and best bidder. The board may reject any or all bids.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.021. Security for Bids

The board shall require every bidder, except administrators of state funds, to include with the bid an exchange or cashier's check for a sum the board considers adequate as a forfeit guaranteeing acceptance of and payment for all bonds covered by the bids and accepted by the board.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.022. Approval of Bonds; Registration

Before bonds are delivered to the purchasers, the bonds and the record pertaining to their issuance shall be submitted to the attorney general for his approval. When the attorney general's approval is obtained, the bonds shall be registered in the office of the state comptroller.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.023. Execution of Bonds

The bonds shall be executed on behalf of the board as general obligations of the state in the following manner: the chairman of the board and the development fund manager shall sign the bonds; the board shall impress its seal on the bonds; the governor shall sign the bonds; and the Secretary of State shall attest the bonds and impress on them the state seal.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.024. Facsimile Signatures and Seals

The resolution authorizing the issuance of an installment or series of bonds may prescribe the extent to which the board in executing the bonds and appurtenant coupons may use facsimile signatures and facsimile seals instead of manual signatures and manually impressed seals. Interest coupons may be signed by the facsimile signatures of the chairman of the board and the development fund manager. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.025. Signature of Former Officer

If an officer whose manual or facsimile signature appears on a bond or whose facsimile signature appears on any coupon ceases to be an officer before the bond is delivered, the signature is valid and sufficient for all purposes as if he had remained in office until the delivery had been made. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.026. Bonds Incontestable

After approval by the attorney general, registration by the comptroller, and delivery to the purchasers, the bonds are incontestable and constitute general obligations of the state. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.027. Payment by Treasurer

The State Treasurer shall pay the principal of the bonds as they mature and the interest as it becomes payable. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.028. Payment Enforceable by Mandamus

Payment of the bonds and performance of official duties prescribed by Article III, Section 49-c, Section 49-d, as amended, and Section 49-d-1, as amended, of the Texas Constitution and by the provisions of this subchapter may be enforced in any court of competent jurisdiction by mandamus or other appropriate proceeding. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.029. Refunding Bonds

The board may provide by resolution for the issuance of refunding bonds to refund outstanding bonds issued under this chapter and their accrued interest. The board may sell these bonds and use the proceeds to retire the outstanding bonds issued under this chapter, or the board may exchange the refunding bonds for the outstanding bonds. The issuance of the refunding bonds, their maturity, the rights of the bondholders, and the duties of the

board with respect to refunding bonds are governed by the provisions of this chapter relating to original bonds to the extent that they may be made applicable.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.030. Bonds Negotiable Instruments

The bonds issued under the provisions of this chapter are negotiable instruments under the laws of this state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.031. Bonds Not Taxable

Bonds issued under this chapter, the income from the bonds, and the profit made on their sale are free from taxation within the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.032. Authorized Investments

Bonds issued under this chapter are legal and authorized investments for:

- (1) banks;
- (2) savings banks;
- (3) trust companies;
- (4) building and loan associations;
- (5) insurance companies;
- (6) fiduciaries;
- (7) trustees;
- (8) guardians; and
- (9) sinking funds of cities, towns, villages, counties, school districts, and other political subdivisions and public agencies of the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.033. Security for Deposit of Funds

Bonds issued under this chapter when accompanied by all appurtenant unmatured coupons are lawful and sufficient security for all deposits of funds of the state or of a city, town, village, county, school district, or any other agency or political subdivision of the state at the par value of the bonds.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.034. Mutilated, Lost, Destroyed Bonds

The board may provide for the replacement of any mutilated, lost, or destroyed bond.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 17.035 to 17.070 reserved for expansion]

SUBCHAPTER C. FUNDING PROVISIONS

§ 17.071. Disposition of Money Received

All money received by the board shall be deposited in the State Treasury and credited to the proper special fund as provided in this subchapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.072. Development Fund

(a) The Texas Water Development Fund, referred to as the "development fund," is a special revolving fund in the State Treasury.

(b) All proceeds from the sale of water development bonds (except accrued interest) shall be deposited in a special account in the development fund designated "water development account," and other money for deposit therein as provided in this chapter shall be credited to the water development account.

(c) The water development account may be used for any project and in any manner consistent with the provisions of the constitution, but the development fund may not be used for retail distribution or for transportation of water solely to retail purchasers.

(d) All proceeds from the sale of water quality enhancement bonds (except accrued interest) shall be deposited in a special account in the development fund designated "water quality enhancement account," and other money for deposit therein as provided in this chapter shall be credited to the water quality enhancement account.

(e) The water quality enhancement account may be used for construction of treatment works in any manner consistent with the provisions of the constitution and this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.073. Water Development Clearance Fund

The Texas Water Development Clearance Fund, referred to as the "clearance fund," is a special fund in the State Treasury. Transfers shall be made from this fund as provided by this subchapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.074. Interest and Sinking Fund

The Texas Water Development Bonds Interest and Sinking Fund, referred to as the "interest and sinking fund," is a special fund in the State Treasury into which there shall be paid, from sources specified in this chapter, amounts sufficient to:

- (1) pay the interest coming due on all outstanding bonds during the ensuing fiscal year;
- (2) pay the principal on all bonds that mature during the ensuing fiscal year, plus collection charges and exchanges on the bonds; and

(3) establish a reserve equal to the average annual principal and interest requirements on all outstanding bonds.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.075. Administrative Fund

The Texas Water Development Board Administrative Fund, referred to as the "administrative fund," is a special fund in the State Treasury. From sources specified in this chapter, money shall be credited to this fund in amounts sufficient to pay the administrative expenses of the board as authorized by legislative appropriation.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.076. Combined Facilities Operation and Maintenance Fund

(a) The Combined Facilities Operation and Maintenance Fund is a special fund in the State Treasury.

(b) Money received from the sale of water, standby service, and the lease of land needed for operation and maintenance of facilities shall be credited to this fund. Any of the money which is not needed for operation and maintenance of facilities may be credited to the interest and sinking fund or used to meet contractual obligations incurred by the board in acquiring facilities.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.077. Credits to Clearance Fund

Except for proceeds from the sale of bonds and proceeds from the sale of bonds of political subdivisions as provided by Sections 17.134 and 17.180 of this code, all money received by the board in any fiscal year, including all amounts received as repayment of loans to political subdivisions and interest on those loans, shall be credited to the clearance fund. Money in the clearance fund may be transferred at any time to the interest and sinking fund until the reserve in that fund is equal to the average annual principal and interest requirements on all outstanding bonds.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.078. Transfers at End of Fiscal Year

Not later than 15 days after the end of each fiscal year, any money credited to the clearance fund at the end of the fiscal year shall be transferred to the other special funds as prescribed by Sections 17.079 through 17.082 of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.079. Transfers to Interest and Sinking Fund

- (a) The board shall determine:
- (1) the amount of interest coming due on all bonds outstanding;
 - (2) the amount of principal of bonds maturing and becoming payable during the fiscal year; and
 - (3) the average annual principal and interest requirements on all outstanding bonds.

(b) The comptroller shall transfer to the interest and sinking fund, after taking into account any money and securities on deposit in the interest and sinking fund, an amount necessary to pay:

- (1) all principal and interest maturing on the bonds during the fiscal year;
- (2) all collection charges and exchanges on the bonds; and
- (3) the money sufficient to establish and maintain an additional reserve equal to the average annual principal and interest requirements on all outstanding bonds.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.080. Additional Funds for Payment of Bonds

If the amount transferred from the clearance fund plus the money and securities in the interest and sinking fund are insufficient to pay the interest coming due and the principal maturing on the bonds during the fiscal year, then after the transfer to the interest and sinking fund of as much money as is available in the clearance fund, the State Treasurer shall transfer out of the first money coming into the treasury, not otherwise appropriated by the constitution, the amount required to pay principal and interest on the bonds during the fiscal year.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.081. Transfers to Administrative Fund

If money remains in the clearance fund after making the transfers provided in Section 17.079 of this code, then to the extent possible the comptroller shall transfer to the administrative fund an amount sufficient to cover the legislative appropriation for administrative expenses of the board for the fiscal year.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.082. Transfers to Development Fund

If money remains in the clearance fund after making the transfers provided in Sections 17.079 and 17.081 of this code, the comptroller shall transfer the balance to the appropriate account in the development fund at the end of each fiscal year to be used for any purpose for which proceeds of bonds in such account may be used.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.083. Investment of Reserve Money

The board may invest any money credited to the reserve portion of the interest and sinking fund in:

- (1) direct obligations of the United States;
- (2) other obligations unconditionally guaranteed by the United States;
- (3) bonds of the State of Texas; and
- (4) bonds of counties, cities, and other political subdivisions of the state, except bonds issued by a political subdivision to finance a project or treatment works described in this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.084. Limitation on Board Investment

The board is bound to the extent that the resolution authorizing the issuance of the bonds further restricts the investment of money in bonds of the United States.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.085. Interest and Sinking Fund Investments

The board may invest the money in the interest and sinking fund, except the money in the reserve portion of the fund, only in direct obligations of the United States or obligations unconditionally guaranteed by the United States that are scheduled to mature prior to the date the board must have money available for its intended purpose.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.086. Development Fund Investments

Surplus money in the development fund that is not needed for at least 90 days shall be invested in direct obligations of the United States or in other obligations unconditionally guaranteed by the United States maturing on or before the contemplated date on which the money will be needed.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.087. Sale of Securities

All of the bonds and obligations owned in the interest and sinking fund or in the development fund are defined as securities. The board may sell securities owned in the interest and sinking fund or in any account in the development fund at the governing market price.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.088. Transfers to be Made by Comptroller

The comptroller shall make the transfers required by this subchapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 17.089 to 17.120 reserved for expansion]

SUBCHAPTER D. ASSISTANCE TO POLITICAL
SUBDIVISIONS FOR PROJECTS

§ 17.121. Financial Assistance

The water development account may be used by the board to provide financial assistance to political subdivisions for the construction, acquisition, or improvement of projects, but to the extent that financial assistance is given by the board to an applicant for construction, acquisition, or improvement of any waste water treatment plant, the financial assistance shall be considered as state matching funds for obtaining maximum federal grants for construction of treatment works.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.122. Application for Assistance

(a) In an application to the board for financial assistance, the applicant shall include:

- (1) the name of the political subdivision and its principal officers;
- (2) a citation of the law under which the political subdivision operates and was created;
- (3) the total cost of the project;
- (4) the amount of state financial assistance requested;
- (5) the plan for repaying the total cost of the project; and
- (6) any other information the board requires in order to perform its duties and to protect the public interest.

(b) The board may not accept an application for financial assistance unless it is submitted in affidavit form by the officials of the political subdivision. The board shall prescribe the affidavit form in its rules. The rules do not restrict or prohibit the board from requiring additional factual material from an applicant.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.123. Certificate of Commission or Approval
by Commission

(a) Except as provided in Subsection (b) of this section, the board shall not deliver funds pursuant to an application for financial assistance until the political subdivision has furnished the board a resolution adopted by the commission certifying:

- (1) that an applicant proposing surface-water development has the necessary water right authorizing it to appropriate and use the water which the project will provide; or
- (2) that an applicant proposing underground water development has the right to use water that the project will provide.

(b) If an application includes a proposal for a waste water treatment plant, the part of the application relating to the waste water treatment plant does not need to be certified by the commission, but the board may not deliver funds for the waste water treatment plant until the political subdivision has obtained written evidence of approval of the plans for the waste water treatment plant from the executive director.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.124. Considerations in Passing on Application

In passing on an application from a political subdivision for financial assistance, the board shall consider:

- (1) the needs of the area to be served by the project and the benefit of the project to the area in relation to the needs of other areas requiring state assistance in any manner and the benefits of those projects to the other areas;
- (2) the availability of revenue to the political subdivision, from all sources, for the ultimate repayment of the cost of the project, including interest;
- (3) whether the political subdivision can reasonably finance the project without assistance from the state;
- (4) the relationship of the project to the overall, statewide water needs; and
- (5) the relationship of the project to the state water plan.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.125. Approval of Application

The board by resolution may approve an application if, after considering the factors listed in Section 17.124 of this code and any other relevant factors, the board finds:

- (1) that the public interest requires state participation in the project;
- (2) that the political subdivision cannot reasonably finance the project without state assistance in the amount finally approved by the board; and
- (3) that in its opinion the revenue or taxes pledged by the political subdivision will be sufficient to meet all the obligations assumed by the political subdivision during the succeeding period of not more than 50 years.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.126. Method of Financial Assistance

The board may provide financial assistance by using money in the water development account to purchase bonds or other securities issued by the political subdivision to finance the project. The board may purchase bonds or securities that are secondary or subordinate to other bonds or securities issued by the political subdivision to finance the same project. The board may purchase outstanding prior lien bonds previously issued by the political subdivision when this will avoid or reduce the necessity for issuing junior lien bonds for subsequent sale to the board. However, the security for both prior lien and junior lien bonds shall be pledged from substantially the same sources of revenue.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.127. Bond Maturity

The board may not purchase bonds or other securities which have a maturity date more than 50 years from the date of issuance.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.128. Interest Rate

(a) Except as provided in Subsection (b) of this section, bonds and securities purchased by the board on or after September 1, 1977, with money derived from the sale of bonds issued under this chapter shall bear interest at the lending rate. The bonds shall bear coupons evidencing interest at a rate or combination of rates that will approximate the lending rate as nearly as the board deems practicable. The lending rate shall be affected by the payment of premiums or the deduction of discounts as necessary.

(b) Bonds and securities purchased by the board pursuant to applications for financial assistance approved by the board prior to September 1, 1977, shall bear interest at the rate prescribed by Subsection (a) of this section prior to this amendment. Outstanding prior lien bonds purchased by the board under Section 17.126 of this code need not bear the interest rate provided in Subsection (a) of this section, but the board may pay such price or prices for outstanding prior lien bonds which in its discretion will accomplish the objective of Section 17.126 of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 11.409 by Acts 1977, 65th Leg., p. 671, ch. 254 § 2.

§ 17.129. Approval and Registration

The board shall not purchase any bonds or securities that have not been approved by the attorney general and registered by the comptroller.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.130. Bonds Incontestable

The bonds or other securities issued by a political subdivision are valid, binding, and incontestable after:

- (1) approval by the attorney general;
- (2) registration by the comptroller; and
- (3) purchase by and delivery to the board.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.131. Security for Bonds

(a) Bonds purchased by the board shall be supported by:

- (1) all or part of the net revenue from the operation of the project;
- (2) taxes levied by the political subdivision for the purpose; or
- (3) a combination of taxes and net revenue, and revenue from other available sources.

(b) The board may require that the bonds be supported both by taxes and by net revenue from the operation of the project in any ratio the board considers necessary to fully secure the investment. The board shall establish other conditions and requirements it considers to be consistent with sound investment practices and in the public interest.

(c) As used in this section, "net revenue" means gross revenue less the amount necessary to provide for principal, interest, and reserve requirements of bonds superior to those purchased by the board and the amount necessary to pay the cost of maintaining and operating the project.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.132. Default

(a) In the event of a default in payment of the principal of or interest on bonds purchased by the board or any other default as defined in the proceedings or indentures authorizing the issuance of the bonds, the attorney general shall institute appropriate proceedings by mandamus or other legal remedies to compel the political subdivision or its officers, agents, and employees to cure the default by performing those duties which they are legally obligated to perform. These proceedings shall be brought and venue shall be in a district court of Travis County.

(b) The provisions of this section are cumulative of any other rights or remedies to which the bondholders may be entitled.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.133. Sale of Bonds by Board

(a) The board may sell or dispose of bonds purchased with money in the water development

account. The board may not sell the bonds for less than amortized value and accrued interest.

(b) The board shall first offer the bonds at their amortized value plus accrued interest to the issuing political subdivision at least 30 days before the date of requesting competitive bids.

(c) If the political subdivision fails to give notice to the board of its desire to acquire the bonds at amortized value and accrued interest within the 30-day period, then the board shall give notice of the sale of the bonds, receive competitive bids, and conduct the sale, all in the manner provided for the sale of bonds, except the board may waive any requirement for good faith checks.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.134. Proceeds From Sale

The proceeds from the sale of political subdivision bonds held by the board shall be credited to the water development account, except that accrued interest shall be credited to the interest and sinking fund.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.135. Construction Contract Requirements

The governing body of each political subdivision receiving financial assistance from the board shall require in all contracts for the construction of a project:

- (1) that payment be made in partial payments as the work progresses;
- (2) that each partial payment shall not exceed 90 percent of the amount due at the time of the payment as shown by the engineer of the project; and
- (3) that payment of the 10 percent remaining due upon completion of the contract shall be made only after:

(A) approval by the engineer for the political subdivision as required under the bond proceedings; and

(B) certification by the board that the work to be done under the contract has been completed and performed in a satisfactory manner and in accordance with sound engineering principles and practices.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.136. Filing Construction Contract

The political subdivision shall file with the department a certified copy of each construction contract it enters into for the construction of all or part of a project. Each contract shall contain or have attached to it the specifications, plans, and details of all work included in the contract.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.137. Inspection of Projects

(a) The department may inspect the construction of a project at any time to assure that:

- (1) the contractor is substantially complying with the engineering plans of the project as submitted when approval of the feasibility of the project was sought; and
- (2) the contractor is constructing the project in accordance with sound engineering principles.

(b) Inspection of a project by the department does not subject the state to any civil liability.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.138. Alteration of Plans

After board approval of engineering plans, a political subdivision may not make any substantial or material alteration in the plans unless the board authorizes the alteration.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.139. Certificate of Approval

The board may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

- (1) failure to construct the project according to the plans as the board approved them or altered with the board's approval;
- (2) failure to construct the works in accordance with sound engineering principles; or
- (3) failure to comply with any term of the contract.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 17.140 to 17.170 reserved for expansion]

SUBCHAPTER E. BOND PURCHASES FOR WATER QUALITY ENHANCEMENT PURPOSES

§ 17.171. Financial Assistance

The board shall use funds in the water quality enhancement account to provide financial assistance through the purchase of bonds or other obligations of political subdivisions pursuant to an application for financial assistance approved by it.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.172. Other Financial Assistance

The board may purchase bonds or other obligations that are secondary or subordinate to other bonds or obligations issued by the political subdivision, including outstanding prior lien bonds previously issued by the political subdivision when this will avoid or reduce the necessity for issuing junior lien

bonds for subsequent sale to the board. However, the security for both prior lien and junior lien bonds shall be pledged from substantially the same sources of revenue.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.173. Bond Maturity

The board may not purchase bonds or other obligations which have a maturity date more than 50 years from the date of issuance.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.174. Interest Rate

(a) Except as provided in Subsection (b) of this section, bonds and other obligations purchased by the board on or after September 1, 1977, with money in the water quality enhancement account pursuant to Subchapters F and G of this chapter¹, shall bear interest at the lending rate. The bonds shall bear coupons evidencing interest at a rate or combination of rates that will approximate the lending rate as nearly as the board deems practicable. The lending rate shall be affected by the payment of premiums or the deduction of discounts as necessary.

(b) Outstanding prior lien bonds purchased by the board under Section 17.172 of this code may but need not bear the interest rate provided in Subsection (a) of this section, but may be purchased for such price or prices as will accomplish the objectives of Section 17.172 of this code.

[Amended by Acts 1977, 65th Leg., p. 2278, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ Sections 17.221 et seq., 17.271 et seq.
The text of this section incorporates the amendment to former § 11.604 by Acts 1977, 65th Leg., p. 671, ch. 254, § 2.

§ 17.175. Approval and Registration

The board shall not purchase any bonds or other obligations that have not been approved by the attorney general and registered by the comptroller.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.176. Bonds Incontestable

The bonds or other obligations issued by a political subdivision are valid, binding, and incontestable after:

- (1) approval by the attorney general;
- (2) registration by the comptroller; and
- (3) purchase by and delivery to the board.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.177. Security for Bonds

(a) Bonds or other obligations purchased by the board under this subchapter shall be supported by:

- (1) all or part of the net revenue from the operation of the treatment works;

(2) taxes levied by the political subdivision for the purpose; or

(3) a combination of taxes and net revenue, and revenue from other available sources.

(b) As used in this section, "net revenue" means gross revenue less the amount necessary to provide for principal, interest, and reserve requirements of bonds, if any, superior to those purchased by the board and the amount necessary to pay the cost of maintaining and operating the treatment works.

(c) The board has the exclusive responsibility to specify terms and conditions of the financial assistance, including all maturity schedules which are necessary in the opinion of the board to achieve the best security for the state which the applicant is reasonably capable of providing. No term or condition shall be specified by the board which would prevent financial assistance from being available to an applicant for construction of treatment works approved by the board.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.178. Default

(a) In the event of a default in payment of the principal of or interest on bonds or other obligations purchased by the board or of a default in payment of amounts due under a loan agreement executed under the provisions of Subchapters F and G of this chapter¹ or of a failure to perform any term or condition agreed to or of any other default as defined in the proceedings or indentures authorizing the issuance of the bonds or in any other obligation or loan agreement, the attorney general shall institute appropriate proceedings by mandamus or other legal remedies to compel the political subdivision or its officers, agents, and employees to cure the default by performing those duties which they are legally obligated to perform. These proceedings shall be brought and venue shall be in a district court of Travis County.

(b) The provisions of this section are cumulative of any other rights or remedies to which the bondholders may be entitled.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ Sections 17.221 et seq., 17.271 et seq.

§ 17.179. Sale of Bonds by Board

(a) The board may sell or dispose of bonds or other obligations purchased with money in the water quality enhancement account at not less than amortized value and accrued interest.

(b) The board shall first offer the bonds or other obligations at their amortized value plus accrued interest to the issuing political subdivision at least 30 days before the date of requesting competitive bids.

(c) If the political subdivision fails to give notice to the board of its desire to acquire the bonds or other obligations at amortized value and accrued interest within the 30-day period, then the board shall give notice of the sale of the bonds, receive competitive bids, and conduct the sale of such bonds or other obligations so purchased, all in the manner provided for the sale of bonds, except the board may waive any requirement for good faith checks.

§ 17.180. Proceeds From Sale

The proceeds from the sale of such political subdivision bonds or other obligations held by the board shall be credited to the water quality enhancement account, except that accrued interest shall be credited to the interest and sinking fund.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 17.181 to 17.220 reserved for expansion]

SUBCHAPTER F. PROGRAM FOR FINANCIAL ASSISTANCE FOR WASTE TREATMENT CONSTRUCTION

§ 17.221. Purpose

The purpose of this subchapter is to provide for making loans of water quality enhancement funds authorized by Article III, Section 49-d-1, as amended, of the Texas Constitution to political subdivisions of the state for use as state matching funds for obtaining maximum federal grants for the construction of treatment works.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.222. Definitions

In this subchapter:

(1) "Water quality enhancement" means the construction of treatment works by political subdivisions with loans provided under this subchapter.

(2) "Treatment works" means any devices and systems used in the storage, treatment, recycling, and reclamation of waste to implement this chapter or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, pumping, power, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including site acquisition of the land that will be a part of or used in connection with the treatment process or is used for ultimate disposal of residues resulting from

such treatment; and any plant, disposal field, lagoon, canal, incinerator, area devoted to sanitary landfills, or other facilities installed for the purpose of treating, neutralizing, or stabilizing waste or facilities to provide for the collection, control, and disposal of waste heat.

(3) "Construction" means any one or more of the following: preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, title, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions, the expense of any condemnation or other legal proceeding, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items.

(4) "Water quality enhancement funds" means the proceeds from the sale of Texas Water Development Bonds issued under the authority of Article III, Section 49-d-1, as amended, of the Texas Constitution.

(5) "Political subdivision" means the state, a county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution and including any interstate compact commission to which the state is a party.

(6) "Loan" means purchase by the state of the bonds or other obligations of a political subdivision with water quality enhancement funds or entry by the state into a loan agreement with any political subdivision for a direct loan of water quality enhancement funds.

(7) "Financial assistance" means any loan of water quality enhancement funds made to a political subdivision for the construction of treatment works through the purchase of bonds or other obligations of the political subdivision or pursuant to a loan agreement.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.223. Financial Assistance

The board may use water quality enhancement funds to provide financial assistance to political subdivisions for purposes of water quality enhancement.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.224. Authority of Political Subdivision

(a) A political subdivision may apply to the board for financial assistance and may use water quality enhancement funds to pay for construction of treatment works in the manner provided in this subchapter.

(b) A political subdivision may exercise any power necessary to apply for, receive, use, and repay water quality enhancement funds, including the power to enter into loan contracts and agreements and to use any of its income and revenues to repay the loan. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.225. Application for Assistance

In an application to the board for financial assistance, the applicant shall include:

- (1) the name of the political subdivision and its principal officers;
- (2) a citation of the law under which the political subdivision operates and was created;
- (3) the total cost of the treatment works;
- (4) the amount of state financial assistance requested;
- (5) the method for obtaining the financial assistance, whether by purchase of bonds or other obligations of the political subdivision, by direct loan, or by a combination of these two methods;
- (6) the plan for repaying the financial assistance; and
- (7) any other information the board requires to have an adequate understanding of proposals made in the application.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.226. Action on Application

(a) After an application is received for financial assistance, the executive director shall submit the application to the board together with the comments and recommendations of the development fund manager relating to the best method for making the financial assistance available.

(b) The board may grant the application in whole or part or may deny the application.

(c) The board has the sole responsibility and authority for selecting the political subdivisions to whom financial assistance may be provided and, in consultation with and pursuant to agreement with the political subdivision, shall determine the location, time, design, scope, and all other aspects of the construction to be performed.

(d) The board shall review and approve plans and specifications for all treatment works for which financial assistance is requested. The provisions of Section 12, Chapter 178, Acts of the 49th Legislature, Regular Session, 1945, as amended (Article 4477-1, Vernon's Texas Civil Statutes), do not apply to treatment works approved under this subchapter.

(e) Except as specifically provided in this subchapter, the deliberations, proposals, decisions, and other actions of the board under this subchapter do not

require the concurrence or approval of any other governmental agency, board, commission, council, political subdivision, or other governmental entity. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.227. Considerations in Passing on Application

In passing on an application from a political subdivision for financial assistance, the board shall consider:

- (1) the public benefit to be derived from the project and the propriety of state participation; and
- (2) the availability of revenue to the political subdivision from all sources for the ultimate repayment of the cost of the project, including interest.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.228. Conditions for Obtaining Financial Assistance

Before financial assistance is provided to a political subdivision, the following conditions must be met:

- (1) the project must be approved by the board and the appropriate federal agency if applicable;
- (2) the political subdivision must adopt any necessary ordinance, rule, order, or resolution which in the judgment of the board is necessary to comply with the contract and requirements of the federal government.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.229. Providing Financial Assistance

If the board grants an application in whole or part, financial assistance shall be funded in accordance with Subchapter E of this chapter.¹

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ Section 17.171 et seq.

§ 17.230. Direct Loans

(a) If a political subdivision in the judgment of the board is unable to issue bonds or other obligations for a project in the state for which a federal grant is to be made under the Federal Water Pollution Control Act, as amended,¹ then the board may provide financial assistance to the political subdivision by agreeing to pay from water quality enhancement funds the amount required by federal law of the estimated reasonable cost of the project.

(b) Before the delivery of any water quality enhancement funds to the political subdivision, the board with the advice of the development fund

manager and the political subdivision shall execute a loan agreement which shall provide that the political subdivision shall pay into the appropriate account not less than the amount necessary to repay the principal of and interest on the loan over the period of time and under the terms and conditions which are mutually agreeable to the board and the political subdivision. The contract may also include any other terms and conditions which the board may require.

(c) Each political subdivision may charge and collect necessary fees, rentals, rates, and charges for the use, occupancy, and availability of its treatment works and any of its other properties, buildings, structures, operations, utilities, systems, activities, and facilities so that it may make all payments required by its loan agreement. The political subdivision shall pledge such amounts to make those payments.

(d) The political subdivision may pledge its ad valorem taxes, if any, and levy and collect the taxes for the purpose of making all or any part of the payments required by its loan agreement. The taxes shall be in addition to all other ad valorem taxes permitted by law but may not exceed, together with other ad valorem taxes, any maximum imposed by the Texas Constitution.

(e) Each loan agreement executed pursuant to this subchapter and the appropriate proceedings authorizing its execution shall be submitted to the attorney general for examination before the delivery of the money to the political subdivision. If he finds that the loan agreement has been authorized and executed in accordance with law, that the provisions are valid, and that the political subdivision has demonstrated to his reasonable satisfaction that the payments required by the agreement can be made from the sources pledged, he may approve the agreement. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹33 U.S.C.A. § 1251 et seq.

§ 17.231. Use of Funds; Federal Requirement Satisfied

When bonds or other obligations are purchased or a loan agreement is approved by the attorney general, water quality enhancement funds shall be delivered to the political subdivisions entitled to receive them and shall be used only to pay for construction costs of treatment works approved as provided in this subchapter. The purchase of bonds and other obligations as provided in this code and the making of direct loans as provided in Section 17.230 of this code together constitute payment by the state of the amount required by federal law of the estimated reasonable construction costs of all projects in the state for which federal grants are to be made under the Federal Water Pollution Control Act, as amended,¹ or any similar law.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹33 U.S.C.A. § 1251 et seq.

¹ West's Tex. Stats. & Codes '77 Supp.—34

§ 17.232. Construction Contract Requirements

(a) In contracts for the construction of treatment works, the governing body of each political subdivision receiving financial assistance shall require:

(1) payment to be made in partial payments as the work progresses;

(2) each bidder to furnish a bid guarantee equivalent to five percent of the bid price; and

(3) each contractor awarded either a design/construct contract or construction contract to furnish performance and payment bonds, each of which must include without limitation guarantees that work done under the contract will be completed and performed:

(A) according to approved plans and specifications; and

(B) in accordance with sound construction principles and practices.

(b) Each bond must:

(1) be in an amount of not less than 100 percent of the contract price; and

(2) remain in effect for one year beyond the date of approval by the engineer of the political subdivision.

(c) No valid approval may be granted unless the work done under the contract has been completed and performed in a satisfactory manner according to approved plans and specifications.

(d) With the approval of its governing body, a political subdivision in addition to the other requirements of this section may require in a contract for construction of treatment works that:

(1) partial payment not exceed 90 percent of the amount due at the time of the payment as shown by the engineer of the project; and

(2) payment of the 10 percent remaining due upon completion of the contract shall be made only after approval by:

(A) the engineer for the political subdivision as required under the bond proceedings; and

(B) the governing body of the political subdivision by a resolution or other formal action.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.233. Filing Construction Contract

The political subdivision shall file with the development fund manager a certified copy of each construction contract it enters into for the construction of all or part of the treatment works. Each contract shall contain or have attached to it the specifications, plans, and details of all work included in the contract.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.234. Department Inspection

(a) The department may inspect the construction of treatment works at any time to assure that:

- (1) the contractor is substantially complying with the engineering plans of the treatment works as submitted when approval of the feasibility of the treatment works was sought; and
- (2) the contractor is constructing the treatment works in accordance with sound construction principles.

(b) Inspection of treatment works by the department does not subject the state to any civil liability. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.235. Alteration of Plans

After board approval of engineering plans, a political subdivision may not make any substantial or material alteration in the plans unless the board authorizes the alteration. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.236. Certificate of Approval

The board may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

- (1) failure to construct the treatment works according to the plans as the board approved them or altered with the board's approval;
- (2) failure to construct the works in accordance with sound engineering principles; or
- (3) failure to comply with any term of the contract.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 17.237 to 17.270 reserved for expansion]

SUBCHAPTER G. ALTERNATIVE PROGRAM FOR FINANCIAL ASSISTANCE FOR CONSTRUCTION OF TREATMENT WORKS

§ 17.271. Purpose

The purpose of this subchapter is to provide for making loans of water quality enhancement funds authorized by Article III, Section 49-d-1, as amended, of the Texas Constitution to political subdivisions of the state for the construction of treatment works. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.272. Definitions

In this subchapter:

- (1) "Water quality enhancement" means the construction of treatment works by political

subdivisions with loans provided with water quality enhancement funds.

(2) "Treatment works" means any devices and systems used in the storage, treatment, recycling, and reclamation of waste to implement this chapter or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, pumping, power, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply such as standby treatment units and clear well facilities; and any works, including sites therefor and acquisition of the land that will be a part of or used in connection with the treatment process or is used for ultimate disposal of residues resulting from such treatment; and any plant, disposal field, lagoon, canal, incinerator, area devoted to sanitary landfills, or other facilities installed for the purpose of treating, neutralizing, or stabilizing waste; or facilities to provide for the collection, control, and disposal of waste heat.

(3) "Construction" means any one or more of the following: preliminary planning to determine the feasibility of treatment works, engineering, architectural, legal, title, fiscal, or economic investigations or studies, surveys, designs, plans, working drawings, specifications, procedures, or other necessary actions, the expense of any condemnation or other legal proceeding, erection, building, acquisition, alteration, remodeling, improvement, or extension of treatment works, or the inspection or supervision of any of the foregoing items.

(4) "Water quality enhancement funds" means the proceeds from the sale of Texas Water Development Bonds issued under the authority of Article III, Section 49-d-1, as amended, of the Texas Constitution.

(5) "Political subdivision" means the state, a county, city, or other body politic or corporate of the state, including any district or authority created under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution and including any interstate compact commission to which the state is a party.

(6) "Loans" means purchase by the state of the bonds or other obligations of a political subdivision with water quality enhancement funds.

(7) "Financial assistance" means any loan of water quality enhancement funds made to a political subdivision for the construction of treatment works through the purchase of bonds or other obligations of the political subdivision.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.273. Financial Assistance

The board may use water quality enhancement funds to provide financial assistance to political subdivisions for purposes of water quality enhancement. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.274. Authority of Political Subdivision

A political subdivision may apply to the board for financial assistance and may use water quality enhancement funds for construction of treatment works in the manner provided in this subchapter. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.275. Application for Assistance

In an application to the board for financial assistance, the applicant shall include:

- (1) the name of the political subdivision and its principal officers;
- (2) a citation of the law under which the political subdivision operates and was created;
- (3) the estimated total cost of construction of the treatment works;
- (4) the amount of state financial assistance requested;
- (5) the method for obtaining the financial assistance, whether by purchase of bonds or purchase of other obligations of the political subdivision;
- (6) the plan for repaying the financial assistance; and
- (7) any other information the board requires.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.276. Considerations in Passing on Application

In passing on an application from a political subdivision for financial assistance, the board shall consider:

- (1) the water quality needs of the waters into which effluent from the treatment works will be discharged and the benefit of the treatment works to such water quality needs in relation to the needs of other waters requiring state assistance in any manner and the benefits of those treatment works to the other waters;
- (2) the availability of revenue to the political subdivision, from all sources, for the ultimate repayment of the cost of the treatment works, including interest;
- (3) whether the political subdivision can reasonably finance the treatment works without assistance from the state;
- (4) the relationship of the treatment works to the overall, statewide water quality needs;

(5) the relationship of the treatment works to water quality planning for the state; and

(6) whether the political subdivision has been designated, pursuant to Section 26.082 of this code, to provide a regional system to serve all or part of the waste disposal needs of a defined area, the development of such systems being the declared policy of the legislature.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 21.706 by Acts 1977, 65th Leg., p. 1651, ch. 648, § 1.

§ 17.277. Action on Application

(a) After an application is received for financial assistance, the executive director shall submit the application to the board together with comments and recommendations of the development fund manager concerning the best method of making financial assistance available.

(b) The board may grant the application in whole or part or may deny the application.

(c) The board has the sole responsibility and authority for selecting the political subdivisions to whom financial assistance may be provided, the amount of any such assistance, and in consultation with and pursuant to agreement with the political subdivision, the board shall determine the location, time, design, scope, and all other aspects of the construction of treatment works to be performed.

(d) The board shall review and approve plans and specifications for all treatment works for which financial assistance is provided in any amount from water quality enhancement funds or funds granted under the Federal Water Pollution Control Act, as amended.¹ The Texas Department of Health Resources² shall review and approve plans in those cases where such assistance has not been requested except when notice of intention to apply for the financial assistance has been given to the board in which case the board shall perform review and approval functions. Duplicate review and approval will not be performed and actions on review and approval shall be fully interchangeable between the board and the Texas Department of Health Resources.

(e) The deliberations, proposals, decisions, and other actions of the board under this subchapter do not require the concurrence or approval of any other governmental agency, board, commission, council, political subdivision, or other governmental entity.

(f) If the board grants an application in whole or part, financial assistance shall be funded by the board in accordance with Subchapter E of this chapter.³

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ 33 U.S.C.A. § 1251 et seq.

² Name changed to Department of Health; see Vernon's Ann.Civ.St. art. 4418g.

³ Section 17.171 et seq.

§ 17.278. Approval of Application

The board by resolution may approve an application if, after considering the factors listed in Section 17.276 of this code and any other relevant factors, the board finds:

(1) that the public interest will benefit from state participation in the financing of the treatment works; and

(2) that the political subdivision cannot reasonably finance the treatment works without state assistance in the amount finally approved by the board.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.279. Construction Contract Requirements

(a) In contracts for the construction of treatment works, the governing body of each political subdivision receiving financial assistance shall require:

(1) payment to be made in partial payments as the work progresses;

(2) each bidder to furnish a bid guarantee equivalent to five percent of the bid price;

(3) each contractor awarded either a design/construct contract or construction contract to furnish performance and payment bonds, each of which must include without limitation guarantees that work done under the contract will be completed and performed:

(A) according to approved plans and specifications; and

(B) in accordance with sound construction principles and practices.

(b) Each bond must:

(1) be in an amount of not less than 100 percent of the contract price; and

(2) remain in effect for one year beyond the date of approval by the engineer of the political subdivision.

(c) No valid approval may be granted unless the work done under the contract has been completed and performed in a satisfactory manner according to approved plans and specifications.

(d) With the approval of its governing body, a political subdivision in addition to the other requirements of this section may require in a contract for construction of treatment works that:

(1) partial payment not exceed 90 percent of the amount due at the time of the payment as shown by the engineer of the project; and

(2) payment of the 10 percent remaining due upon completion of the contract shall be made only after approval by:

(A) the engineer for the political subdivision as required under the bond proceedings; and

(B) the governing body of the political subdivision by a resolution or other formal action.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.280. Filing Construction Contract

The political subdivision shall file with the department a certified copy of each construction contract it enters into for the construction of all or part of the treatment works. Each contract shall contain or have attached to it the specifications, plans, and details of all work included in the contract.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.281. Department Inspection

(a) The department may inspect the construction of treatment works at any time to assure that:

(1) the contractor is substantially complying with the engineering plans of the treatment works as submitted when approval of the feasibility of the treatment works was sought; and

(2) the treatment works are being constructed in accordance with sound construction principles.

(b) Inspection of treatment works by the department does not subject the state to any civil liability.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.282. Alteration of Plans

After board approval of engineering plans, a political subdivision may not make any substantial or material alteration in the plans unless the board authorizes the alteration.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.283. Certificate of Approval

The board may consider the following as grounds for refusal to give a certificate of approval for any construction contract:

(1) failure to construct the treatment works according to the plans as the board approved them or altered with the board's approval;

(2) failure to construct the works in accordance with sound engineering principles; or

(3) failure to comply with any term of the contract.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 17.284. Obtaining Financial Assistance

(a) In order to obtain financial assistance under this subchapter, a political subdivision may authorize and issue revenue bonds for the purpose of con-

structing treatment works and sell such bonds to the board in such amounts as may be determined by the governing body of the political subdivision and approved by the board.

(b) Notwithstanding the provisions of Article 1112, Revised Civil Statutes of Texas, 1925, as amended, or any other general or special law or charter provisions to the contrary, a political subdivision may authorize, issue, and sell such revenue bonds as provided herein and create any encumbrance in connection therewith by a majority vote of the governing body of the political subdivision without the necessity of any election.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

CHAPTER 18. WEATHER MODIFICATION

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Acts 1977, 65th Leg., p. 2207, ch. 870, revised Title 2 of the Water Code, effective September 1, 1977, for disposition of provisions of former Title 2 in the revised Title, see Disposition Table preceding § 5.001.

SUBCHAPTER A. GENERAL PROVISIONS

§ 18.001. Short Title

This chapter may be cited as the Weather Modification Act.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.002. Definitions

As used in this chapter:

(1) "Commission" means the Texas Water Commission.

(2) "Board" means the Texas Water Development Board.

(3) "Executive director" means the executive director of the Texas Department of Water Resources.

(4) "Department" means the Texas Department of Water Resources.

(5) "Weather modification and control" means changing or controlling, or attempting to change or control, by artificial methods the natural development of atmospheric cloud forms or precipitation forms which occur in the troposphere.

(6) "Operation" means the performance of weather modification and control activities entered into for the purpose of producing or attempting to produce a certain modifying effect within one geographical area over one continuing time interval not exceeding four years.

(7) "Research and development" means theoretical analysis, exploration, experimentation, and the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 18.003 to 18.010 reserved for expansion]

SUBCHAPTER B. POWERS AND DUTIES
OF BOARD

§ 18.011. Rules—In General

The board may make rules necessary to exercise the powers and to perform their duties under this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.012. Rules—Licenses and Permits

In order to effectuate the purposes of this chapter, the commission may make rules establishing procedures and conditions for the issuance of licenses and permits.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.013. Rules—Safety

The board may make rules establishing standards and instructions to govern the carrying out of research or projects in weather modification and control that the board considers necessary or desirable to minimize danger to health or property.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.014. Studies; Investigations; Hearings

The department may make any studies or investigations, obtain any information, and hold any hearings necessary or proper to administer or enforce this chapter or any rules or orders issued under this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.015. Advisory Committees

The board may establish advisory committees to advise the board and to make recommendations to the board concerning legislation, policies, administration, research, and other matters.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.016. Personnel

The executive director may, as provided by the General Appropriations Act, appoint and fix the compensation of any personnel, including specialists and consultants, necessary to perform duties and functions under this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.017. Materials and Equipment

The department may acquire in the manner provided by law any materials, equipment, and facilities necessary to the performance of its duties and functions under this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.018. Interstate Compacts

The executive director may represent the state in matters pertaining to plans, procedures, or negotiations for interstate compacts relating to weather modification and control.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.019. Contracts, Cooperative Agreements, Etc.

(a) The department may cooperate with public or private agencies to promote the purposes of this chapter.

(b) The department may enter into cooperative agreements with the United States or any of its agencies, or with counties and cities of this state, or with any private or public agencies for conducting weather modification or cloud-seeding operations.

(c) The department may represent the state, counties, cities, and public and private agencies in contracting with private concerns for the performance of weather modification or cloud-seeding operations.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.020. Promotion of Research and Development

(a) In order to assist in expanding the theoretical and practical knowledge of weather modification and control, the department shall promote continuous research and development in:

(1) the theory and development of methods of weather modification and control, including processes, materials, and devices related to these methods;

(2) the utilization of weather modification and control for agricultural, industrial, commercial, and other purposes; and

(3) the protection of life and property during research and operational activities.

(b) The executive director with approval of the board may conduct and may contract for research and development activities relating to the purposes of this section.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.021. Grants, Gifts, Etc.

Subject to any limitations imposed by law, the department may accept federal grants, private gifts, and donations from any other source. Unless the use of the money is restricted or subject to any limitations provided by law, the department may spend it for the administration of this chapter or may by grant, contract, or cooperative arrangement use the money to encourage research and development by a public or private agency.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.022. Disposition of License and Permit Fees

The department shall deposit all license and permit fees in the State Treasury.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 18.023 to 18.050 reserved for expansion]

SUBCHAPTER C. LICENSES AND PERMITS

§ 18.051. License and Permit Required

Except as provided by rule of the board under Section 18.052 of this code, no person may engage in activities for weather modification and control:

- (1) without a weather modification license and a weather modification permit issued by the commission; or
- (2) in violation of any term or condition of the license or the permit.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.052. Exemptions

The board, to the extent it considers exemptions practical, shall provide by rule for exempting the following activities from the license and permit requirements of this chapter:

- (1) research, development, and experiments conducted by state and federal agencies, institutions of higher learning, and bona fide nonprofit research organizations;
- (2) laboratory research and experiments;
- (3) activities of an emergent nature for protection against fire, frost, sleet, or fog; and
- (4) activities normally conducted for purposes other than inducing, increasing, decreasing, or preventing precipitation or hail.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.053. Issuance of License

(a) The commission, in accordance with the rules, shall issue a weather modification license to each applicant who:

- (1) pays the license fee; and
- (2) demonstrates, to the satisfaction of the commission, competence in the field of meteorology which is reasonably necessary to engage in weather modification and control activities.

(b) If the applicant is an organization, the competence must be demonstrated by the individual or individuals who are to be in control and in charge of the operation for the applicant.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.054. License Fee

The fee for an original or renewal license is \$50.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.055. Expiration Date

Each original or renewal license expires at the end of the state fiscal year for which it was issued.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.056. Renewal License

At the expiration of the license period, the commission shall issue a renewal license to each applicant who pays the license fee and who has the qualifications necessary for issuance of an original license.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 18.057 to 18.080 reserved for expansion]

§ 18.081. Issuance of Permit

(a) The commission, in accordance with the rules and on a finding that the weather modification and control operation as proposed in the permit application will not significantly dissipate the clouds and prevent their natural course of developing rain in the area where the operation is to be conducted to the material detriment of persons or property in that area, and after approval at an election if covered by Section 14.0641¹ of this code, may issue a weather modification permit to each applicant who:

- (1) holds a valid weather modification license;
- (2) pays the permit fee;
- (3) publishes a notice of intention and submits proof of publication as required by this chapter; and
- (4) furnishes proof of financial responsibility.

(b) The commission shall, if requested by at least 25 persons, hold at least one public hearing in the area where the operation is to be conducted prior to the issuance of a permit.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ See [§ 18.0841].

The text of this section incorporate the amendment to former § 14.061 by Acts 1977, 65th Leg., p. 952, ch. 360, § 1.

§ 18.082. Permit Fee

The fee for each permit is \$25.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.083. Scope of Permit

A separate permit is required for each operation. If an operation is to be conducted under contract, a permit is required for each separate contract. The

commission shall not issue a permit for a contracted operation unless it covers a continuous period not to exceed four years.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.084. Application and Notice of Intention

Before undertaking any operation, a licensee shall file an application for a permit and shall have a notice of intention published as required by this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[§ 18.0841.]¹ Election for Approval of a Permit that Includes Authorization for Hail Suppression

(a) In this section:

(1) "Target area" means that area described by metes and bounds or other specific bounded description set out in the application for a permit.

(2) "Operational area" means that area that joins the target area which is reasonably necessary to use in order to effectuate the purposes over the target area without affecting the land or land owners in the operational area, but in no event to exceed eight miles from the limits of the target area. The operational area shall be described by metes and bounds or other specific bounded description and shall be set out in the application for a permit.

(b) No permit may be issued by the board before the end of the 30-day period immediately following the first publication of notice and then only in those counties or parts of counties in the target area or operational area in which the majority of the qualified electors have not disapproved the issuance of a permit if an election has been held, or in any county or part of a county in the target area or operational area if no petition for an election has been filed.

(c) Persons eligible to vote in elections held under this section shall include qualified voters in counties or parts of counties included in the target area or operational area. Where the target area or operational area includes only part of a county, an election held under this section may be held only in the election precincts which are included entirely within or are partially included in said areas. All qualified voters in such precincts shall be entitled to vote in these elections.

(d) On written request of at least 25 qualified voters residing in the target area or operational area mentioned in the notice requesting an election accompanied by unsigned petitions, the county clerk of each county within the target area or operational area shall certify and mark for identification petitions for circulation, and upon return to the county

clerks of such petitions signed by at least 10 percent of the qualified voters residing in each county within the target area or operational area in the notice requesting an election the commissioners court of each county shall call and hold an election. The petition must be filed with the clerk of each county within 30 days immediately following the first publication of notice. The election shall be held within 21 days after the petition is received to determine whether or not the qualified voters in the target area or operational area approve the issuance of the permit. Immediately on calling the election, the clerk of each county within the target area or operational area shall notify the board of the date of the election.

(e) The petition for the election shall read substantially as follows: "The following qualified voters of _____ County request the Commissioners Court of _____ County to call an election at which the qualified voters shall be asked to vote on the proposition of whether or not they approve of the issuance of a weather modification permit that includes authorization for hail suppression (description of area)." Each qualified voter signing the petition shall give his full name and address and voter registration number. Within five days after receiving a petition under this section, the commissioners court shall have the county clerk of the county check the names on the petition against the voter registration lists of the county and certify to the commissioners court the number of qualified voters signing the petition as reflected by checking the county's voter registration lists. If only a part of a county is included in the target area or operational area, the county clerk shall also certify that those signing the petition reside in an election precinct in the county totally or partially included in the target area or operational area. On certification by the county clerk, the petition shall be filed with the official records of the county and shall be available for public inspection.

(f) A person filing a petition with the county judge shall deposit with the county judge an amount of money estimated by the county clerk to be sufficient to cover the costs of the election, to be held by the county judge until the result of the election to approve or disapprove the issuance of the permit is officially announced. If the result of the election is against the issuance of the permit, the county judge shall return the deposit to the person filing the petition or his agent or attorney, but if the result of the election favors the issuance of the permit, the county judge shall pay the cost and expenses of the election from the deposit and return the balance of the deposit to the person filing the petition or his agent or attorney.

(g) The ballots for an election under this section shall be printed to provide for voting for or against

the proposition: "The issuance of a permit providing for weather modification including authorization for hail suppression and control in (description of area)."

(h) The order calling the election shall provide for the time and place or places for holding the election, the form of the ballots, and the presiding judge for each voting place.

(i) The commissioners court shall publish a copy of the election order in a newspaper of general circulation in the county or in the part of the county within the target area or operational area at least once before the seven-day period immediately preceding the day of the election. Absentee voting shall be conducted beginning the second day after the day of the publication of the election order as provided for elsewhere in this subsection and continuing through the day immediately preceding the day of the election, the provisions of any other statute of this state notwithstanding.

(j) The presiding judge of each voting place shall supervise the counting of all votes cast and shall certify the results to the commissioners court within five days after the election. A copy of the results are to be filed with the county clerk and become a public record.

(k) Within five days after the results are filed, the commissioners court shall declare the results.

(l) The commissioners court of each county holding an election shall send certified copies of the results of the election to the board within 24 hours after the results are declared under Subsection (j) of this section.

(m) If a majority of the qualified voters voting in the election precincts which are wholly within the target area vote in favor of issuance of the permit, the board may issue the permit as provided in this subchapter. If a majority of the qualified voters voting in any election precinct any part of which is located in the operational area vote against the issuance of the permit, that part of the county shall be excluded from the coverage of the permit, but if the board finds that a weather modification and control operation is still feasible, a permit may be issued covering areas in which no election is requested and areas in which the voters give their approval as provided in this section.

(n) If a permit is denied under Subsection (m) of this section, no application for a permit covering all or part of the same target area or operational area so denied may be considered, and no permit under that application may be issued by the board, for a period of two years following the date of the election.

(o) If a permit including authorization for hail suppression is to cover only a part of a county, only those qualified voters residing in an election precinct or precincts of the county included in the target area

or operational area are eligible to sign a petition and to vote at an election under this section, and in computing the vote, only a majority of those qualified voters residing in such areas and voting in the election shall be necessary to carry the proposition in that county.

(p) No permit shall be issued which provides for or allows the seeding of clouds for hail suppression outside the target area, except that seeding may be done in the operational area where it is reasonably calculated to take effect only within the target area. This shall not prohibit the observation of cloud and cloud formations.

(q) The board may monitor any program under such conditions as the board deems advisable.

(r) The provisions of this section do not apply to any permits in effect at the time this section becomes law.

(s) Upon petition as provided in this section, the commissioners court of any county outside but adjacent to a county included in the operational area of an existing or proposed permit shall call and hold an election on the proposition of whether or not the qualified voters of the county approve of the issuance of any permit authorizing hail suppression in the county. If the county voters voting in such election disapprove the issuance of permits authorizing hail suppression, the board may not issue any such permit covering the county until the proposition has been approved by a subsequent election. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ Enacted as § 14.0641 by Acts 1977, 65th Leg., p. 952, ch. 360, § 2, and editorially reclassified.

§ 18.085. Content of Notice

In the notice of intention, the applicant shall include:

- (1) the name and address of the licensee;
- (2) the nature and object of the intended operation and the person or organization on whose behalf it is to be conducted;
- (3) the area in which and the approximate time during which the operation is to be conducted;
- (4) the area which is intended to be affected by the operation; and
- (5) the materials and methods to be used in conducting the operation.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.086. Publication of Notice

The notice of intention shall be published at least once a week for three consecutive weeks in a newspaper of general circulation published in each county in which the operation is to be conducted and in each

county which includes any part of the affected area. If in any such county no newspaper of general circulation is published, then publication shall be made in a newspaper having general circulation in the county.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.087. Proof of Publication; Affidavit

The applicant shall file proof of the publication, together with the publishers' affidavits, with the commission during the 15-day period immediately following the date of the last publication.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.088. Proof of Financial Responsibility

Proof of financial responsibility is made by showing to the satisfaction of the commission that the licensee has the ability to respond in damages for liability which might reasonably result from the operation for which the permit is sought.

§ 18.089. Modification of Permit

The commission may modify the terms and conditions of a permit if:

- (1) the licensee is first given notice and a reasonable opportunity for a hearing on the need for a modification; and
- (2) it appears to the commission that a modification is necessary to protect the health or property of any person.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.090. Scope of Activity

Once a permit is issued, the licensee shall confine his activities substantially within the limits of time and area specified in the notice of intention, except to the extent that the limits are modified by the commission. He shall also comply with any terms and conditions of the permit as originally issued or as subsequently modified by the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.091. Records and Reports

(a) A licensee shall keep a record of each operation conducted under permit, showing:

- (1) the method employed;
- (2) the type of equipment used;
- (3) the kind and amount of each material used;
- (4) the times and places the equipment is operated;
- (5) the name and post-office address of each individual, other than the licensee, who participates or assists in the operation; and

(6) other information required by the board.

(b) The board shall require written reports covering each operation, whether it is exempt or conducted under a permit.

(c) At the time and in the manner required by the board, a licensee shall submit a written report containing the information described in Subsection (a) of this section.

(d) All information on an operation shall be submitted to the department before it is released to the public.

(e) The reports and records in the custody of the department shall be kept open for public inspection. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 18.092 to 18.120 reserved for expansion]

SUBCHAPTER D. SANCTIONS

§ 18.121. Suspension; Revocation; Refusal to Renew

(a) The commission may suspend or revoke a license or permit if it appears that the licensee:

- (1) no longer has the qualifications necessary for the issuance of an original license or permit; or
- (2) has violated any provision of this chapter.

(b) The commission may refuse to renew the license of, or to issue another permit to, any applicant who has failed to comply with any provision of this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[§ 18.1211.]¹ Permit Violation

(a) In this section, "permit area" means the area affected and the area of operations covered by a permit.

(b) After notice and hearing, the board may issue a warning or, if a warning has already been issued, may suspend a permit up to a period of two years if the board finds that a permittee, through carelessness, performed all or any part of a weather modification and control operation outside the boundaries of the permit area. The board may suspend the permit up to a period of two years without prior issuance of a warning if the permittee, through gross carelessness, performed all or any part of a weather modification and control operation outside the boundaries of a permit area.

(c) A person who violates a provision of a permit is guilty of a Class A misdemeanor.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ Enacted as § 14.0911 by Acts 1977, 65th Leg., p. 955, ch. 360, § 3, and editorially reclassified.

§ 18.122. Hearing Required

The commission may not suspend or revoke a license or permit without first giving the licensee notice and a reasonable opportunity to be heard with respect to the grounds for the commission's proposed action.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.123. Record of Hearing

The commission shall have a record made of all proceedings at each hearing held under Section 18.122 of this code and shall have the record filed with its findings and conclusions.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 18.124 to 18.150 reserved for expansion]

§ 18.151. Immunity of State

The state and its officers and employees are immune from liability for all weather modification and control activities conducted by private persons and groups.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.152. Private Legal Relationships

(a) This chapter does not affect private legal relationships, except that an operation conducted under the license and permit requirements of this chapter is not an ultrahazardous activity which makes the participants subject to liability without fault.

(b) The fact that a person holds a license or permit under this chapter or that he has complied with this chapter or the regulations issued under this chapter is not admissible as evidence in any legal proceeding brought against him.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 18.153 to 18.170 reserved for expansion]

§ 18.171. Penalty

(a) A person who violates any provision of this chapter or any valid regulation or order issued under this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$1,000, or by confinement in the county jail for not more than 10 days, or by both.

(b) A separate offense is committed each day a violation continues.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 18.172. Enforcement

(a) Whenever it appears that a person has violated or is violating or is threatening to violate any provision of this chapter or any rule, license, permit, or order of the commission or board, then the executive director may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation or for the assessment and recovery of a civil penalty of not less than \$50 nor more than \$1,000 for each act of violation and for each day of violation, or for both injunctive relief and civil penalty.

(b) Upon application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this chapter or any rule, license, permit, or order of the commission or board, the district court shall grant the injunctive relief the facts may warrant.

(c) At the request of the executive director, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty or for both injunctive relief and penalty as authorized in Subsection (a) of this section.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

CHAPTER 19. TEXAS DEEPWATER PORT AUTHORITY

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SUBCHAPTER A. GENERAL PROVISIONS

§ 19.001. Policy

It is the policy, intent, and determination of the legislature that:

(1) Texas urgently needs an offshore deepwater port capable of accommodating supertankers for the importation of crude oil and other fluid commodities that may be carried in ships of that size;

(2) it is most desirable for private enterprise to own, construct, and operate such an offshore port;

(3) in the absence of any active and viable plan to develop a deepwater, offshore port by private enterprise, the State of Texas should construct such a facility, which should be self-supporting and whose design, construction, and operation should be carried out by private companies under contract;

(4) protecting the environment is essential to the proper operation of such a port;

(5) the credit of the State of Texas shall not be pledged to finance such a port; and

(6) the Texas Deepwater Port Authority be created to implement this policy.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.002. Definitions

In this chapter:

(1) "General manager" means the General Manager of the Texas Deepwater Port Authority.

(2) "Authority" means the Texas Deepwater Port Authority.

(3) "Board" means the Board of Commissioners of the Texas Deepwater Port Authority.

(4) "Commissioner" means a member of the Board of Commissioners of the Texas Deepwater Port Authority.

(5) "Deepwater port" means the facilities defined in Section 3(10) of the Deepwater Port Act of 1974, 33 U.S.C.A. 1501 et seq., and also includes the onshore storage tank facilities and the pipelines located within the State of Texas that connect the onshore storage facilities with the offshore facilities of a deepwater port.

(6) "Petroleum" means petroleum, crude oil, natural gas, and any substance refined from crude oil or natural gas.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.003. Authorization for Deepwater Port

In order to insure that the policy stated in this chapter is not circumvented, the Texas Deepwater Port Authority created by this chapter shall not commence operations unless and until the governor determines, and so states by executive order, that no active and viable plan to develop a deepwater, offshore port by private enterprise exists in Texas and that the Texas Deepwater Port Authority should carry out its responsibilities under this chapter.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.004. Expiration

If the governor has not made the finding and issued the executive order provided in Section 19.003 of this code, all provisions of this chapter, including the existence of the Texas Deepwater Port Authority, shall expire on January 1, 1979.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.005. Tidelands

None of the provisions of this chapter shall be interpreted or construed to affect Texas's claim to its tidelands or the location of Texas's coastline as interpreted by the State of Texas.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

[Sections 19.006 to 19.010 reserved for expansion]

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 19.011. Texas Deepwater Port Authority

The Texas Deepwater Port Authority is created as an agency of the state and pursuant to Article XVI, Section 59, Subsection (a) of the Texas Constitution. [Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.012. Commissioners; Appointment

The authority shall be governed by a board of commissioners with nine members, who shall be appointed by the governor with the advice and consent of the senate.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.013. Terms of Office; Vacancies

(a) Of the initial appointees to the board, the governor shall designate three persons to serve until January 31, 1979, three persons to serve until January 31, 1981, and three persons to serve until January 31, 1983.

(b) Except for the initial appointees, each commissioner shall hold office for a staggered term of six years and until his successor is appointed and has qualified.

(c) Any vacancy that occurs on the board shall be filled for the unexpired term in the manner provided in Section 19.012 of this code for making the original appointment.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.014. Officers

(a) Before June 1 of each even-numbered year, the board of commissioners shall elect a chairman, except for the initial election of chairman which shall be made as soon as possible after the effective date of this chapter.

(b) The board may elect other officers at the times and by the means as it may provide by rule. [Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.015. Board Meetings

(a) The board shall meet at least once every three months and may hold other meetings at the call of the chair or of five of the commissioners.

(b) The board shall provide by rule for the conduct of meetings.

(c) A majority of the commissioners shall constitute a quorum for the transaction of business.

(d) All meetings of the board shall be open to the public to the same extent as may be provided by general law for meetings of state boards and agencies.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.016. Compensation and Expenses

Each commissioner is entitled to receive reimbursement for travel and other necessary expenses resulting from the performance of his duties under this chapter and is entitled to receive as compensation \$75 a day for each day actually engaged in the work of the authority.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.017. Powers and Duties of the Board; Delegation

(a) The board shall formulate general policy to govern the authority and its activities.

(b) The board shall exercise the powers and duties of the authority and may delegate to the agents and employees of the authority such powers and duties as the board may provide.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.018. General Manager

(a) The board shall employ a general manager to serve at the pleasure of the board.

(b) The general manager shall be the chief administrative officer of the authority and shall manage the executive and administrative functions of the authority under policies adopted by the board.

(c) The general manager shall have kept full and accurate minutes of all transactions and proceedings of the authority.

(d) The general manager shall have any other duties the board may direct.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.019. Employees; Compensation; Etc.

(a) The general manager shall employ necessary attorneys, accountants, engineers, technical personnel, and other employees as the board may consider necessary.

(b) In employing persons under Subsection (a) of this section, the general manager shall comply with all federal laws and rules relating to equal employment opportunity and shall employ for each position the best qualified person for that position.

(c) The employees of the authority shall receive the compensation provided by the board.

(d) Employees of the authority shall not be considered employees of the State of Texas.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.020. Rules

The board shall, after proper notice and hearings, adopt rules governing the conduct of authority operations and the manner of carrying out its powers, duties, and responsibilities.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.021. Documents, Etc.; Open for Inspection

(a) All information, documents, and data collected by the authority in the performance of its duties are open to inspection by any person to the same extent as if that information or the documents or data were the property of the state.

(b) The general manager shall be the custodian of all the files and records of the authority.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

[Sections 19.022 to 19.035 reserved for expansion]

SUBCHAPTER C. INITIAL ACTIVITIES AND STUDIES

§ 19.036. Securing of License

(a) Prior to the acquisition of any facilities, the sale of any bonds or notes, or the borrowing of any money, the authority shall secure all necessary licenses and permits for the acquisition, construction, and operation of a deepwater port facility.

(b) No license or permit may be requested or accepted by the authority nor may the state be a party to a license or permit which would impose on the State of Texas or the authority any liability or financial obligation by virtue of contract, tort, or otherwise unless that liability or financial obligation is fully indemnified without expense of state funds.

(c) With the exception of the initial appropriation from the General Revenue Fund to the Texas Deepwater Port Authority and revenues of the authority, the state may not pledge its faith and credit or contribute any state funds to a project of the Texas Deepwater Port Authority or for expenses of carrying out the powers and duties of the authority. Bonds issued under the provisions of this chapter shall not be deemed to constitute a debt of the state or a pledge of the faith and credit of the state. The authority is not authorized to incur any liability or financial obligations which cannot be serviced from the revenues of the authority or from the initial appropriation to the authority.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.037. Engineering and Environmental Studies

Concurrent with any applications for licenses and permits for the construction and operation of a deepwater port facility, the authority shall conduct or cause to be conducted engineering and environmental impact studies to determine engineering feasibility of the proposed facility and to determine that adverse effects on the environment will be minimized. The authority may receive information concerning engineering and environmental impact data from any person, firm, or corporation possess-

ing that information and, if construction of such deepwater port facility is commenced, may compensate that person, firm, or corporation a reasonable amount for the information, as determined by the authority.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.038. Financial Feasibility

After securing all necessary licenses and permits to enable the acquisition, construction, and operation of a deepwater port facility, the authority shall conduct a study to determine the financial feasibility of constructing and operating a deepwater port facility. In addition to any financial details or other matters it deems relevant, the authority shall specifically investigate financing alternatives and determine which alternative is feasible and most attractive to the state. In no event does the authority have the ability to pledge the general credit of the state.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.039. Final Report of Commission; Submission of Report to Governor

After consideration of the studies required by Sections 19.036 through 19.038 of this code, the authority shall determine whether or not the facility is feasible and in the public interest and shall submit a detailed report of its findings to the governor and the legislature.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.040. Submission to Natural Resources Council

On receiving the report containing the findings of the authority, the governor shall transmit a copy of the report to the Natural Resources Council. The Natural Resources Council shall review the report of the authority and submit a recommendation to the governor on the report. If the council has objections to any part of the report, it shall state those objections in detail in its recommendation to the governor. If the council fails to act within 60 days after the report of the authority is received from the governor, the report is deemed approved by the council.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.041. Action by the Governor

The governor shall, within 120 days after the report of the authority is received, either approve or disapprove the findings of the authority. If the report is disapproved, the governor shall state in detail his reasons for disapproval of the report. If the governor disapproves the report of the authority,

the authority may revise its report or undertake additional studies and submit a new report to meet the objections of the governor. If the governor has taken no action on the report within 120 days after submission, it is deemed approved.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.042. Approval Necessary for Construction and Issuance of Bonds

Prior to the acquisition of any property or construction of any facilities to be used as a part of a deepwater port facility, the sale of any bonds or notes, or the borrowing of any money, both the authority and the governor must find that the construction and operation of a deepwater port facility is feasible and in the public interest.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

[Sections 19.043 to 19.050 reserved for expansion]

SUBCHAPTER D. POWERS AND DUTIES

§ 19.051. General Powers and Duties

(a) The authority has the powers and duties specifically prescribed by this chapter and all other powers necessary or convenient to carry out its responsibilities.

(b) The authority shall have, in general, all the powers that are permitted to a corporation by the general laws of this state.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.052. Specific Powers and Duties

(a) In addition to its powers and duties under Section 19.051 of this code, the authority shall have the following specific powers and duties as to each individual deepwater port facility:

(1) to acquire by purchase, lease, gift, or in any other manner other than by condemnation and to maintain, use, and operate property of any kind, real, personal, or mixed, or any interest in that property, within or without the boundaries of the State of Texas necessary or convenient to the exercise of the powers, rights, privileges, and functions conferred on it by this chapter;

(2) to acquire by condemnation property of any kind, real, personal, or mixed, other than minerals or interests in minerals, or any interest in that property, within or without the boundaries of the State of Texas necessary or convenient to the exercise of the powers, rights, privileges, and functions conferred on it by this chapter, in the manner provided by Title 52 of the Revised Civil Statutes of Texas, 1925, as amended;¹

(3) subject to the provisions of this chapter, from time to time to sell or otherwise dispose of any property of any kind, real, personal, or mixed, or any interest in that property that shall not be necessary to carry on the business of the authority;

(4) subject to the limitations of Subsection (a) of Section 19.054 of this chapter, to construct, extend, improve, maintain, and reconstruct, to cause to be constructed, extended, improved, maintained, and reconstructed, and to use and operate, any and all facilities of any kind necessary or convenient to the exercise of such powers, rights, privileges, and functions;

(5) to sue and be sued in its corporate name;

(6) to adopt, use, and alter a corporate seal;

(7) to make bylaws for the management and regulation of its affairs;

(8) to make contracts and to execute instruments necessary or convenient to the exercise of the powers, rights, privileges, and functions conferred on it by this chapter;

(9) to borrow money for its corporate purposes and without limitation of the generality of the foregoing, to borrow money and accept grants from the United States or from any corporation or agency created or designated by the United States, and in connection with any such loan or grant, to enter into agreements as the United States or the corporation or agency may require, and to make and issue its bonds and notes for money borrowed, in the manner and to the extent provided in Subchapter F of this chapter;

(10) to apply for, request, solicit, contract for, receive, and accept money and other assistance from any source to carry out its duties; and
(11) to do any and all other acts or things necessary or convenient to the exercise of the powers, rights, privileges, or functions conferred on it by this chapter or any other law.

(b) If the authority requires the relocation, raising, lowering, rerouting, or change in grade or alteration in the construction of any railroad, electric transmission, telegraph or telephone lines, conduits, poles, or facilities, or pipelines in the exercise of the power of eminent domain, all of the relocation, raising, lowering, rerouting, or changes in grade or alteration of construction due to the exercise of the power of eminent domain shall be the sole expense of the authority. The term "sole expense" means the actual cost of relocation, raising, lowering, rerouting, or change in grade or alteration of construction to provide comparable replacement without enhancement of facilities, after deducting the net salvage value derived from the old facility.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 3264 et seq.

§ 19.053. State-owned Water Bottoms; Lease; Etc.

(a) The School Land Board shall lease to the authority state-owned water bottoms that are necessary for the construction, operation, and maintenance of a deepwater port.

(b) The School Land Board shall not lease to any third party any water bottoms that may be necessary for construction, operation, or maintenance of a deepwater port unless the authority certifies to the School Land Board that those water bottoms are not required for use by the authority.

(c) Necessary water bottoms shall be leased to the authority on the terms and for the compensation to which the School Land Board and the authority shall mutually agree.

(d) Mineral rights and interests in the leased areas are reserved to the state; however, the School Land Board may not lease for mineral development any areas leased to the authority without the consent of the authority unless the mineral lease will not adversely affect the deepwater port.

(e) The School Land Board, the authority, and the lessee may enter into agreements to coordinate the use of sites needed by the authority if the sites have existing mineral leases.

(f) Nothing in this section shall authorize the authority to explore for, develop, or produce any minerals of whatever kind.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.054. Development of a Deepwater Port

(a) The authority shall, as soon as possible after the effective date of this chapter:

(1) have designed, licensed, developed, built, operated, maintained, or modified any deepwater port or ports as it shall determine to be necessary from time to time;

(2) provide that the engineering, design, construction, operation, and maintenance of those deepwater ports shall be carried out by suitable private enterprise under the regulation and supervision of the authority;

(3) finance those deepwater ports through self-supporting revenue bonds backed by tariffs charged the users of the facilities and by any other means that may be necessary or convenient and consistent with the provisions of this chapter;

(4) enter into contracts with public or private entities necessary to carry out the provisions of this chapter, provided, however, that no contract for purposes of operation of a deepwater port may be entered into by the authority unless the contract stipulates that the public or private entities contracting with the authority shall as-

sume any liability of the authority for any causes of action arising from environmental damage;

(5) apply for any necessary licenses, permits, or other permissions necessary to carry out the provisions of this chapter;

(6) set and collect those charges the authority may determine are appropriate for any service or other action performed by or requested of the authority;

(7) take any actions the authority may determine are necessary or cause to be done any of the things required of the authority under this chapter;

(8) enter into agreements with port and navigation districts and other political subdivisions or agencies of the state regarding matters of mutual concern;

(9) make payments in lieu of taxes to the state and political subdivisions of the state to the same extent as if the property of the authority were privately owned, provided, however, that any payments in lieu of taxes shall be based on full value less the value of the interests of any public or private entities contracted with to operate the facility; and

(10) take any other actions determined by the board to be necessary for the authority to carry out its duties and responsibilities in implementing the provisions of this chapter.

(b) In addition to the foregoing, the authority may:

(1) own, construct, maintain, lease as lessor or lessee, and sell by installment sale or otherwise, deepwater mooring facilities, wharves, sheds, pipelines, pumping stations, tanks, tank farms and facilities, heliports, warehouses, vessels, and other property, structures, equipment, and other facilities functionally related to a deepwater port;

(2) dredge and maintain shipways, channels, anchorage, roadsteads, and fairways;

(3) establish, operate, and maintain navigable waterway systems in the immediate area of the facilities constructed hereunder, in cooperation with the United States, this state, and political subdivisions of this state;

(4) enter into a contract with any public or private entity to provide public utility service to the authority and its facilities, or provide its own utility services;

(5) negotiate with and enter into contracts, compacts, and other agreements with the United States and other states of the United States concerning development programs including jurisdictional aspects of the location of deepwater ports and adoption and enforcement of rules governing authority operations;

(6) adopt tolls, fees, rates, tariffs, and charges for use of the terminal or terminals or any of its facilities;

(7) provide for use of existing port facilities and provide for rates, wharfage fees, and other matters of mutual interest, by agreements with existing port authorities and navigation districts; and

(8) enter into contracts or agreements with any person, corporation, trust, or partnership for the financing, construction, operation, maintenance, and sale by installment or otherwise of a deepwater port or any facilities relative to a deepwater port.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.055. Authority Contracts

(a) The authority may let any contracts for the purchase of materials, machinery, and equipment to constitute the plant, works, facilities, and improvements of a deepwater port, for construction, or for other purposes.

(b) All these contracts shall be let to the lowest responsible bidder after sealed bids are solicited by public notice.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

[Sections 19.056 to 19.100 reserved for expansion]

SUBCHAPTER E. ENVIRONMENTAL PROTECTION

§ 19.101. Protection of the Environment

(a) The authority shall take all reasonable steps to protect the coastal environment and the high seas from any short-term or long-term damage or harm that might occur from any action the authority may take.

(b) The general manager, under the direction of the board, shall formulate an environmental protection plan as soon as possible, which shall be adopted by the authority after proper notice and hearing.

(c) In preparing and adopting the environmental protection plan, the authority shall consult and coordinate with any federal, state, and local agencies that have responsibility for environmental protection within the state and shall comply with applicable rules.

(d) The environmental protection plan may be amended at any time by the authority after proper notice and hearing.

(e) Environmental protection shall be a primary responsibility of the authority, and costs incurred to develop the plan to protect the environment shall be considered a necessary cost to the authority and shall be considered a cost to the same extent that

economic, engineering, or promotional programs are considered costs.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

[Sections 19.102 to 19.130 reserved for expansion]

SUBCHAPTER F. FINANCIAL PROVISIONS

§ 19.131. General Provisions

The authority may:

(1) borrow money from time to time for any corporate purpose or in aid of any corporate purpose;

(2) issue and sell notes and provide the terms and conditions for repayment with interest and the rights of the holders of the notes;

(3) issue and sell bonds and provide the terms and conditions for repayment with interest and the rights of the bondholders;

(4) pledge, hypothecate, or otherwise encumber all or any designated part of the revenues and receipts of the authority as security for any of its notes or bonds;

(5) invest money held in any sinking fund, reserve fund, or other fund or money not required for immediate use or disbursement in such securities as it shall determine;

(6) apply for, accept, and administer grants, loans, and other assistance from the United States or any agency or instrumentality of the United States and any agency or instrumentality of this state to carry out the purpose of this chapter, and enter into any agreement in relation to those grants, loans, or other assistance as may be provided by the authority subject to the provisions of Section 19.036, which is not in conflict with the constitution of this state; and

(7) fix, charge and alter, and collect reasonable rentals, rates, fees, and other charges for the use of any works and facilities or for any services rendered by the authority and provide for the imposition of reasonable penalties for any of those rates, fees, and charges that are delinquent.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.132. Form and Terms of Bonds and Notes

(a) Bonds and notes issued under the provisions of this chapter together with any interest coupons shall be authorized by resolution of the board and shall have the form and characteristics and bear the designation as are therein provided.

(b) Bonds and notes shall:

(1) be authorized by resolution or resolutions of the board;

(2) bear the date or dates, mature at the time or times, serially, terms, or otherwise in not more than 50 years from their dates; and

(3) be callable prior to stated maturity on the terms and at the prices, bear interest at such rate or rates, be payable annually, semiannually, or otherwise, be in the denominations, be in the form, either coupon or registered, carry the registration privileges as to principal only or as to both principal and interest and as to successive exchange of coupon for registered bonds or notes or vice versa and successive exchange of bonds or notes of one denomination for bonds or notes of other denominations, be executed in the manner, and be payable at the place or places within or without the state as the resolution or resolutions may provide.

(c) Bonds or notes may be issued in one or more installments and from time to time as required and sold at a price or prices and under terms determined by the board to be the most advantageous reasonably obtainable.

(d) The proceeds of the sale of bonds or notes shall be deposited in the bank or banks or trust company or trust companies and shall be paid out pursuant to the terms and conditions that may be agreed on between the authority and the purchasers. [Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.133. Execution of Bonds, Notes, and Coupons

(a) Bonds or notes issued under the provisions of this chapter shall be signed by the chairman or vice-chairman of the board, be attested by its general manager, and bear the seal of the authority.

(b) Any interest coupons appurtenant to the bonds or notes shall be signed by the chairman or the vice-chairman of the board and be attested by its general manager.

(c) The resolution or resolutions authorizing the issuance of an installment or any series of bonds or notes may prescribe the extent to which the authority, in executing the bonds, notes, or appurtenant coupons, may use facsimile signatures and facsimile seals instead of manual signatures and manually impressed seals.

(d) If an officer whose manual or facsimile signature appears on a bond or note or whose facsimile signature appears on any coupons ceases to be an officer before the bond or note is delivered, the signature is valid and sufficient for all purposes as if he had remained in office until the delivery had been made.

(e) Neither the members of the board nor officers of the authority nor anyone executing the bonds or notes for and on behalf of the authority shall be liable personally on the bonds or notes of the authority by reason of participation in any way in the issuance of the bonds or notes.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.134. Security Provisions, Etc.

(a) The bonds or notes may be secured by a pledge of all or any part of the revenues or receipts of the authority or by the revenues of any one or more leases or other contracts theretofore or thereafter made or other revenues or income specified by the resolution of the board or in the trust indenture or other instrument securing the bonds or notes. A pledge may reserve the right, under conditions specified in it, to issue additional bonds or notes that will be on a parity with or subordinate to the bonds or notes then being issued.

(b) A pledge or security instrument made by the authority is valid and binding from the time when it is made. The revenues or money pledged and entrusted and thereafter received by the authority shall immediately be subject to the lien of the pledge or security instrument without any physical delivery of it or further act. The lien of the pledge or security instrument is valid and binding against all parties having claims of any kind in tort, contract, or otherwise against the authority, irrespective of whether the parties have notice thereof. Neither the resolution nor any security instrument or other instrument by which a pledge or security interest is created need be recorded or filed, and compliance with any provision of any other law is not required in order to perfect the pledge or other security interest.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.135. Provisions of Resolution

A resolution authorizing bonds or notes or a trust indenture under which bonds or notes may be issued may contain provisions, which shall be a part of the agreement with the holders of bonds or notes, as to:

(1) pledging all or any part of the rentals, rates, fees, and other charges made or received by the authority and other money received or to be received from the planning, financing, ownership, operation, or sale of or otherwise in connection with any project to secure the payment of the bonds or notes or of any issue of the bonds or notes;

(2) pledging all or any part of the assets of the authority, including any obligation acquired by the authority, to secure the payment of the bonds or notes or any issue of the bonds or notes;

(3) the use and disposition of rentals, rates, fees, and other charges made or received by the authority;

(4) pledging to establish, alter, and collect rates and other charges with respect to each property or facility sufficient to produce revenues adequate to pay all expenses necessary to the operation and maintenance of such to be

made in respect of any of those bonds or notes payable out of those revenues as the bonds or notes become due and payable, and to fulfill the terms of any agreement made with the holders of the bonds or notes and with any person in their behalf;

(5) the setting aside of reserves or sinking funds and the regulation and disposition of those reserves and sinking funds;

(6) limitations on the purpose to which the proceeds from the sale of the bonds may be applied and pledging the proceeds to secure the payment of the bonds, notes, or any issue of the notes or bonds;

(7) limitations on the issuance of additional bonds and on the refunding of outstanding or other bonds or notes;

(8) the acquisition, construction, improvement, operation, extension, enlargement, maintenance, and repair of any project and the duties of the authority with reference thereto;

(9) the procedure, if any, by which the terms of any agreement with bondholders or noteholders may be amended or abrogated, the amount of bonds or notes the holders of which are required to give consent thereto, and the manner in which the consent may be given;

(10) limitations on the amount of money to be spent by the authority for administrative or other expenses;

(11) vesting in a trustee or other fiduciary, property, rights, powers, and duties in trust the authority determines, which may include any of the rights, powers, and duties of the trustee appointed by the bondholders or noteholders pursuant to this chapter, and abrogating the right of the bondholders or noteholders to appoint a trustee under this chapter or limiting the rights, powers, and duties of the trustee;

(12) placing the management, operation, and control of specified works and facilities of the authority in the hands of a board of trustees to be named in the resolution or trust indenture and specifying the terms of office of the trustees, their powers and duties, the manner of exercising the same, the appointment of successors, and all matters pertaining to their organization and duties; and

(13) any other matters, of like or different character, which in any way affect the security or protection of the bonds or notes or the bondholders or noteholders.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.136. Default Provisions

The resolution authorizing the issuance of the bonds or notes or the trust indenture or other instrument securing them may provide that in the event of a default or, under the conditions therein stated, a threatened default in the payment of principal or of interest on bonds or notes, any court of competent jurisdiction may, on petition of the holders of outstanding bonds or notes, appoint a receiver with authority to collect and receive pledged income, and those instruments may limit or qualify the rights of less than all of the holders of the outstanding bonds or notes payable from the same source to institute or prosecute any litigation affecting the authority's properties or revenues.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.137. Additional Security

(a) Any bonds or notes, including refunding bonds, authorized by this chapter may be additionally secured by a trust indenture under which the trustee may be a bank having trust powers situated either within or without the state.

(b) The bonds or notes, within the discretion of the board, may be additionally secured by a mortgage or a deed of trust lien or security interest on works and facilities of the authority and all real property, franchises, easements, leases, and contracts and all rights appurtenant to those properties, vesting in the trustee power to sell those works and facilities for the payment of the indebtedness and to operate those works and facilities, and all other powers and authority for the further security of the bonds or notes.

(c) The trust indenture, regardless of the mortgage or the deed of trust lien or security interest in the properties, may contain any provisions prescribed by the authority for the security of the bonds or notes and the preservation of the trust estate, may make provision for amendment or modification thereof, may condition the right to spend the authority's money or sell the authority's works and facilities on approval of a registered professional engineer selected as provided in the trust indenture, and may make any other provisions for protecting and enforcing the rights and remedies of the bondholders or noteholders as may be reasonable and proper and not in violation of the law. The trust indenture may also contain provisions governing the issuance of bonds and notes to replace lost, stolen, or mutilated bonds or notes.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.138. Bond Proceeds

(a) The board may direct the investment of money in the funds created by the resolutions, trust inden-

tures, or other instruments securing the bonds or notes.

(b) From the proceeds from the sale of the bonds or notes, the board may set aside amounts for payments into the interest and sinking fund until completion of construction and until adequate revenue is available from operations to pay principal and interest and amounts for payments into reserve funds, and provisions for such may be made in the resolution authorizing the bonds, notes, or the trust indenture or other instrument securing the bonds or notes.

(c) Proceeds from the sale of the bonds or notes shall be used for the payment of all expenses of issuing and selling the bonds or notes.

(d) The proceeds from the sale of the bonds or notes and money in any funds created in connection with the bonds or notes may be invested in:

(1) direct or indirect obligations of or obligations unconditionally guaranteed by the United States government or one of its agencies maturing in the manner that may be specified by the resolution authorizing the bonds or notes or the trust indenture or other instrument securing the bonds or notes; or

(2) certificates of deposit of any bank or trust company whose deposits are secured by the obligations described in Subdivision (1) of this subsection.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.139. Depository

Any bank or trust company located in this state and incorporated under the laws of the United States or any state in the United States may be designated by resolution to act as depository for the proceeds of bonds, notes, or contract or lease revenues or other revenues of the authority. The bank or trust company shall furnish indemnifying bonds or pledge securities to secure those deposits to the same extent as may be required by general law to secure the deposit of state funds.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.140. Refunding

(a) The board may provide by resolution for the issuance of refunding bonds or notes to refund outstanding bonds or notes issued under this chapter and their accrued interest.

(b) The authority may sell these bonds or notes and use the proceeds to retire the outstanding bonds or notes issued under this chapter or the authority may exchange the refunding bonds or notes for the outstanding bonds or notes.

(c) The issuance of the refunding bonds or notes, their maturity, the rights of the bondholders and the

duties of the authority with respect to refunding bonds or notes are governed by the provisions of this chapter relating to original bonds or notes, to the extent that they may be made applicable.

(d) The authority may also refund any bonds or notes under the provisions of general law.

(Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.)

§ 19.141. Approval and Registration of Bonds and Notes

(a) After bonds and notes, including refunding bonds and notes, are authorized by the board, those bonds and notes and the record relating to their issuance shall be submitted to the attorney general for his examination as to their validity.

(b) If the bonds and notes recite that they are secured by a pledge of the proceeds of any lease or other contract previously made between the authority and any person, those leases and contracts may also be submitted to the attorney general.

(c) If those bonds or notes have been validly authorized and if those leases or contracts have been made in accordance with the constitution and laws of the state, the attorney general shall approve the bonds or notes, and the leases or contracts and the bonds or notes shall be registered by the state comptroller.

(d) The attorney general in approving bonds or notes issued in anticipation of being refunded by other bonds and notes shall not require as a condition of his approval that those bonds or notes being examined have pledged to them sufficient revenues to retire the bonds and notes before the time they will be refunded in accordance with such anticipation.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.142. Incontestability

After the bonds or notes, and the leases or other contracts, if any, have been approved by the attorney general, and the bonds and notes have been registered by the state comptroller and delivered to the purchasers, those bonds and notes and any underlying leases and contracts are incontestable for any cause.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.143. Duties Enforceable by Mandamus

Payment of any bonds and notes according to the term and tenor, performance of agreements with the holders of bonds or notes or any person in their behalf, and performance of official duties prescribed by the provisions of this chapter in connection with any bonds or notes may be enforced in any court of competent jurisdiction by mandamus or other appropriate proceeding.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.144. Bonds Negotiable

Bonds issued under the provisions of this chapter and coupons, if any, representing interest on those bonds, shall, when delivered, be deemed and construed to be a "security" within the meaning of Chapter 8 of the Uniform Commercial Code, as amended.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.145. Bonds and Notes not Taxable

Bonds and notes issued under the provisions of this chapter, the interest on the bonds and notes, and the profit from the sale of the bonds and notes shall be exempt from taxation, except inheritance taxes, by the state or by any municipal corporation, county, or other political subdivision or taxing district of the state.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.146. Authorized Investments

Bonds and notes issued under this chapter are legal and authorized investments for:

- (1) banks;
- (2) savings banks;
- (3) trust companies;
- (4) building and loan associations;
- (5) insurance companies;
- (6) fiduciaries;
- (7) trustees; and
- (8) sinking funds of the state and of cities, towns, villages, counties, school districts, and all political corporations, subdivisions, and public agencies of the state.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.147. Security for Deposit of Funds

Bonds and notes issued under the provisions of this chapter, when accompanied by all appurtenant unmatured coupons if any, are lawful and sufficient security for all deposits of funds of the state or of a city, town, village, county, school district, or any other agency or political corporation or subdivision of the state, at the par value of the bonds.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.148. Source of Repayment

Bonds and notes issued under the provisions of this chapter together with the interest on the bonds and notes shall be secured by and payable solely from the revenues and receipts of the authority and other money available therefor, including, without limitation, rentals, rates, fees, and other charges made and received by the authority and other money

received and to be received from grants and assistance, and other money received and to be received from the planning, financing, ownership, or operation of any works and facilities of the authority, and other money available therefor from proceeds of bonds or notes.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

§ 19.149. State Credit not Pledged

(a) The provisions of this chapter shall not be construed to authorize the giving or lending of the credit of the state or to be a pledge of the credit of the state for the payment of any bonds or notes issued under the provisions of this chapter, and the purchasers and successive holders of any bonds or notes shall never have the right to demand payment from any money or revenues of the authority except those pledged to the payment of bonds or notes.

(b) This chapter shall not be construed as obligating this state to the holders of any of those bonds or notes nor to constitute a contract on the part of this state to make money available for any of the authority's needs.

(c) This state, however, pledges and agrees to the holders of any bonds or notes issued under this chapter that it will not limit or alter the rights vested in the authority to fulfill the terms of any agreements made with the holders thereof consistent herewith, or in any way impair the rights and remedies of the holders until the bonds and notes, together with interest on them, with interest on any unpaid installments of interest, and all costs and expenses for which the authority is liable in connection with any action or proceedings by or on behalf of the holders, are fully met and discharged. The authority shall include this pledge and agreement of the state in any agreements it makes with the holders of the bonds or notes.

[Added by Acts 1977, 65th Leg., 1st C.S., p. 59, ch. 5, § 1, eff. Aug. 29, 1977.]

[Chapter 20 to 25 reserved for expansion]

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SUBCHAPTER A. ADMINISTRATIVE PROVISIONS

Acts 1977, 65th Leg., p. 2207, ch. 870, revised Title 2 of the Water Code, effective September 1, 1977, for disposition of provisions of former Title 2 in the revised Title, see Disposition Table preceding § 5.001.

§ 26.001. Definitions

As used in this chapter:

- (1) "Board" means the Texas Water Development Board.
- (2) "Commission" means the Texas Water Commission.
- (3) "Executive director" means the executive director of the Texas Department of Water Resources.
- (4) "Department" means the Texas Department of Water Resources.
- (5) "Water" or "water in the state" means groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of sur-

face water, natural or artificial, inland or coastal, fresh or salt, navigable or nonnavigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(6) "Waste" means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, or other waste, as defined in this section.

(7) "Sewage" means waterborne human waste and waste from domestic activities, such as washing, bathing, and food preparation.

(8) "Municipal waste" means waterborne liquid, gaseous, or solid substances that result from any discharge from a publicly owned sewer system, treatment facility, or disposal system.

(9) "Recreational waste" means waterborne liquid, gaseous, or solid substances that emanate from any public or private park, beach, or recreational area.

(10) "Agricultural waste" means waterborne liquid, gaseous, or solid substances that arise from the agricultural industry and agricultural activities, including without limitation agricultural animal feeding pens and lots, structures for housing and feeding agricultural animals, and processing facilities for agricultural products. The term "agricultural waste" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated range land, pasture land, and farmland.

(11) "Industrial waste" means waterborne liquid, gaseous, or solid substances that result from any process of industry, manufacturing, trade, or business.

(12) "Other waste" means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, salt water, or any other substance, other than sewage, industrial waste, municipal waste, recreational waste, or agricultural waste.

(13) "Pollutant" means dredged spoil, solid waste, incinerator residue, sewage, garbage, sewage sludge, munitions, chemical wastes, biological materials, radioactive materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial, municipal, and agricultural waste discharged into any water in the state. The term "pollutant" does not include tail water or runoff water from irrigation or rainwater runoff from cultivated or uncultivated rangeland, pastureland, and farmland.

(14) "Pollution" means the alteration of the physical, thermal, chemical, or biological quality

of, or the contamination of, any water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(15) "Sewer system" means pipelines, conduits, storm sewers, canals, pumping stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport waste.

(16) "Treatment facility" means any plant, disposal field, lagoon, incinerator, area devoted to sanitary landfills, or other facility installed for the purpose of treating, neutralizing, or stabilizing waste.

(17) "Disposal system" means any system for disposing of waste, including sewer systems and treatment facilities.

(18) "Local government" means an incorporated city, a county, a river authority, or a water district or authority acting under Article III, Section 52 or Article XVI, Section 59 of the Texas Constitution.

(19) "Permit" means an order issued by the commission in accordance with the procedures prescribed in this chapter establishing the treatment which shall be given to wastes being discharged into or adjacent to any water in the state to preserve and enhance the quality of the water and specifying the conditions under which the discharge may be made.

(20) "To discharge" includes to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of, or to allow, permit, or suffer any of these acts or omissions.

(21) "Point source" means any discernible, confined and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, or vessel or other floating craft, from which pollutants or wastes are or may be discharged into or adjacent to any water in the state.

(22) "Identified state supplement to an NPDES permit" means any part of a permit on which the board has entered a written designation to indicate that the board has adopted that part solely in order to carry out the board's duties under state statutes and not in pursuance of administration undertaken to carry out a permit program under approval by the Administrator of the United States Environmental Protection Agency.

(23) "NPDES" means the National Pollutant Discharge Elimination System under which the

Administrator of the United States Environmental Protection Agency can delegate permitting authority to the State of Texas in accordance with Section 402(b) of the Federal Water Pollution Control Act.¹

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ 33 U.S.C.A. § 1342(b).

The text of this section incorporates the amendment to former § 21.003 by Acts 1977, 65th Leg., p. 1640, ch. 644, § 1.

Section 12 of Acts 1977, 65th Leg., p. 1647, ch. 644, provided:

"This Act shall take effect upon full or partial delegation of NPDES permit authority to the board by the Administrator of the United States Environmental Protection Agency pursuant to Section 402(b) of the Federal Water Pollution Control Act but shall not be construed to affect persons discharging, proposing to discharge or threatening to discharge wastes or pollutants over which the board does not have such delegated NPDES permit authority. In no event, however, shall this Act become effective prior to October 1, 1977. The provisions of this Act shall be effective only during such periods that the board maintains such NPDES permit authority."

§ 26.002. Ownership of Underground Water

Nothing in this chapter affects ownership rights in underground water.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.003. Policy of This Subchapter

It is the policy of this state and the purpose of this subchapter to maintain the quality of water in the state consistent with the public health and enjoyment, the propagation and protection of terrestrial and aquatic life, the operation of existing industries, and the economic development of the state; to encourage and promote the development and use of regional and areawide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state; and to require the use of all reasonable methods to implement this policy.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 26.004 to 26.010 reserved for expansion]

SUBCHAPTER B. GENERAL POWERS AND DUTIES

§ 26.011. In General

Except as otherwise specifically provided, the department shall administer the provisions of this chapter and shall establish the level of quality to be maintained in, and shall control the quality of, the water in this state as provided by this chapter. Waste discharges or impending waste discharges covered by the provisions of this chapter are subject to reasonable rules or orders adopted or issued by the department in the public interest. The department has the powers and duties specifically prescribed by this chapter and all other powers necessary or convenient to carry out its responsibilities.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.012. State Water Quality Plan

The executive director shall prepare and develop a general, comprehensive plan for the control of water quality in the state which shall be used as a flexible guide by the department when approved by the board.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.013. Research, Investigations

The executive director shall conduct or have conducted any research and investigations it considers advisable and necessary for the discharge of the duties under this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.014. Power to Enter Property

The members of the commission and employees and agents of the department are entitled to enter any public or private property at any reasonable time for the purpose of inspecting and investigating conditions relating to the quality of water in the state or the compliance with any rule, regulation, permit or other order of the department. Members, employees, or agents acting under this authority who enter private property shall observe the establishment's rules and regulations concerning safety, internal security, and fire protection, and if the property has management in residence, shall notify management or the person then in charge of his presence and shall exhibit proper credentials. If any member, employee, or agent is refused the right to enter in or on public or private property under this authority, the executive director may invoke the remedies authorized in Section 26.123 of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 21.064 by Acts 1977, 65th Leg., p. 1640, ch. 644, § 1.

§ 26.015. Power to Examine Records

The members of the commission and employees and agents of the department may examine and copy during regular business hours any records or memoranda pertaining to the operation of any sewer system, disposal system, or treatment facility or pertaining to any discharge of waste or pollutants into any water in the state, or any other records required to be maintained.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 21.065 by Acts 1977, 65th Leg., p. 1640, ch. 644, § 1.

§ 26.016. Enforcement Proceedings

The executive director may institute court proceedings to compel compliance with the provisions of this chapter or the rules, orders, permits, or other decisions of the department.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.017. Cooperation

The department shall:

(1) encourage voluntary cooperation by the people, cities, industries, associations, agricultural interests, and representatives of other interests in preserving the greatest possible utility of water in the state;

(2) encourage the formation and organization of cooperative groups, associations, cities, industries, and other water users for the purpose of providing a medium to discuss and formulate plans for attainment of water quality control;

(3) establish policies and procedures for securing close cooperation among state agencies that have water quality control functions; and

(4) cooperate with the governments of the United States and other states and with official or unofficial agencies and organizations with respect to water quality control matters and with respect to formulation of interstate water quality control compacts or agreements, and when representation of state interests on a basin planning agency for water quality purposes is required under Section 3(c) of the Federal Water Pollution Control Act, as amended,¹ or other federal legislation having a similar purpose, the representation shall include an officer or employee of the board.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ See 33 U.S.C.A. § 1252(c).

§ 26.018. Contracts, Instruments

With the approval of the board, the executive director may make contracts and execute instruments that are necessary or convenient to the exercise of the department's powers or the performance of its duties.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.019. Orders

(a) The commission is authorized to issue orders and make determinations necessary to effectuate the purposes of this chapter.

(b) The commission shall set forth the findings on which it bases any order granting or denying special relief requested of the commission or involving a determination following a hearing on an alleged violation of Section 26.121 of this code or directing a person to perform or refrain from performing a certain act or activity.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.0191. Temporary Orders Prior to Notice and Hearing

(a) The commission may issue temporary orders relating to the discharge of waste without notice and hearing, or with such notice and hearing as the commission considers practicable under the circumstances, when this is necessary to enable action to be taken more expeditiously than is otherwise provided by this chapter to effectuate the policy and purposes of this chapter.

(b) If the commission issues a temporary order under this authority without a hearing, the order shall fix a time and place for a hearing to be held before the commission, which shall be held as soon after the temporary order is issued as is practicable.

(c) At the hearing, the commission shall affirm, modify, or set aside the temporary order. If the nature of the commission's action requires, further proceedings shall be conducted as appropriate under provisions of the Administrative Procedure and Texas Register Act (Article 6252-13a, Vernon's Texas Civil Statutes).

(d) The requirements of Section 26.022 of this code relating to the time for notice, newspaper notice, and method of giving a person notice do not apply to such a hearing, but such general notice of the hearing shall be given as the commission considers practicable under the circumstances.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.020. Hearing Powers

The commission may call and hold hearings, administer oaths, receive evidence at the hearing, issue subpoenas to compel the attendance of witnesses and the production of papers and documents related to the hearing, and make findings of fact and decisions with respect to administering the provisions of this chapter or the rules, orders, or other actions of the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.021. Delegation of Hearing Powers

(a) Except for those hearings required to be held before the commission under Section 26.019(b)¹ of this code, the commission may authorize the chief hearing examiner to call and hold hearings on any subject on which the commission may hold a hearing.

(b) The commission may also authorize the chief hearing examiner to delegate to one or more hearing examiners the authority to hold any hearing called by him.

(c) At any hearing called by the chief hearing examiner, he or the person delegated the authority by him to hold the hearing is empowered to administer oaths and receive evidence.

(d) The individual or individuals holding a hearing under the authority of this section shall report the hearing in the manner prescribed by the commission. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ So in enrolled bill; probably should read "26.0191(b)".

§ 26.022. Notice of Hearings; Continuance

(a) Except as otherwise provided in Sections 26.0191 and 26.176 of this code, the provisions of this section apply to all hearings conducted in compliance with this chapter.

(b) Notice of the hearing shall be published at least once in a newspaper regularly published or circulated in each county where, by virtue of the county's geographical relation to the subject matter of the hearing, the commission has reason to believe persons reside who may be affected by the action that may be taken as a result of the hearing. The date of the publication shall be not less than 20 days before the date set for the hearing.

(c) If notice of the hearing is required by this chapter to be given to a person, the notice shall be served personally or mailed not less than 20 days before the date set for the hearing to the person at his last address known to the commission. If the party is not an individual, the notice may be given to any officer, agent, or legal representative of the party.

(d) The individual or individuals holding the hearing, called the hearing body, shall conduct the hearing at the time and place stated in the notice. The hearing body may continue the hearing from time to time and from place to place without the necessity of publishing, serving, mailing, or otherwise issuing a new notice.

(e) If a hearing is continued and a time and place for the hearing to reconvene are not publicly announced by the person conducting the hearing at the hearing before it is recessed, a notice of any further setting of the hearing shall be served personally or mailed in the manner prescribed in Subsection (c) of this section at a reasonable time before the new setting, but it is not necessary to publish a newspaper notice of the new setting.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.023. Water Quality Standards

The board by rule shall set water quality standards for the water in the state and may amend the standards from time to time. The board has the sole and exclusive authority to set water quality standards for all water in the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.024. Hearings on Standards; Consultation

Before setting or amending water quality standards, the board shall:

(1) hold public hearings at which any person may appear and present evidence under oath, pertinent for consideration by the board; and

(2) consult with the executive director to insure that the proposed standards are not inconsistent with the objectives of the state water plan.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.025. Hearings on Standards: Notice to Whom

Notice of a hearing under Section 26.024 of this code shall be given to each of the following that the board believes may be affected:

(1) each local government whose boundary is contiguous to the water in question or whose boundaries contain all or part of the water, or through whose boundaries the water flows;

(2) the holders of rights to appropriate water from the water in question as shown by the records of the department; and

(3) the holders of permits from the commission to discharge waste into or adjacent to the water in question.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.026. Standards to be Published

The department shall publish its water quality standards and amendments and shall make copies available to the public on written request.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.027. Commission May Issue Permits

(a) The commission may issue permits and amendments to permits for the discharge of waste or pollutants into or adjacent to water in the state. No permit shall be issued authorizing the discharge of any radiological, chemical, or biological warfare agent or high-level radioactive waste. The commission may refuse to issue a permit when the commission finds that issuance of the permit would violate the provisions of any state or federal law or rule or regulation promulgated thereunder, or when the commission finds that issuance of the permit would interfere with the purpose of this chapter.

(b) A person desiring to obtain a permit or to amend a permit shall submit an application to the department containing all information reasonably required by the department.

(c) A person may not commence construction of a treatment facility until the commission has issued a

permit to authorize the discharge of waste from the facility, except with the approval of the commission.

(d) The commission may not require under this chapter any permit for the placing of dredged or fill materials into or adjacent to water in the state for the purpose of constructing, modifying, or maintaining facilities or structures, but this does not change or limit any authority the commission may have with respect to the control of water quality. The commission may adopt rules and regulations to govern and control the discharge of dredged or fill materials consistent with the purpose of this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 21.079 by Acts 1977, 65th Leg., p. 1645, ch. 644, § 7.

§ 26.028. Action on Application

(a) Except as provided in Subsection (b) of this section, a public hearing shall be held on an application for a permit or to amend a permit. Notice of the hearing shall be given to the persons who in the judgment of the commission may be affected.

(b) An application to amend a permit to improve the quality of waste authorized to be discharged may be set for consideration and may be acted on by the commission at a regular meeting without the necessity of holding a public hearing if the applicant does not seek to increase significantly the quantity of waste authorized to be discharged or change materially the pattern or place of discharge. Notice of the application shall be mailed to the mayor and health authorities for the city or town, and the county judge and health authorities for the county, in which the waste is or will be discharged, at least 10 days before the commission meeting, and they may present information to the commission on the application.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.029. Conditions of Permit; Amendment; Revocation and Suspension

(a) In each permit, the commission shall prescribe the conditions on which it is issued, including:

- (1) the duration of the permit;
- (2) the location of the point of discharge of the waste;
- (3) the maximum quantity of waste that may be discharged under the permit at any time and from time to time;
- (4) the character and quality of waste that may be discharged under the permit; and
- (5) any monitoring and reporting requirements prescribed by the commission for the permittee.

(b) After a public hearing, notice of which shall be given to the permittee, the commission may require

the permittee, from time to time, for good cause, in conformance with applicable laws, to conform to new or additional conditions.

(c) A permit does not become a vested right in the permittee. After a public hearing in conformance with applicable laws, notice of which shall be given to the permittee, the commission may revoke or suspend a permit for good cause on any of the following grounds:

- (1) the permittee has failed or is failing to comply with the conditions of the permit;
- (2) the permit is subject to cancellation or suspension under Section 26.084 of this code;
- (3) the permit or operations under the permit have been abandoned;
- (4) the permit is no longer needed by the permittee;
- (5) the commission finds that a change in conditions requires elimination of the discharge;
- (6) revocation or suspension is necessary in order to maintain the quality of water in the state consistent with the objectives of this chapter; or
- (7) the permit was obtained by misrepresentation or failure to disclose fully all relevant facts.

(d) The notice required by Subsections (b) and (c) of this section shall be sent to the permittee at his last known address as shown by the records of the department.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 21.081 by Acts 1977, 65th Leg., p. 1646, ch. 644, § 8.

§ 26.030. Permit: Effect on Recreational Water

In considering the issuance of a permit to discharge effluent into any body of water having an established recreational standard, the commission shall consider any unpleasant odor quality of the effluent and the possible adverse effect that it might have on the receiving body of water, and the commission may consider the odor as one of the elements of the water quality of the effluent.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.031. Private Sewage Facilities

(a) As used in this section and Section 26.032 of this code, "private sewage facilities" means septic tanks, pit privies, cesspools, sewage holding tanks, injection wells used to dispose of sewage, chemical toilets, treatment tanks, and all other facilities, systems, and methods used for the disposal of sewage other than disposal systems operated under a permit issued by the commission.

(b) Whenever it appears that the use of private sewage facilities in an area is causing or may cause pollution or is injuring or may injure the public health, the commission may hold a public hearing in or near the area to determine whether an order should be entered controlling or prohibiting the installation or use of private sewage facilities in the area.

(c) Before the commission enters its order, the executive director shall consult with the Director of Health Resources for recommendations concerning the impact of the use of private sewage facilities in the area on public health and present the recommendations at the hearing.

(d) If the commission finds after the hearing that the use of private sewage facilities in an area is causing or may cause pollution or is injuring or may injure the public health, the commission may enter an order as it may consider appropriate to abate or prevent pollution or injury to public health.

(e) The order may, without limitation, do one or more of the following:

- (1) limit the number and kind of private sewage facilities which may be used in the area;
- (2) prohibit the installation and use of additional private sewage facilities or kinds of private sewage facilities in the area;
- (3) require modifications or improvements to existing private sewage facilities or impose limitations on their use; and
- (4) provide for a gradual and systematic reduction of the number or kinds of private sewage facilities in the area.

(f) The commission may provide in the order for a system of licensing of private sewage facilities in the area, including procedures for cancellation of a license for violation of this section, the license, or the orders or rules of the department. The commission may also provide in the system of licensing for periodic renewal of the licenses, but this may not be required more frequently than once a year.

(g) The commission may delegate the licensing function and the administration of the licensing system to the executive director or to any local government whose boundaries include the area or which has been designated by the commission under Sections 26.081 through 26.086 of this code as the agency to develop a regional waste disposal system which includes the area or to any district or authority created and existing under Article XVI, Section 59 or Article III, Section 52 of the Texas Constitution, which owns or operates a dam or reservoir project within the area regulated.

(h) The board also may prescribe and require the payment of reasonable license fees by an applicant for a license, including fees for periodic renewal of a license. The board may change the amount of the

license fees from time to time. The amount of the fees shall be based on the reasonable cost of performing the licensing function and administering the licensing system, including, where applicable, costs of soil percolation and other tests to determine the suitability of using a particular type or types of private sewage facilities in the area or at any location within the area, field inspections, travel, and other costs directly attributable to performing the licensing function and administering the licensing system.

(i) If the commission or the executive director has the responsibility for performing the licensing function, the license fees shall be paid to the department. Those fees shall not be deposited in the General Revenue Fund of the state but shall be deposited in a special fund for use by the department in performing the licensing function and administering the licensing system, and the fees so deposited are hereby appropriated to the department to use for those purposes only.

(j) If a local government has the responsibility for performing the licensing function, the fees shall be paid to the local government.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.032. Control by Counties

(a) Whenever it appears to the commissioners court of any county that the use of private sewage facilities in an area within the county is causing or may cause pollution or is injuring or may injure the public health, the county may proceed in the same manner and in accordance with the same procedures as the commission to hold a public hearing and enter an order, resolution, or other rule as it may consider appropriate to abate or prevent pollution or injury to public health.

(b) The order, resolution, or other rule may provide the same restrictions and requirements as are authorized for an order of the commission entered under this section.

(c) Before the order, resolution, or other rule becomes effective, the county shall submit it to the commission and obtain the commission's written approval.

(d) In the event of any conflict within an area between an order adopted by the commission and an order, resolution, or other rule adopted by a county under this section, the order of the commission shall take precedence.

(e) Where a system of licensing has been ordered by the commission or the commissioners court of a county, no person may install or use private sewage facilities required to be licensed without obtaining a license.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.033. Rating of Waste Disposal Systems

(a) After consultation with the Texas Department of Health Resources, the board shall provide by rule for a system of approved ratings for municipal waste disposal systems and other waste disposal systems which the board may designate.

(b) The owner or operator of a municipal waste disposal system which attains an approved rating has the privilege of erecting signs of a design approved by the board on highways approaching or inside the boundaries of the municipality, subject to reasonable restrictions and requirements which may be established by the State Department of Highways and Public Transportation.

(c) In addition, the owner or operator of any waste disposal system, including a municipal system, which attains an approved rating has the privilege of erecting signs of a design approved by the board at locations which may be approved or established by the board, subject to such reasonable restrictions and requirements which may be imposed by any governmental entity having jurisdiction.

(d) If the waste disposal system fails to continue to achieve an approved rating, the commission may revoke the privilege. On due notice from the commission, the owner or operator of the system shall remove the signs.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.034. Approval of Disposal System Plans

(a) This section applies to all sewer systems, treatment facilities, and disposal systems, except those public sewage disposal systems for which plans are subject to review and approval by the Texas Department of Health Resources.

(b) Before beginning construction, every person who proposes to construct or materially alter the efficiency of any sewer system, treatment facility, or disposal system to which this section applies shall submit completed plans and specifications to and obtain the approval of the plans by the board.

(c) The board shall approve the plans and specifications if they conform to the waste discharge requirements and water quality standards established by the commission and the board respectively.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.035. Federal Grants

The executive director with the approval of the board may execute agreements with the United States Environmental Protection Agency or any other federal agency that administers programs providing federal cooperation, assistance, grants, or loans for research, development, investigation, training, planning, studies, programming, and construction related to methods, procedures, and facilities for the

collection, treatment, and disposal of waste or other water quality control activities. The department may accept federal funds for these purposes and for other purposes consistent with the objectives of this chapter and may use the funds as prescribed by law or as provided by agreement.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.036. Water Quality Management Plans

(a) The executive director shall develop and prepare, and from time to time revise, comprehensive water quality management plans for the different areas of the state, as designated by the board.

(b) The executive director may contract with local governments, regional planning commissions, planning agencies, other state agencies, colleges and universities in the state, and any other qualified and competent person to assist the department in developing and preparing, and from time to time revising, water quality management plans for areas designated by the board.

(c) With funds provided for the purpose by legislative appropriation, the board may make grants or interest-free loans to, or contract with, local governments, regional planning commissions, and planning agencies to pay administrative and other expenses of such entities for developing and preparing, and from time to time revising, water quality management plans for areas designated by the board. The period of time for which funding under this provision may be provided for developing and preparing or for revising a plan may not exceed three consecutive years in each instance. Any loan made pursuant to this subsection shall be repaid when the construction of any project included in the plan is begun.

(d) Any person developing or revising a plan shall, during the course of the work, consult with the department and with local governments and other federal, state, and local governmental agencies which in the judgment of the executive director may be affected by or have a legitimate interest in the plan.

(e) Insofar as may be practical, the water quality management plans shall be reasonably compatible with the other governmental plans for the area, such as area or regional transportation, public utility, zoning, public education, recreation, housing, and other related development plans.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.037. Approval of Plans

(a) After a water quality management plan has been prepared or significantly revised as authorized in Section 26.036 of this code, it shall be submitted to the board and to such local governments and other federal, state, and local governmental agencies as in

the judgment of the executive director may be affected by or have a legitimate interest in the plan.

(b) After a reasonable period of time as determined by the board for the persons to whom the plan was submitted to review and consult on the plan, a public hearing shall be held on whether the plan should be approved or whether the plan should be modified in any way. Notice of the hearing shall be given to the person or persons who prepared or revised the plan and to the persons to whom the plan was submitted for review.

(c) After the public hearing if the board finds that the plan complies with the policy and purpose of this chapter and the rules and policies of the board, it shall approve the plan. If the board does not so find, it may disapprove the plan, modify the plan as necessary so that it will comply, or return it for further development and later resubmission to the board, in accordance with the procedure in Section 26.036 of this code.

(d) When a water quality management plan has been approved as provided in this section, the plan may be furnished to the Federal Environmental Protection Agency, the Federal Water Quality Administration, or any other federal official or agency in fulfillment of any federal water quality management planning requirement specified for any purpose by the federal government.

(e) The board and the commission may use an approved water quality management plan or a plan in progress but not completed or approved in reviewing and making determinations on applications for permits and on applications for financial assistance for construction of treatment works.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.038. Fiscal Control on Water Quality Management Planning

In administering the program for making grants and loans to and contracting with local governments, regional planning commissions, and planning agencies as authorized in Subsection (c) of Section 26.036 of this code, the board shall adopt rules and procedures for the necessary engineering review and supervision, fiscal control, and fund accounting. The fiscal control and fund accounting procedures are supplemental to other procedures prescribed by law. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.039. Accidental Discharges and Spills

(a) As used in this section:

(1) "Accidental discharge" means an act or omission through which waste or other substances are inadvertently discharged into water in the state.

(2) "Spill" means an act or omission through which waste or other substances are deposited where, unless controlled or removed, they will drain, seep, run, or otherwise enter water in the state.

(3) "Other substances" means substances which may be useful or valuable and therefore are not ordinarily considered to be waste, but which will cause pollution if discharged into water in the state.

(b) Whenever an accidental discharge or spill occurs at or from any activity or facility which causes or may cause pollution, the individual operating, in charge of, or responsible for the activity or facility shall notify the department as soon as possible and not later than 24 hours after the occurrence.

(c) Activities which are inherently or potentially capable of causing or resulting in the spillage or accidental discharge of waste or other substances and which pose serious or significant threats of pollution are subject to reasonable rules establishing safety and preventive measures which the board may adopt or issue. The safety and preventive measures which may be required shall be commensurate with the potential harm which could result from the escape of the waste or other substances.

(d) The provisions of this section are cumulative of the other provisions in this chapter relating to waste discharges, and nothing in this section exempts any person from complying with or being subject to any other provision of this chapter. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.040. Control of Certain Waste Discharges by Rule

Whenever the board determines that the quality of water in an area is adversely affected or threatened by the combined effects of several relatively small-quantity discharges of wastes being made for which it is not practical to issue individual permits or that the general nature of a particular type of activity which produces a waste discharge is such that requiring individual permits is unnecessarily burdensome both to the waste discharger and the department, the board may by rule regulate and set the requirements and conditions for the discharges of waste.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.041. Health Hazards

The department may use any means provided by this chapter to prevent a discharge of waste that is injurious to public health.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.042. Monitoring and Reporting

(a) The board may prescribe reasonable requirements for a person making discharges of any waste or of any pollutant to monitor and report on his activities concerning collection, treatment, and disposal of the waste or pollutant.

(b) The board may, by regulation, order, permit, or otherwise require the owner or operator of any source of a discharge of pollutants into any water in the state or of any source which is an industrial user of a publicly owned treatment works to:

- (1) establish and maintain such records;
- (2) make such reports;
- (3) sample any discharges in accordance with such methods, at such locations, at such intervals, and in such manner as the board shall prescribe; and
- (4) provide such other information relating to discharges of pollutants into any water in the state or to introductions of pollutants into publicly owned treatment works as the board may reasonably require.

(c) When in the judgment of the commission significant water quality management benefits will result or water quality management needs justify, the commission may also prescribe reasonable requirements for any person or persons making discharges of any waste or of any pollutant to monitor and report on the quality of any water in the state which the commission has reason to believe may be materially affected by the discharges.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 21.094 by Acts 1977, 65th Leg., p. 1640, ch. 644, § 1.

§ 26.043. The State of Texas Water Pollution Control Compact

(a) The legislature recognizes that various river authorities and municipal water districts and authorities of the state have signed, and that others are authorized to sign and may sign, a document entitled "The State of Texas Water Pollution Control Compact" (hereinafter called the "compact"), which was approved by Order of the Texas Water Quality Board on March 26, 1971, and which is now on file in the official records of the department, wherein each of the signatories is by law an official agency of the state, created pursuant to Article XVI, Section 59 of the Texas Constitution and operating on a multiple county or regional basis, and that collectively those signatories constitute an agency of the state authorized to agree to pay, and to pay, for and on behalf of the state not less than 25 percent of the estimated costs of all water pollution control projects in the state, wherever located, for which federal grants are to be made pursuant to Clause (7), Subsection (b), Section 1158,¹ Federal Water Pollution Control Act,

as amended (33 U.S.C. Section 1158), or any similar law, in accordance with and subject to the terms and conditions of the compact. The compact provides a method for taking advantage of increased federal grants for water pollution control projects by virtue of the state payment which will be made from the proceeds from the sale of bonds by the signatories to the compact. The compact is hereby ratified and approved, and it is hereby provided that Section 30.026 of this code shall not constitute a limitation or restriction on any signatory with respect to any contract entered into pursuant to the compact or with respect to any water pollution control project in the state, wherever located, for which the aforesaid federal grants are to be made, and such signatory shall not be required to obtain the consent of any other river authority or conservation and reclamation district which is not a signatory with respect to any such contract or project. Each signatory to the compact is empowered and authorized to do any and all things and to take any and all action and to execute any and all contracts and documents which are necessary or convenient in carrying out the purposes and objectives of the compact and issuing bonds pursuant thereto, with reference to any water pollution control project in the state, wherever located, for which the aforesaid federal grants are to be made.

(b) It is further found, determined, and enacted that all bonds issued pursuant to said compact and all bonds issued to refund or refinance same are and will be for water quality enhancement purposes, within the meaning of Article III, Section 49-d-1, as amended, of the Texas Constitution and any and all bonds issued by a signatory to said compact to pay for all or any part of a project pursuant to the compact and any bonds issued to refund or refinance any such bonds may be purchased by the Texas Water Development Board with money received from the sale of Texas Water Development Board bonds pursuant to said Article III, Section 49-d-1, as amended, of the Texas Constitution. The bonds or refunding bonds shall be purchased directly from any such signatory at such price as is necessary to provide the state payment and any other part of the cost of the project or necessary to accomplish the refunding, and all purchases shall constitute loans for water quality enhancement. The bonds or refunding bonds shall have the characteristics and be issued on such terms and conditions as are acceptable to the board. The proceeds received by any such signatory from the sale of any such bonds shall be used to provide the state payment pursuant to the compact and any other part of the cost of the project, and the proceeds from the sale of any such refunding bonds to refund any outstanding bonds issued pursuant to the compact shall be used to pay off and retire the bonds being refunded thereby.

(c) This subsection is not intended to interfere in any way with the operation of Article III, Section 49-d-1, as amended, of the Texas Constitution or the enabling legislation enacted pursuant thereto, and the aforesaid compact shall constitute merely a complementary or supplemental method for providing the state payment solely in instances that it is deemed necessary or advisable by the board.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ See, now, 33 U.S.C.A. § 1281 et seq.

§ 26.044. Disposal of Boat Sewage

(a) As used in this section, "boat" means any vessel or other watercraft, whether moved by oars, paddles, sails, or other power mechanism, inboard or outboard, or any other vessel or structure floating on water in this state, whether or not capable of self-locomotion, including but not limited to cabin cruisers, houseboats, barges, marinas, and similar floating objects.

(b) The board shall issue rules concerning the disposal of sewage from boats located or operated on inland fresh waters in this state. The rules of the board shall include but not be limited to provisions for the establishment of standards for sewage disposal devices, the certification of sewage disposal devices, including on-shore pump-out facilities, and the visible and conspicuous display of evidence of certification of sewage disposal devices on each boat equipped with such device and on each on-shore pump-out device.

(c) The board may delegate the administration and performance of the certification function to the executive director or to any other governmental entity. The board may prescribe and require the payment, by applicants for certification, of reasonable fees based on the costs of administering and performing the certification function. All certification fees shall be paid to the entity performing the certification function. All fees collected by any state agency shall be deposited in a special fund for use by that agency in administering and performing the certification function and shall not be deposited in the General Revenue Fund of the state.

(d) Before issuing any rules under Subsection (b) of this section, the board or any person authorized by it under Section 26.021 of this code shall hold hearings thereon in Austin and in five other locations in the state in order to provide the best opportunity for all citizens of the state to appear and present evidence to the board.

(e) Notice of the hearing in Austin shall be published at least once in one or more newspapers having general circulation in the state. Notice of each of the other hearings shall be published at least once in one or more newspapers having general circulation in the region in which each hearing is to be held.

(f) Copies of each rule issued by the board under this section shall be filed in the offices of the department in Austin, Texas, in the office of the Secretary of State in Austin, and the office of the county clerk in each county in the state. The board shall provide for publication of notice of each rule issued under this section in at least one newspaper of general circulation in each county of the state and shall furnish the county judge of each county of the state a copy of the rules.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.045. Pump-Out Facilities for Boat Sewage

(a) In this section:

(1) "Boat" means the same as defined in Section 26.044(a), Water Code.

(2) "Boat pump-out station" means any private or public shoreside installation either independent of or in addition to an organized waste collection, treatment, and disposal system used to receive boat sewage.

(3) "Shoreside installation" means marinas and other installations servicing boats on fresh water of Texas.

(4) "Fresh water" means as geographically applied all of the surface lakes, streams, and reservoirs of the state, exclusive of the extent of ordinary tidal action on this water.

(b) After a public hearing and after making every reasonable effort to bring about the establishment of an adequate number of boat pump-out stations on fresh water, the commission may enter an order requiring the establishment of boat pump-out stations by a local government that has any jurisdiction over at least a portion of the fresh water or over land immediately adjacent to the fresh water.

(c) If a local government is authorized to issue authorization for the operation of shoreside installations, the local government may require the installation and operation of boat pump-out stations where necessary. The local government shall require the installation and operation of boat pump-out stations if required by the commission.

(d) A local government responsible for establishing boat pump-out stations may issue bonds or may use general revenue funds from normal operations to finance the construction and operation of the pump-out facilities. Pump-out stations established as a result of this section will be self-sustaining with respect to costs and revenues collected from users of said facilities, and local governments are authorized to levy reasonable, appropriate charges or fees to recover cost of installation and operation of the pump-out stations. Nothing in this section is to be construed to require any local government to rebate to the State of Texas funds collected pursuant to this program.

(e) The hearings required by this section and other acts of the commission in carrying out the provisions of this section shall be handled as provided in the rules of the board.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.046. Hearings on Protection of Edwards Aquifer From Pollution

(a) As used in this section, "Edwards Aquifer" means that portion of an arcuate belt of porous, waterbearing limestones composed of the Comanche Peak, Edwards, and Georgetown formations trending from west to east to northeast through Kinney, Uvalde, Medina, Bexar, Kendall, Comal, and Hays counties, respectively, and as defined in the most recent order of the commission for the protection of the quality of the potable underground water in those counties.

(b) Annually, the commission shall hold a public hearing in Kinney, Uvalde, Medina, Bexar, Kendall, Comal, or Hays County, and a hearing in any other of those counties whose commissioners court requests that a hearing be held in its county, to receive evidence from the public on actions the commission should take to protect the Edwards Aquifer from pollution.

(1) Notice of the public hearing shall be given and the hearing shall be conducted in accordance with the rules of the commission.

(2) The hearings examiner, appointed by the commission, shall convene the public hearing at an hour convenient for the public to attend, but not later than 10 a. m. of the day set for the public hearing and shall close the public hearing no later than 6 p. m. of the same day.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[§ 26.047.]¹ Permit Conditions and Pretreatment Standards Concerning Publicly Owned Treatment Works

(a) The board shall impose as conditions in permits for the discharge of pollutants from publicly owned treatment works requirements for information to be provided by the permittee concerning new introductions of pollutants or substantial changes in the volume or character of pollutants being introduced into such treatment works.

(b) The board is authorized to impose as conditions in permits for the discharge of pollutants from publicly owned treatment works appropriate measures to establish and insure compliance by industrial users with any system of user charges required under state or federal law or any regulations or guidelines promulgated thereunder.

(c) The board is authorized to apply, and to enforce pursuant to Subchapter E of this code,²

against industrial users of publicly owned treatment works, toxic effluent standards and pretreatment standards for the introduction into such treatment works of pollutants which interfere with, pass through, or otherwise are incompatible with such treatment works.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ Enacted as § 21.099 by Acts 1977, 65th Leg., p. 1646, ch. 644, § 9, and editorially reclassified.

² See, now, Subchapter D of this chapter, § 26.121 et seq.

[§ 26.048.]¹ Federal Grants for the Construction of Treatment Works; Processing Fees

(a) The board may execute agreements with the United States Environmental Protection Agency or its successor agency and any other federal agency that administers programs providing federal grants to local governments for the construction of treatment works, as defined in Section 21.602² of this code. The board may exercise all duties and responsibilities required for the administration by the board of the federal construction grant program.

(b) Each applicant for a federal construction grant, under a grant program administered by the board, shall pay to the board a reasonable grant processing fee as prescribed by the board. The grant processing fee charged by the board shall be cost-eligible under the grant program and shall not exceed one-half of one percent of the total eligible project cost, including the planning, design, and construction phases, for any one project. The board shall promulgate regulations establishing schedules for timely payment of grant processing fees. For grants awarded in steps under a federal program, the time schedule for payment of grant processing fees shall provide for payment reasonably apportioned among each step grant awarded. The grant processing fee for each step grant or for any other grant not awarded in steps shall be due and payable immediately following the award of such grant. No grant processing fee shall be levied for any grant awarded prior to the effective date of this Act; but the grant processing fee established in this Subsection (b) shall be levied on grants awarded on or after the effective date of this Act where the board has processed the grant pursuant to an agreement with the United States Environmental Protection Agency, or its successor agency, or any other federal agency that administers programs providing federal grants to local governments for the construction of treatment works.

(c) All grant processing fees collected by the board shall be deposited in a special fund of the state treasury for use by the board in processing and administering the grant programs, and shall not be deposited in the general revenue fund of the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ Enacted as § 21.101 by Acts 1977, 65th Leg., p. 253, ch. 120, § 1, and editorially reclassified.

² See, now, § 17.222.

[Sections 26.049 to 26.080 reserved for expansion]

SUBCHAPTER C. REGIONAL AND AREA-WIDE SYSTEMS

§ 26.081. Regional or Area-Wide Systems; General Policy

(a) The legislature finds and declares that it is necessary to the health, safety, and welfare of the people of this state to implement the state policy to encourage and promote the development and use of regional and area-wide waste collection, treatment, and disposal systems to serve the waste disposal needs of the citizens of the state and to prevent pollution and maintain and enhance the quality of the water in the state.

(b) Within any standard metropolitan statistical area in the state, the department is authorized to implement this policy in the manner and in accordance with the procedure provided in Sections 26.081 through 26.086 of this code.

(c) In those portions of the state which are not within a standard metropolitan statistical area, the department shall observe this state policy by encouraging interested and affected persons to cooperate in developing and using regional and area-wide systems. The department may not use the procedure specified in Sections 26.081 through 26.086 of this code in these areas to implement this policy. However, this does not affect or diminish any authority which the department may otherwise have and exercise under other provisions of this chapter.

(d) The term "standard metropolitan statistical area," as used in this section, means an area consisting of a county or one or more contiguous counties which is officially designated as such by the United States Office of Management and Budget or its successor in this function.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.082. Hearing to Define Area of Regional or Area-Wide Systems

(a) Whenever it appears to the board that because of the existing or reasonably foreseeable residential, commercial, industrial, recreational, or other economic development in an area a regional or area-wide waste collection, treatment, or disposal system or systems are necessary to prevent pollution or maintain and enhance the quality of the water in the state, the board may hold a public hearing in or near the area to determine whether the policy stated in Section 26.081 of this code should be implemented in that area.

(b) Notice of the hearing shall be given to the local governments which in the judgment of the board may be affected.

(c) If after the hearing the board finds that a regional or area-wide system or systems are necessary or desirable to prevent pollution or maintain and enhance the quality of the water in the state, the board may enter an order defining the area in which such a system or systems are necessary or desirable.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.083. Hearing to Designate Systems to Serve the Area Defined; Order; Election; Etc.

(a) At the hearing held under Section 26.082 of this code or at a subsequent hearing held in or near an area defined under Section 26.082 of this code, the board may consider whether to designate the person to provide a regional or area-wide system or systems to serve all or part of the waste collection, treatment, or disposal needs of the area defined.

(b) Notice of the hearing shall be given to the local governments and to owners and operators of any waste collection, treatment, and disposal systems who in the judgment of the board may be affected.

(c) If after the hearing the board finds that there is an existing or proposed system or systems then capable or which in the reasonably foreseeable future will be capable of serving the waste collection, treatment, or disposal needs of all or part of the area defined and that the owners or operators of the system or systems are agreeable to providing the services, the board may enter an order designating the person to provide the waste collection, treatment, or disposal system or systems to serve all or part of the area defined.

(d) After the board enters an order under Subsection (c) of this section and if the board receives a timely and sufficient request for an election as provided in Section 21.206, the board shall designate a presiding judge for an election, to determine whether the proposed regional or area-wide system or systems operated by the designated regional entity should be created.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 21.203 by Acts 1977, 65th Leg., p. 255, ch. 121, § 1.

§ 26.084. Actions Available to Commission After Designations of Systems

(a) After the board has entered an order as authorized in Section 26.083 of this code, the commission may, after public hearing and after giving notice of the hearing to the persons who in the judgment of the commission may be affected, take any one or more of the following actions:

(1) enter an order requiring any person discharging or proposing to discharge waste into or adjacent to the water in the state in an area defined in an order entered under Section 26.082 of this code to use a regional or area-wide system designated under Section 26.083 of this code for the disposal of his waste;

(2) refuse to grant any permits for the discharge of waste or to approve any plans for the construction or material alteration of any sewer system, treatment facility, or disposal system in an area defined in an order entered under Section 26.082 of this code unless the permits or plans comply and are consistent with any orders entered under Sections 26.081 through 26.086 of this code; or

(3) cancel or suspend any permit, or amend any permit in any particular, which authorizes the discharge of waste in an area defined in an order entered under Section 26.082 of this code.

(b) Before exercising the authority granted in this section, the commission shall find affirmatively:

(1) that there is an existing or proposed regional or area-wide system designated under Section 26.083 of this code which is capable or which in the reasonably foreseeable future will be capable of serving the waste collection, treatment, or disposal needs of the person or persons who are the subject of an action taken by the commission under this section;

(2) that the owner or operator of the designated regional or area-wide system is agreeable to providing the service;

(3) that it is feasible for the service to be provided on the basis of waste collection, treatment, and disposal technology, engineering, financial, and related considerations existing at the time, exclusive of any loss of revenue from any existing or proposed waste collection, treatment, or disposal systems in which the person or persons who are the subject of an action taken under this section have an interest;

(4) that inclusion of the person or persons who are the subject of an action taken by the commission under this section will not suffer undue financial hardship as a result of inclusion in a regional or area-wide system; and

(5) that a majority of the votes cast in any election held under Section 21.206¹ of this code favor the creation of the regional or area-wide system or systems operated by the designated regional entity.

(c) An action taken by the commission under Section 26.085 of this code, excluding any person or persons from a regional or area-wide system because the person or persons will suffer undue financial hardship as a result of inclusion in the regional or

area-wide system, shall be subject to a review at a later time determined by the commission in accordance with the criteria set out in this section, not to exceed three years from the date of exclusion.

(d) If a person or persons excluded from a regional or area-wide system fail to operate the excluded facilities in a manner that will comply with its permits, the permits shall be subject to cancellation after review by the commission, and the facilities may become a part of the regional or area-wide system.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ See [§ 26.087].

The text of this section incorporates the amendment to former § 21.204 by Acts 1977, 65th Leg., p. 255, ch. 121, § 2.

§ 26.085. Inclusion at a Later Time

Any person or persons who are the subject of an action taken by the commission under Section 26.084 of this code and who are excluded from a regional or area-wide system because the person or persons will suffer undue financial hardship as a result of inclusion in the regional or area-wide system may be added to the system at a later time under the provisions of Section 26.084 of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.086. Rates for Services by Designated Systems

(a) On motion of any interested party and after a public hearing, the commission may set reasonable rates for the furnishing of waste collection, treatment, or disposal services to any person by a regional or area-wide system designated under Section 26.083 of this code.

(b) Notice of the hearing shall be given to the owner or operator of the designated regional or area-wide system, the person requesting the hearing, and any other person who in the judgment of the commission may be affected by the action taken by the commission as a result of the hearing.

(c) After the hearing, the commission shall enter an order setting forth its findings and the rates which may be charged for the services by the owner or operator of the designated regional or area-wide system.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[§ 26.087.]¹ Election for Approval of Regional or Area-Wide System or Systems

(a) After the board, under Sections 21.202² and 21.203³ of this code, enters an order: defining an area for a regional or area-wide system or systems; designating a regional entity to operate the regional or area-wide system or systems; and appointing a presiding judge for the election, an election shall be

held within the boundaries of the proposed regional or area-wide system or systems to be operated by the designated regional entity upon the filing of a timely and sufficient request for an election except as provided in Subsection (i) of this section.

(b) Any person located within the boundaries of the proposed regional or area-wide system or systems requesting an election for the approval of the proposed regional or area-wide system or systems to be operated by the designated regional entity shall file a written request with the board within 30 days of the date the board enters an order under Section 21.203. The request shall include a petition signed by 50 persons holding title to the land within the proposed regional or area-wide system or systems, as indicated by the county tax rolls.

(c) Notice of the election shall state the day and place or places for holding the election, and the proposition to be voted on. The notice shall be published once a week for two consecutive weeks in a newspaper with general circulation in the county or counties in which the regional or area-wide system or systems is to be located. The first publication of the notice shall be at least 14 days before the day set for the election. Notice of the election shall be given to the local governments and to owners and operators of any waste collection, treatment, and disposal systems who in the judgment of the board may be affected.

(d) Absentee balloting in the election shall begin 10 days before the election and shall end as provided in the Texas Election Code. The ballots for the election shall be printed to provide for voting for or against the regional or area-wide system to be operated by the designated regional entity.

(e) Immediately after the election, the presiding judge shall make returns of the result to the executive director of the board. The executive director shall canvass the returns and report to the board his findings of the results at the earliest possible time.

(f) If a majority of the votes cast in the election favor the creation of the regional or area-wide system or systems operated by the designated regional entity, then the board shall declare the regional system is created and enter the results in its minutes. If a majority of the votes cast in the election are against the creation of the regional or area-wide system or systems operated by the designated regional entity, then the board shall declare that the regional system was defeated and enter the result in its minutes.

(g) The order canvassing the results of the confirmation election shall contain a description of the regional system's boundaries and shall be filed in the deed records of the county or counties in which the regional system is located.

(h) The legislature, through the General Appropriations Act, may provide funds for the conduct of

elections required under this section. If no funds are appropriated for this purpose, the costs of conducting the election shall be assessed by the board.

(i) This subsection applies to regional or area-wide system or systems and regional entities which have been designated prior to the effective date of this Act. An election to approve creation of a regional or area-wide system or systems and the designation of a regional entity to operate those systems as provided in this section shall not be required for those regional systems or entities to which this subsection applies.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ Enacted as § 21.206 by Acts 1977, 65th Leg., p. 256, ch. 121, § 3, and editorially reclassified.

² See, now, § 26.082.

³ See, now, § 26.083.

[Sections 26.088 to 26.120 reserved for expansion]

SUBCHAPTER D. PROHIBITION AGAINST POLLUTION; ENFORCEMENT

§ 26.121. Unauthorized Discharges Prohibited

(a) Except as authorized by a rule, permit, or order issued by the department, no person may:

(1) discharge sewage, municipal waste, recreational waste, agricultural waste, or industrial waste into or adjacent to any water in the state;

(2) discharge other waste into or adjacent to any water in the state which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state; or

(3) commit any other act or engage in any other activity which in itself or in conjunction with any other discharge or activity causes, continues to cause, or will cause pollution of any of the water in the state, unless the activity is under the jurisdiction of the Parks and Wildlife Department, the General Land Office, or the Railroad Commission of Texas, in which case this subdivision does not apply.

(b) In the enforcement of Subdivisions (2) and (3) of Subsection (a) of this section, consideration shall be given to the state of existing technology, economic feasibility, and the water quality needs of the water that might be affected.

(c) No person may cause, suffer, allow, or permit the discharge of any waste or the performance of any activity in violation of this chapter or of any rule, permit, or order of the department.

(d) Except as authorized by a rule, permit, or order issued by the department, no person may discharge any pollutant, sewage, municipal waste, recreational waste, agricultural waste, or industrial waste from any point source into any water in the state.

(e) No person may cause, suffer, allow, or permit the discharge from a point source of any waste or of any pollutant, or the performance or failure of any activity other than a discharge, in violation of this chapter or of any rule, regulation, permit, or other order of the board.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 21.251 by Acts 1977, 65th Leg., p. 1643, ch. 644, § 2.

§ 26.122. Civil Penalty

(a) A person who violates any provision of this chapter, other than Subsection (d) or Subsection (e) of Section 21.251,¹ or who violates any rule, permit, or order of the department is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each act of violation and for each day of violation to be recovered as provided in this subchapter.

(b) A person who violates Subsection (d) or Subsection (e) of Section 21.251 of this chapter is subject to a civil penalty of not more than \$10,000 for each act of violation and for each day of violation, to be recovered as provided in this subchapter; provided, however, that in suits instituted pursuant to this subsection, the civil penalty, if any, assessed against the person who committed or who is committing the violation shall be no more than \$1,000 for each act of violation and for each day of violation where the violation is of a limitation or condition included in a permit issued by the department prior to delegation by the Administrator of the United States Environmental Protection Agency of NPDES permit authority under Section 402(b) of the Federal Water Pollution Control Act,² or of any limitation or condition included in an identified state supplement to an NPDES permit issued after NPDES permit delegation by the Administrator of the United States Environmental Protection Agency.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ See, now, § 26.121.

² 33 U.S.C.A. § 1342(b).

The text of this section incorporates the amendment to former § 21.252 by Acts 1977, 65th Leg., p. 1643, ch. 644, § 3.

§ 26.123. Enforcement by Department

(a) Whenever it appears that a person has violated or is violating or is threatening to violate any provision of this chapter, other than Subsection (d) or Subsection (e) of Section 21.251,¹ or has violated or is violating, or is threatening to violate, any rule, permit, or order of the department, then the executive director may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not less than \$50 nor more than \$1,000 for each act of violation and for each day of violation, or for both injunctive relief and civil penalty.

(b) Whenever it appears that a person has violated or is violating, or is threatening to violate, Subchapter (d) or Subchapter (e) of Section 21.251 of this chapter, then the executive director may have a civil suit instituted in a district court for injunctive relief to restrain the person from continuing the violation or threat of violation, or for the assessment and recovery of a civil penalty of not more than \$10,000 for each act of violation and for each day of violation, or for both injunctive relief and civil penalty; provided, however, that in suits instituted pursuant to this subsection, the civil penalty, if any, assessed against the person who committed or who is committing the violation shall be no more than \$1,000 for each act of violation and for each day of violation where the violation is of a limitation or condition included in a permit issued by the board prior to delegation by the Administrator of the United States Environmental Protection Agency of NPDES permit authority under Section 402(b) of the Federal Water Pollution Control Act,² or of any limitation or condition included in an identified state supplement to an NPDES permit issued after NPDES permit delegation by the Administrator of the United States Environmental Protection Agency.

(c) On application for injunctive relief and a finding that a person is violating or threatening to violate any provision of this chapter or any rule, permit, or order of the department, the district court shall grant the injunctive relief the facts may warrant.

(d) At the request of the executive director, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty or for both injunctive relief and penalty as authorized in Subsection (a) or (b) of this section.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ See, now, § 26.121.

² 33 U.S.C.A. § 1342(b).

The text of this section incorporates the amendment to former § 21.253 by Acts 1977, 65th Leg., p. 1644, ch. 644, § 4.

§ 26.124. Enforcement by Others

(a) Whenever it appears that a violation or threat of violation of any provision of Section 26.121 of this code or any rule, permit, or order of the department has occurred or is occurring within the jurisdiction of a local government, exclusive of its extraterritorial jurisdiction, the local government, in the same manner as the department, may have a suit instituted in a district court through its own attorney for the injunctive relief or civil penalties or both, as authorized in Subsection (a) of Section 26.123 of this code, against the person who committed or is committing or threatening to commit the violation. This power may not be exercised by a local government unless its governing body adopts a resolution

authorizing the exercise of the power. In a suit brought by a local government under this section, the department is a necessary and indispensable party.

(b) Whenever it appears that a violation or a threat of violation of any provision of Section 26.121 of this code or any rule, permit, or order of the department has occurred or is occurring that affects aquatic life or wildlife, the Parks and Wildlife Department, in the same manner as the department, may have a suit instituted in a district court for injunctive relief or civil penalties or both, as authorized in Section 26.123(a) of this code, against the person who committed or is committing or is threatening to commit the violation. The suit shall be brought in the name of the State of Texas through the county attorney or the district attorney, as appropriate, of the county where the defendant resides or in the county where the violation or threat of violation occurs.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.125. Venue and Procedure

(a) A suit for injunctive relief or recovery of a civil penalty or for both injunctive relief and penalty may be brought either in the county in which the defendant resides or in the county in which the violation or threat of violation occurs.

(b) In any suit brought to enjoin a violation or threat of violation of this chapter or any rule, permit, or order of the department, the court may grant the department, the Parks and Wildlife Department, or the local government, without bond or other undertaking, any prohibitory or mandatory injunction the facts may warrant, including temporary restraining orders, after notice and hearing temporary injunctions, and permanent injunctions.

(c) A suit brought under this chapter shall be given precedence over all other cases of a different nature on the docket of the trial or appellate court.

(d) Either party may appeal from a final judgment of the court as in other civil cases.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.126. Disposition of Civil Penalties

(a) All civil penalties recovered in suits instituted by the State of Texas under this chapter through the department or the Parks and Wildlife Department shall be paid to the General Revenue Fund of the State of Texas.

(b) All civil penalties recovered in suits instituted by a local government or governments under this chapter shall be equally divided between the State of Texas and the local government or governments first instituting the suit, with 50 percent of the recovery to be paid to the General Revenue Fund of

the State of Texas and the other 50 percent paid equally to the local government or governments first instituting the suit.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.127. Department as Principal Authority

The department is the principal authority in the state on matters relating to the quality of the water in the state. The executive director has the responsibility for establishing a water quality sampling and monitoring program for the state. All other state agencies engaged in water quality or water pollution control activities shall coordinate those activities with the department.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.128. Groundwater Quality

The executive director shall have investigated all matters concerning the quality of groundwater in the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.129. Duty of Parks and Wildlife Department

The Parks and Wildlife Department and its authorized employees shall enforce the provisions of this chapter to the extent that any violation affects aquatic life and wildlife as provided in Section 26.124(b) of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.130. Duty of Department of Health Resources¹

The Texas Department of Health Resources shall continue to apply the authority vested in it by Chapter 178, Acts of the 49th Legislature, 1945, as amended (Article 4477-1, Vernon's Texas Civil Statutes), in the abatement of nuisances resulting from pollution not otherwise covered by this chapter. The Texas Department of Health Resources shall investigate and make recommendations to the department concerning the health aspects of matters related to the quality of the water in the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹Name changed to Department of Health; see Civil Statutes, art. 4418g.

§ 26.131. Duties of Railroad Commission

The Railroad Commission of Texas is solely responsible for the control and disposition of waste and the abatement and prevention of pollution of surface and subsurface water resulting from activities associated with the exploration, development, and production of oil or gas. The Railroad Commission of Texas may issue permits for the discharge of waste resulting from these activities, and discharge

of waste into water in this state resulting from these activities shall meet the water quality standards established by the board.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.132. Act of God, War, Etc.

Any pollution, or any discharge of waste without a permit or in violation of a permit, caused by an act of God, war, strike, riot, or other catastrophe is not a violation of this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.133. Effect on Private Remedies

Nothing in this chapter affects the right of any private corporation or individual to pursue any available common-law remedy to abate a condition of pollution or other nuisance or to recover damages.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.134. Repealed by Acts 1977, 65th Leg., p. 1647, ch. 644, § 11.

Acts 1977, 65th Leg., p. 1647, ch. 644, § 11, repealed former § 21.264, which was identical to this section, as revised by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1.

See, now, § 5.053.

§ 26.135. Effect on Other Laws

(a) Nothing in this chapter affects the powers and duties of the department and the Railroad Commission of Texas with respect to injection wells as provided in Chapter 27 of this code.

(b) The department and the Water Well Drillers Board shall continue to exercise the authority granted to them in The Water Well Drillers Act, as amended (Article 7621e, Vernon's Texas Civil Statutes).

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 26.136 to 26.170 reserved for expansion]

SUBCHAPTER E. AUTHORITY OF LOCAL GOVERNMENTS

§ 26.171. Inspection of Public Water

A local government may inspect the public water in its area and determine whether or not:

(1) the quality of the water meets the state water quality standards adopted by the board;

(2) persons discharging effluent into the public water located in the areas of which the local government has jurisdiction have obtained permits for discharge of the effluent; and

(3) persons who have permits are making discharges in compliance with the requirements of the permits.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.172. Recommendations to Board

A local government may make written recommendations to the board as to what in its judgment the water quality standards should be for any public water within its territorial jurisdiction.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.173. Power to Enter Property

(a) A local government has the same power as the department has under Section 26.014 of this code to enter public and private property within its territorial jurisdiction to make inspections and investigations of conditions relating to water quality. The local government in exercising this power is subject to the same provisions and restrictions as the department.

(b) When requested by the executive director, the result of any inspection or investigation made by the local government shall be transmitted to the department for its consideration.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.174. Enforcement Action

A local government may bring an enforcement action under this chapter in the manner provided in Subchapter D of this chapter¹ for local governments.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ Section 26.121 et seq.

§ 26.175. Cooperative Agreements

(a) A local government may execute cooperative agreements with the department or other local governments:

(1) to provide for the performance of water quality management, inspection, and enforcement functions and to provide technical aid and educational services to any party to the agreement; and

(2) for the transfer of money or property from any party to the agreement to another party to the agreement for the purpose of water quality management, inspection, enforcement, technical aid and education, and the construction, ownership, purchase, maintenance, and operation of disposal systems.

(b) When in the opinion of the executive director it would facilitate and enhance the performance by a local government of its water quality management, inspection, and enforcement functions pursuant to a cooperative agreement between the local government and the department as authorized in Subsection (a) of this section, the executive director may assign and delegate to the local government during the period of the agreement such of the pertinent powers and functions vested in the department un-

der this chapter as in the judgment of the executive director may be necessary or helpful to the local government in performing those management, inspection, and enforcement functions.

(c) At any time and from time to time prior to the termination of the cooperative agreement, the executive director may modify or rescind any such assignment or delegation.

(d) The executive director shall notify immediately a local government to whom it assigns or delegates any powers and functions pursuant to Subsections (b) and (c) of this section or as to when it modifies or rescinds any such assignment or delegation.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.176. Disposal System Rules

(a) Every local government which owns or operates a disposal system is empowered to and shall, except as authorized in Subsection (c) of this section, enact and enforce rules, ordinances, orders, or resolutions, referred to in this section as rules, to control and regulate the type, character, and quality of waste which may be discharged to the disposal system and, where necessary, to require pretreatment of waste to be discharged to the system, so as to protect the health and safety of personnel maintaining and operating the disposal system and to prevent unreasonable adverse effects on the disposal system.

(b) The local government in its rules may establish the charges and assessments which may be made to and collected from all persons who discharge waste to the disposal system or who have conduits or other facilities for discharging waste connected to the disposal system, referred to in this subsection as "users." The charges and assessments shall be equitable as between all users and shall correspond as near as can be practically determined to the cost of making the waste disposal services available to all users and of treating the waste of each user or class of users. The charges and assessments may include user charges, connection fees, or any other methods of obtaining revenue from the disposal system available to the local government. In establishing the charges and assessments, the local government shall take into account:

- (1) the volume, type, character, and quality of the waste of each user or class of users;
- (2) the techniques of treatment required;
- (3) any capital costs and debt retirement expenses of the disposal system required to be paid for from the charges and assessments;
- (4) the costs of operating and maintaining the system to comply with this chapter and the permits, rules, and orders of the department; and

(5) any other costs directly attributable to providing the waste disposal service under standard, accepted cost-accounting practices.

(c) A local government may apply to the commission for an exception from the requirements of Subsections (a) and (b) of this section or for a modification of those requirements. The application shall contain the exception or modifications desired, the reasons the exception or modifications are needed, and the grounds authorized in this subsection on which the commission should grant the application. A public hearing on the application shall be held in or near the territorial area of the local government, and notice of the hearing shall be given to the local government. If after the hearing the commission in its judgment determines that the volume, type, character, and quality of the waste of the users of the system or of a particular user or class of users of the system do not warrant the enactment and enforcement of rules containing the requirements prescribed in Subsections (a) and (b) of this section or that the enactment and enforcement of the rules would be impractical or unreasonably burdensome on the local government in relation to the public benefit to be derived, then the commission in its discretion may enter an order granting an exception to those requirements or modifying those requirements in any particular in response to circumstances shown to exist.

(d) At any time and from time to time as circumstances may require, the commission may amend or revoke any order it enters pursuant to Subsection (c) of this section. Before the commission amends or revokes such an order, a public hearing shall be held in or near the territorial area of the local government in question, and notice of the hearing shall be given to the local government. If after the hearing the commission in its judgment determines that the circumstances on which it based the order have changed significantly or no longer exist, the commission may revoke the order or amend it in any particular in response to the circumstances then shown to exist.

(e) In the event of any conflict between the provisions of this section and any other laws or parts of laws, the provisions of this section shall control. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.177. Water Pollution Control Duties of Cities

(a) Every city in this state having a population of 5,000 or more inhabitants shall, and any city of this state may, establish a water pollution control and abatement program for the city. The city shall employ or retain an adequate number of personnel on either a part-time or full-time basis as the needs and circumstances of the city may require, who by virtue of their training or experience are qualified to

perform the water pollution control and abatement functions required to enable the city to carry out its duties and responsibilities under this section.

(b) The water pollution control and abatement program of a city shall encompass the entire city and may include areas within its extraterritorial jurisdiction which in the judgment of the city should be included to enable the city to achieve the objectives of the city for the area within its territorial jurisdiction. The city shall include in the program the services and functions which, in the judgment of the city or as may be reasonably required by the commission, will provide effective water pollution control and abatement for the city, including the following services and functions:

(1) the development and maintenance of an inventory of all significant waste discharges into or adjacent to the water within the city and, where the city so elects, within the extraterritorial jurisdiction of the city, without regard to whether or not the discharges are authorized by the department;

(2) the regular monitoring of all significant waste discharges included in the inventory prepared pursuant to Subdivision (1) of this subsection;

(3) the collecting of samples and the conducting of periodic inspections and tests of the waste discharges being monitored to determine whether the discharges are being conducted in compliance with this chapter and any applicable permits, orders, or rules of the department, and whether they should be covered by a permit from the commission;

(4) in cooperation with the department, a procedure for obtaining compliance by the waste dischargers being monitored, including where necessary the use of legal enforcement proceedings; and

(5) the development and execution of reasonable and realistic plans for controlling and abating pollution or potential pollution resulting from generalized discharges of waste which are not traceable to a specific source, such as storm sewer discharges and urban runoff from rainwater.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 26.178 to 26.210 reserved for expansion]

SUBCHAPTER F. CRIMINAL PROSECUTION

§ 26.211. Definitions

As used in this subchapter:

(1) "Water" includes both surface and subsurface water, and "water in the state" means any water within the jurisdiction of the state.

(2) "Water pollution" means the alteration of the physical, chemical, or biological quality of, or the contamination of, any of the water in the state that renders the water harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or public enjoyment of the water for any lawful or reasonable purpose.

(3) "Person" means an individual or private corporation.

(4) "Waste" means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, or other waste defined in this section.

(5) "Sewage" means waterborne human or animal wastes from residences, buildings, industrial establishments, cities, towns, or other places together with groundwater infiltration and surface water with which it is commingled.

(6) "Municipal waste" means waterborne liquid, gaseous, solid, or other waste substances or a combination of these that result from any discharge arising within or emanating from, or subject to the control of, any municipal corporation, city, town, village, or municipality.

(7) "Recreational waste" means waterborne liquid, gaseous, solid, or other waste substances or a combination of these that arise within or emanate from any public or private park, beach, or recreational area.

(8) "Agricultural waste" means waterborne liquid, gaseous, solid, or other waste substances that arise from any type of public or private agricultural activity, including poisons and insecticides used in agricultural activities.

(9) "Industrial waste" means waterborne liquid, gaseous, solid, or other waste substances or a combination of these that result from any process of industry, manufacturing, trade, or business.

(10) "Other waste" means garbage, refuse, decayed wood, sawdust, shavings, bark, sand, lime, cinders, ashes, offal, oil, tar, dyestuffs, acids, chemicals, salt water, or any other substance, other than sewage, industrial waste, municipal waste, recreational waste, or agricultural waste that may cause the quality of water in the state to be impaired.

(11) "To discharge" includes to deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release or dispose of.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.212. Criminal Offense

(a) No person may discharge or cause or permit the discharge of any waste into or adjacent to any

water in the state which causes or which will cause water pollution unless the waste is discharged in compliance with a permit or order issued by the department or the Railroad Commission of Texas.

(b) No person to whom the commission has issued a permit or other order authorizing the discharge of any waste at a particular location may discharge or cause or permit the discharge of the waste in violation of the requirements of the permit or order.

(c) No person may wilfully or negligently cause, suffer, allow, or permit the discharge from a point source, of any waste or of any pollutant, or the performance or failure of any activity other than a discharge, in violation of this chapter, or of any rule, regulation, permit, or other order of the commission.

(d) No person may knowingly make any false statement, representation, or certification in any application, notice, record, report, plan, or other document filed or required to be maintained under this chapter, or under any rule, regulation, permit, or other order of the commission.

(e) No person may falsify, tamper with, or knowingly render inaccurate any monitoring device or method required to be maintained under this chapter, or under any rule, regulation, permit, or other order of the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 21.552 by Acts 1977, 65th Leg., p. 1645, ch. 644, § 5.

§ 26.213. Criminal Penalty

(a) A person who violates the provisions of Subsection (a) or Subsection (b) of Section 26.212 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$1,000. Each day that a violation occurs constitutes a separate offense.

(b) A person who violates the provisions of Subsection (c), (d), or (e) of Section 26.212 is guilty of a misdemeanor and on conviction is punishable by a fine of not more than \$25,000; provided, however, that violations of limitations or conditions included in permits issued by the commission prior to delegation by the Administrator of the United States Environmental Protection Agency of NPDES permit authority under Section 402(b) of the Federal Water Pollution Control Act,¹ or violations of limitations or conditions included in an identified state supplement to an NPDES permit issued after NPDES permit delegation by the Administrator, shall be punishable by a fine of not less than \$10 nor more than \$1,000. Each day that a violation occurs constitutes a separate offense.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ 33 U.S.C.A. § 1342(b).
The text of this section incorporates the amendment to former § 21.553 by Acts 1977, 65th Leg., p. 1645, ch. 644, § 6.

§ 26.214. Criminal Penalty for Violation of Private Sewage Facility Order

(a) A person who violates any order entered by the commission under Section 26.031 of this code or adopted by a county under Section 26.032 of this code is guilty of a misdemeanor and on conviction is punishable by a fine of not less than \$10 nor more than \$200. Each day that a violation occurs constitutes a separate offense.

(b) Jurisdiction for prosecution of a suit under this section is in the justice of the peace courts.

(c) Venue for prosecution of a suit under this section is in the justice of the peace precinct in which the violation is alleged to have occurred. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.215. Peace Officers

For purposes of this subchapter, the authorized agents and employees of the Parks and Wildlife Department are constituted peace officers. These agents and employees are empowered to enforce the provisions of this subchapter the same as any other peace officer, and for such purpose shall have the powers and duties of peace officers as set forth in the Code of Criminal Procedure, 1965, as amended. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.216. Act of God, War, Etc.

Any waste discharge otherwise punishable under this subchapter which is caused by an act of God, war, riot, or other catastrophe is not a violation of this subchapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.217. Venue

Venue for prosecution of any alleged violation of Section 21.552¹ is in the county court, the county criminal court, or the county court-at-law of the county in which the violation is alleged to have occurred.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ See, now, § 26.212.
The text of this section incorporates the amendment to former § 21.556 by Acts 1977, 65th Leg., p. 1645, ch. 644, § 6.

§ 26.218. Allegations

In alleging the name of a defendant private corporation, it is sufficient to state in the complaint, indictment, or information the corporate name or to state any name or designation by which the corporation is known or may be identified. It is not necessary to allege that the defendant was lawfully incorporated.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.219. Summons and Arrest

(a) After a complaint is filed or an indictment or information presented against a private corporation under the provisions of this subchapter, the court or clerk shall issue a summons to the corporation. The summons shall be in the same form as a *capias* except that:

(1) it shall summon the corporation to appear before the court named at the place stated in the summons;

(2) it shall be accompanied by a certified copy of the complaint, indictment, or information; and

(3) it shall provide that the corporation appear before the court named at or before 10 a. m. of the Monday next after the expiration of 20 days after it is served with summons, except when service is made upon the Secretary of State, in which instance the summons shall provide that the corporation appear before the court named at or before 10 a. m. of the Monday next after the expiration of 30 days after the Secretary of State is served with summons.

(b) No individual may be arrested upon a complaint, indictment, or information against a private corporation.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.220. Service of Summons

(a) A peace officer shall serve a summons on a private corporation by personally delivering a copy of it to the corporation's registered agent for service. If a registered agent has not been designated or cannot with reasonable diligence be found at the registered office, the peace officer shall serve the summons by personally delivering a copy of it to the president or a vice-president of the corporation.

(b) If the peace officer certifies on the return that he diligently but unsuccessfully attempted to effect service under Subsection (a) of this section or if the corporation is a foreign corporation that has no certificate of authority, he shall serve the summons on the Secretary of State by personally delivering a copy of it to him or to the assistant secretary of state or to any clerk in charge of the corporation department of his office. On receipt of the summons copy, the Secretary of State shall immediately forward it by certified or registered mail, return receipt requested, addressed to the defendant corporation at its registered office or, if it is a foreign corporation, at its principal office in the state or country under whose law it was incorporated.

(c) The Secretary of State shall keep a permanent record of the date and time of receipt and his disposition of each summons served under Subsection (b) of this section together with the return receipt.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.221. Arraignment and Pleadings

In all criminal actions instituted against a private corporation under the provisions of this subchapter:

(1) appearance is for the purpose of arraignment; and

(2) the corporation has 10 full days after the day the arraignment takes place and before the day the trial begins to file written pleadings.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.222. Appearance

(a) A defendant private corporation appears through counsel or its representative.

(b) If a private corporation does not appear in response to summons or appears but fails or refuses to plead, it is considered to be present in person for all purposes, and the court shall enter a plea of not guilty in its behalf and may proceed with trial, judgment, and sentencing.

(c) After appearing and entering a plea in response to summons, if a private corporation is absent without good cause at any time during later proceedings, it is considered to be present in person for all purposes, and the court may proceed with trial, judgment, or sentencing.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.223. Fine Treated as Judgment in Civil Action

If a private corporation is found guilty of a violation of this subchapter and a fine imposed, the fine shall be entered and docketed by the clerk of the court as a judgment against the corporation, and the fine shall be of the same force and effect and be enforced against the corporation in the same manner as if the judgment were recovered in a civil action.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.224. Cumulative Provisions

Nothing in this subchapter repeals or amends any of the provisions of Subchapters A through E of this chapter, Chapter 27 of this code, or Article 6029a, Revised Civil Statutes, 1925, as added, but this subchapter is cumulative of those acts and they remain in full force and effect.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.225. Effect on Certain Other Laws

To the extent that any general or special law makes an act or omission a criminal offense and which act or omission also constitutes a criminal offense under this subchapter, the other general or special law is repealed, but only to that extent.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 26.226 to 26.260 reserved for expansion]

SUBCHAPTER G. COASTAL OIL AND HAZARDOUS SPILL PREVENTION AND CONTROL

§ 26.261. Short Title

This subchapter may be cited as the Texas Oil and Hazardous Substances Spill Prevention and Control Act.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.262. Policy

It is the policy of this state to prevent the spill or discharge of oil and other hazardous substances into the coastal waters of the state and to cause the removal of such discharges without undue delay.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.263. Definitions

As used in this subchapter:

(1) "Coastal land or water" means any land or water in the coastal area as defined in this section.

(2) "Coastal area" refers to the geographic area comprising all counties of Texas having any tidewater shoreline, including that portion of the bed and waters of the Gulf of Mexico within the jurisdiction of the State of Texas.

(3) "Discharge or spill" means an act or omission by which oil or hazardous substances in harmful quantities are spilled, leaked, pumped, poured, emitted, entered, or dumped onto or into coastal waters of this state or by which those substances are deposited where, unless controlled or removed, they may drain, seep, run, or otherwise enter coastal water in this state. The term "discharge" or "spill" shall not include any discharge which is authorized by a permit issued pursuant to federal law or any other law of this state.

(4) "Fund" means the Texas Coastal Protection Fund.

(5) "Harmful quantity" means that quantity of oil or hazardous substance the discharge or spill of which is determined to be harmful to the public health or welfare by the administrator of the Environmental Protection Agency pursuant to the Federal Water Pollution Control Act¹ and by the board.

(6) "Hazardous substance" means any substance designated as such by the administrator of the Environmental Protection Agency pursuant to the Federal Water Pollution Control Act and by the board.

(7) "Oil" means oil of any kind or in any form, including but not limited to petroleum, fuel oil, sludge, oil refuse, and oil mixed with wastes other than dredged soil.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ 33 U.S.C.A. § 1251 et seq.

§ 26.264. Administrative Provisions

(a) The department shall administer this subchapter. The department shall cooperate with other agencies, departments, and subdivisions of this state and of the United States in implementing this subchapter.

(b) The board may issue rules necessary and convenient to carry out the purposes of this subchapter.

(c) The executive director shall enforce the provisions of this subchapter and any rules given effect pursuant to Subsection (b) of this section.

(d) The executive director with the approval of the board may contract with any public agency or private persons or other entity for the purpose of implementing this subchapter.

(e) The executive director shall solicit the assistance of and cooperate with local governments, the federal government, other agencies and departments of this state, and private persons and other entities to develop regional contingency plans for prevention and control of oil and hazardous substance spills and discharges.

(f) The department and the State Department of Highways and Public Transportation, in cooperation with the governor and the United States Coast Guard, shall develop a contractual agreement whereby personnel, equipment, and materials in possession or under control of the State Department of Highways and Public Transportation may be diverted and utilized for spill and discharge cleanup as provided for in this subchapter. Under the agreement, the following conditions shall be met:

(1) the department and the State Department of Highways and Public Transportation shall develop and maintain written agreements and contracts on how such utilization will be effected, and designating agents for this purpose;

(2) personnel, equipment, and materials may be diverted only with the approval of the department and the State Department of Highways and Public Transportation, acting through their designated agents, or by action of the governor;

(3) all expenses and costs of acquisition of such equipment and materials or resulting from such cleanup activities shall be paid from the fund, subject to reimbursement as provided in this subchapter; and

(4) subsequent to such activities, a full report of all expenditures and significant actions shall be prepared and submitted to the governor, the Legislative Budget Board, and the state auditor, and shall be reviewed by the board.

(g) The executive director shall develop and revise from time to time written action and contractual plans with the designated on-scene coordinator provided for by federal law.

(h)(1) In developing rules and plans under this subchapter and in engaging in cleanup activities, the board shall recognize the authority of the pre-designated United States Coast Guard on-scene coordinator to oversee, coordinate, and direct all private and public activities related to cleanup of discharges and spills. The executive director shall place the resources of the state at the disposal of the on-scene coordinator, if he is present, or shall engage in cleanup activities when directed to do so by the on-scene coordinator.

(2) Nothing in this subchapter shall prevent the executive director from acting independently if no on-scene coordinator is present and no action is being taken by an agency of the federal government.

(3) The department shall seek reimbursement from the designated agencies of the federal government for the reasonable costs incurred in cleanup operations, including but not limited to costs of personnel, equipment, the use of equipment, and supplies.

(i) The executive director shall after appropriate investigation prepare a report on the discharge or spill, and this report shall provide the following information:

(1) a description of the incident, including location, amount, and characteristics of the material discharged or spilled and the prevailing weather conditions;

(2) the time and duration of discharge or spill and the time and method by which the discharge or spill was reported;

(3) the action taken, and by whom, to contain and clean up the discharge or spill;

(4) an assessment of both the short-term and long-term environmental impact of the accidental discharge or spill;

(5) the estimated cost of cleanup operations and the source of payment of these costs;

(6) an evaluation of the principal causes of the discharge or spill and an assessment of how similar incidents might be prevented in the future; and

(7) a description of any legal action being taken to levy penalties or collect damages.

(j) This subchapter is cumulative of all other powers of the department.

(k) In the event that a discharge or spill presents or threatens to present an occurrence of disaster proportions, the governor shall utilize the authority granted him under the Texas Disaster Act of 1975 (Article 6889-7, Vernon's Texas Civil Statutes) to make available and bring to bear all resources of the state to prevent or lessen the impact of such a disaster.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.265. Texas Coastal Protection Fund

(a) There is hereby created the Texas Coastal Protection Fund. This fund shall not exceed \$5 million, exclusive of fines and penalties received under this subchapter.

(b) The fund shall consist of money appropriated to it by the legislature and any fines or other reimbursement to the fund provided for under this subchapter. It is the intent of the legislature that the state attempt to recover money spent from the fund according to the following priority:

(1) direct reimbursement from the federal government as provided by federal law for costs incurred in cleanup operations;

(2) in the event that federal reimbursement is not available, the state shall seek to recover cleanup costs from the responsible party. If the responsible party refuses to pay, the state shall initiate legal action to collect the actual costs, provided, however, that such recovery may not exceed \$5 million; and

(3) if federal reimbursement occurs but is insufficient to repay the fund, the state shall take action to collect the remainder from the responsible party as provided in Subdivision (2) of this subsection.

(c) Money in the fund may be expended only for the purpose of obtaining personnel, equipment, and supplies required in the cleanup of discharges and spills, including restoration of beaches and marine resources.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.266. Removal of Accidental Discharge

(a) Any person discharging or spilling oil or hazardous substances into coastal waters shall immediately undertake all feasible actions to abate and remove the discharge or spill subject to applicable federal and state requirements.

(b) In the event that the responsible party is unwilling or in the opinion of the executive director is unable to remove the discharge or spill, or the removal operation of such party is inadequate, the department may undertake the removal of the discharge or spill and may retain agents for these purposes who shall operate under the direction of the executive director.

(c) Any discharge or spill of oil or hazardous substance, the source of which is unknown, occurring in coastal waters or in waters beyond the jurisdiction of this state and which may reasonably be expected to enter coastal water may be removed by or under the direction of the executive director. Any expense involved in the removal of an unexplained discharge pursuant to this subsection shall be paid, on the board's approval, from the fund, subject to the au-

thority of the board to seek reimbursement from an agency of the federal government, and from the responsible party if the identity of that party is discovered.

(d) In any activity undertaken pursuant to this section, the department shall act in accordance with the national contingency plan authorized by the Federal Water Pollution Control Act, as amended,¹ and with Section 26.264(h) of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ See 33 U.S.C.A. § 1321(c)(2).

§ 26.267. Exemptions

(a) No person shall be held liable under this subchapter for any accident resulting from an act of God, act of war, third party negligence, or an act of government.

(b) Nothing in this subchapter shall in any way affect or limit the liability of any person to any other person or to the United States, or to this state except as specifically provided in Section 26.265(b)(2) of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 26.268. Penalties

(a) This section is cumulative of all penalties and enforcement provisions provided elsewhere to the department.

(b) Any person who violates any provision of this subchapter or of a department rule or order issued pursuant to this subchapter is subject to a civil penalty of not less than \$50 nor more than \$1,000 for each act of violation and for each day of violation.

(c) Any person operating, in charge of, or responsible for a facility or vessel which causes a discharge or spill as defined in this subchapter and fails to report said spill or discharge upon discovery thereof shall be guilty of a Class A misdemeanor.

(d) Any person who knowingly falsifies records or reports concerning the prevention or cleanup of a discharge or spill of oil or hazardous substance as provided for in this subchapter is guilty of a felony of the third degree.

(e) The penalties authorized by this subchapter for discharges and spills shall not apply to any discharge or spill promptly reported and removed by the responsible party in accordance with the rules and orders of the department.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

CHAPTER 27. DISPOSAL WELLS

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SUBCHAPTER A. GENERAL PROVISIONS

Acts 1977, 65th Leg., p. 2207, ch. 870, revised Title 2 of the Water Code, effective September 1, 1977, for disposition of provisions of former Title 2 in the revised Title, see Disposition Table preceding § 5.001.

§ 27.001. Short Title

This chapter may be cited as the Disposal Well Act.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.002. Definitions

In this chapter:

- (1) "Commission" means the Texas Water Commission.
- (2) "Board" means the Texas Water Development Board.
- (3) "Executive director" means the executive director of the Texas Department of Water Resources.
- (4) "Department" means the Texas Department of Water Resources.

(5) "Railroad commission" means the Railroad Commission of Texas.

(6) "Pollution" means the alteration of the physical, chemical, or biological quality of, or the contamination of, water that makes it harmful, detrimental, or injurious to humans, animal life, vegetation, or property or to public health, safety, or welfare, or impairs the usefulness or the public enjoyment of the water for any lawful or reasonable purpose.

(7) "Industrial and municipal waste" means any liquid, gaseous, solid, or other waste substance, or combination of these substances, which may cause or might reasonably be expected to cause pollution of fresh water and which result from

(A) processes of industry, manufacturing, trade, or business;

(B) development or recovery of natural resources other than oil or gas; or

(C) disposal of sewage or other wastes of cities, towns, villages, communities, water districts, and other municipal corporations.

(8) "Oil and gas waste" means waste arising out of or incidental to drilling for or producing of oil or gas which includes but is not limited to salt water, brine, sludge, drilling mud, and other liquid or semi-liquid waste material.

(9) "Fresh water" means water having bacteriological, physical, and chemical properties which make it suitable and feasible for beneficial use for any lawful purpose.

(10) "Casing" means material lining used to seal off strata at and below the earth's surface.

(11) "Disposal well" means an artificial excavation or opening in the ground made by digging, boring, drilling, jetting, driving, or some other method, and used to inject, transmit, or dispose of industrial and municipal waste or oil and gas waste into a subsurface stratum; or a well initially drilled to produce oil and gas which is used to transmit, inject, or dispose of industrial and municipal waste or oil and gas waste into a subsurface stratum; but the term does not include any surface pit, surface excavation, or natural depression used to dispose of industrial and municipal waste or oil and gas waste.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 27.003 to 27.010 reserved for expansion]

SUBCHAPTER B. INDUSTRIAL AND MUNICIPAL WASTE

§ 27.011. Permit From Commission

No person may continue utilizing a disposal well or begin drilling a disposal well or converting an

existing well into a disposal well to dispose of industrial and municipal waste without first obtaining a permit from the commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 22.011 by Acts 1977, 65th Leg., p. 1647, ch. 644, § 10.

§ 27.012. Application for Permit

The department shall prescribe forms for application for a permit and shall make the forms available on request without charge.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.013. Information Required of Applicant

The commission shall require an applicant to furnish any information the commission considers necessary to discharge its duties under this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.014. Application Fee

With each application, the department shall collect a fee of \$25 for the benefit of the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.015. Letter From Railroad Commission

A person making application to the department for a permit under this chapter shall submit with the application a letter from the railroad commission stating that drilling the disposal well and injecting industrial and municipal waste into the subsurface stratum will not endanger or injure any oil or gas formation.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.016. Inspection of Well Location

On receiving an application for a permit, the executive director shall have an inspection made of the location of the proposed disposal well to determine the local conditions and the probable effect of the well and shall determine the requirements for the setting of casing, as provided in Sections 27.051, 27.055, and 27.056 of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.017. Recommendations From Other Agencies

The executive director shall submit to the Texas Department of Health Resources,¹ the Water Well Drillers Board, and to other persons which the board may designate, copies of every application received in proper form. These agencies, persons, and divisions may make recommendations to the commission concerning any aspect of the application and shall have reasonable time to do so as the board may prescribe.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹Name changed to Department of Health; see Civil Statutes, art. 4418g.

§ 27.018. Hearing on Permit Application

If it is considered necessary and in the public interest, the commission may hold a public hearing on the application.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.019. Rules, Etc.

(a) The commission shall adopt procedures reasonably required for the performance of its powers, duties, and functions under this chapter, including rules for notice and procedure of public hearings.

(b) Copies of any rules under this chapter proposed by the board shall before their adoption be sent to the railroad commission, the executive director, the Texas Department of Health Resources,¹ the Water Well Drillers Board, and any other persons the board may designate. Any agency or person to whom the copies of proposed rules are sent may submit comments and recommendations to the board and shall have reasonable time to do so as the board may prescribe.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ Name changed to Department of Health; see Civil Statutes, art. 4418g.

[Sections 27.020 to 27.030 reserved for expansion]

SUBCHAPTER C. OIL AND GAS WASTE

§ 27.031. Permit From Railroad Commission

No person may begin drilling a disposal well or converting an existing well into a disposal well to dispose of oil and gas waste without first obtaining a permit from the railroad commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.032. Information Required of Applicant

The railroad commission shall require an applicant to furnish any information the railroad commission considers necessary to discharge its duties under this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.033. Letter From Executive Director

A person making application to the railroad commission for a permit under this chapter shall submit with the application a letter from the executive director stating that drilling the disposal well and injecting oil and gas waste into the subsurface stratum will not endanger the freshwater strata in that area and that the formation or stratum to be used for the disposal is not freshwater sand.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.034. Railroad Commission Rules, Etc.

(a) The railroad commission shall adopt rules and procedures reasonably required for the performance of its powers, duties, and functions under this chapter, including rules for notice and procedure of public hearings.

(b) Copies of any rules under this chapter proposed by the railroad commission shall, before their adoption, be sent to the department, the Texas Department of Health Resources,¹ the Water Well Drillers Board, and any other persons the railroad commission may designate. Any agency or person to whom the copies of proposed rules and regulations are sent may submit comments and recommendations to the railroad commission and shall have reasonable time to do so as the railroad commission may prescribe.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ Name changed to Department of Health; see Civil Statutes, art. 4418g.

[Sections 27.035 to 27.050 reserved for expansion]

SUBCHAPTER D. ISSUANCE OF PERMITS:
TERMS AND CONDITIONS

§ 27.051. Issuance of Permit

(a) The commission or railroad commission may grant an application in whole or part and may issue the permit if it finds:

- (1) that the installation of the disposal well is in the public interest;
- (2) that no existing rights will be impaired; and
- (3) that, with proper safeguards, both ground and surface fresh water can be adequately protected from pollution.

(b) In the permit the commission or railroad commission shall impose terms and conditions reasonably necessary to protect fresh water from pollution, including the necessary casing.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.052. Copies of Permit; Filing Requirements

(a) The department shall furnish the railroad commission, the Texas Department of Health Resources,¹ and the Water Well Drillers Board with a copy of each permit the commission issues. The railroad commission shall furnish the department with a copy of each permit the railroad commission issues and the executive director shall in turn forward copies to the Texas Department of Health Resources and the Water Well Drillers Board.

(b) Before beginning injection operations, a person receiving a permit to inject industrial and municipal waste shall file a copy of the permit with the

health authorities of the county, city, and town where the well is located.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ Name changed to Department of Health; see Civil Statutes, art. 4418g.

§ 27.053. Record of Strata

The commission or railroad commission may require a person receiving a permit under this chapter to keep and furnish a complete and accurate record of the depth, thickness, and character of the different strata penetrated in drilling the disposal well. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.054. Electric or Drilling Log

If an existing well is to be converted to a disposal well, the commission or railroad commission may require the applicant to furnish an electric log or a drilling log of the existing well.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.055. Casing Requirements

The casing shall be set at the depth, with the materials, and in the manner required by the commission or railroad commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.056. Factors in Setting Casing Depth

Before setting the depth to which casing shall be installed, the commission or railroad commission shall consider:

- (1) known geological and hydrological conditions and relationships;
- (2) foreseeable future economic development in the area; and
- (3) foreseeable future demand for the use of fresh water in the locality.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 27.057 to 27.100 reserved for expansion]

SUBCHAPTER E. CIVIL AND CRIMINAL REMEDIES

§ 27.101. Civil Penalty

(a) A person who violates any provision of this chapter, any rule of the board or the railroad commission made under this chapter, or any term, condition, or provision of a permit issued under this chapter shall be subject to a civil penalty in any sum not exceeding \$5,000 for each day of noncompliance and for each act of noncompliance.

(b) The action may be brought by the executive director or the railroad commission in any court of competent jurisdiction in the county where the offending activity is occurring or where the defendant resides.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.102. Injunction, Etc.

The executive director or the railroad commission may enforce any valid rule made under this chapter or any term or condition of a permit issued by the commission or railroad commission under this chapter by injunction or other appropriate remedy. The suit shall be brought in a court of competent jurisdiction in the county where the offending activity is occurring.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.103. Procedure

(a) At the request of the executive director or the railroad commission, the attorney general shall institute and conduct a suit in the name of the State of Texas for injunctive relief or to recover the civil penalty, or for both the injunctive relief and civil penalty, authorized in Sections 27.101 and 27.102 of this chapter.

(b) Any party to a suit may appeal from a final judgment as in other civil cases.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 27.104. Effect of Permit on Civil Liability

The fact that a person has a permit issued under this chapter does not relieve him from any civil liability.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

CHAPTER 28. WATER WELLS

Section	
28.001.	Definitions.
28.002.	Underground Water: Regulations.
28.003.	Certain Wells to be Plugged or Cased.
28.004.	Penalty.

Acts 1977, 65th Leg., p. 2207, ch. 870, revised Title 2 of the Water Code, effective September 1, 1977. For disposition of provisions of former Title 2 in the revised Title, see Disposition Table preceding § 5.001.

§ 28.001. Definitions

In this chapter:

- (1) "Department" means the Texas Department of Water Resources.

(2) "Commission" means the Texas Water Commission.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 28.002. **Underground Water: Regulations**

The department shall make and enforce rules and regulations for conserving, protecting, preserving, and distributing underground, subterranean, and percolating water located in this state and shall do all other things necessary for these purposes.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 28.003. **Certain Wells to be Plugged or Cased**

The owner of a water well which encounters salt water or water containing mineral or other substances injurious to vegetation or agriculture shall securely plug or case the well in a manner that will effectively prevent the water from escaping from the stratum in which it is found into another water-bearing stratum or onto the surface of the ground.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 28.004. **Penalty**

If the owner of a well that is required to be cased or plugged by this chapter fails or refuses to case or plug the well within the 30-day period following the date of the commission's order to do so or if a person fails to comply with any other order issued by the commission under this chapter within the 30-day period following the date of the order, he is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$10 nor more than \$500. He commits a separate offense each day the failure or refusal continues after the 30-day period.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

CHAPTER 29. SALT WATER HAULERS

SUBCHAPTER A. GENERAL PROVISIONS

Section

- 29.001. Short Title.
- 29.002. Definitions.

SUBCHAPTER B. PERMITS

- 29.011. Application for Permit.
- 29.012. Application Form.
- 29.013. Contents of Application.
- 29.014. Rejecting an Application.
- 29.015. Bond.
- 29.016. Expiration of Permit.
- 29.017. Renewal of Permit.
- 29.018. Suspension; Refusal to Renew.
- 29.019. Appeal.
- 29.020. Suit to Compel Railroad Commission to Act.
- 29.021. Venue.

SUBCHAPTER C. RULES

Section

- 29.031. Rulemaking Power.
- 29.032. Copies of Rules.
- 29.033. Effective Date of Rules.

SUBCHAPTER D. OFFENSES; PENALTIES

- 29.041. Hauling Without Permit.
- 29.042. Exception.
- 29.043. Using Haulers Without Permit.
- 29.044. Disposing of Salt Water.
- 29.045. Use of Unmarked Vehicles.
- 29.046. Penalty.

SUBCHAPTER A. GENERAL PROVISIONS

Acts 1977, 65th Leg., p. 2207, ch. 870, revised Title 2 of the Water Code, effective September 1, 1977. For disposition of provisions of former Title 2 in the revised Title, see Disposition Table preceding § 5.001.

§ 29.001. **Short Title**

This chapter may be cited as the Salt Water Haulers Act.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.002. **Definitions**

In this chapter:

(1) "Person" means an individual, association of individuals, partnership, corporation, receiver, trustee, guardian, executor, or a fiduciary or representative of any kind.

(2) "Railroad commission" means the Railroad Commission of Texas.

(3) "Salt water" means water containing salt or other mineralized substances produced by drilling an oil or gas well or produced in connection with the operation of an oil or gas well.

(4) "Hauler" means a person who transports salt water for hire by any method other than by pipeline.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 29.003 to 29.010 reserved for expansion]

SUBCHAPTER B. PERMITS

§ 29.011. **Application for Permit**

Any person may apply to the railroad commission for a permit to haul and dispose of salt water.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.012. **Application Form**

The railroad commission shall prescribe a form on which an application for a permit may be made and

shall provide the form to any person who wishes to submit an application.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.013. Contents of Application

The application for a permit shall:

(1) state the number of vehicles the applicant plans to use for salt water hauling;

(2) affirmatively show that the vehicles are designed so that they will not leak during transportation of salt water;

(3) include an affidavit from a person who operates an approved system of salt water disposal stating that the applicant has permission to use the approved system;

(4) state the applicant's name, business address, and permanent mailing address; and

(5) include other relevant information required by railroad commission rules.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.014. Rejecting an Application

If an application for a permit does not comply with Section 29.013 of this code or with reasonable rules of the railroad commission, the railroad commission may reject the application.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.015. Bond

Before issuing a permit to a person whose application it has approved, the railroad commission shall require the person to file with it a bond in the amount of \$5,000, guaranteed by a corporate surety company and conditioned on the payment of full damages to any person who may acquire a judgment against the permittee for damages done to the person's property by the permittee's improper hauling, handling, or disposal of salt water. However, the railroad commission may dispense with the bond requirement on a proper showing of financial responsibility.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.016. Expiration of Permit

Permits issued under this chapter expire on August 31 of each year.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.017. Renewal of Permit

A permittee may apply to renew his permit by submitting an application for renewal on or before August 31 of each year.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.018. Suspension; Refusal to Renew

The railroad commission shall suspend or refuse to renew a permit for a period not to exceed one year if the permittee:

(1) violates the provisions of this chapter;

(2) violates reasonable rules promulgated under Section 29.031 of this code; or

(3) does not maintain his operation at the standards that entitled him to a permit under Section 29.013 of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

The text of this section incorporates the amendment to former § 24.018 by Acts 1977, 65th Leg., p. 1654, ch. 650, § 1.

§ 29.019. Appeal

Any person whose permit application is refused, whose permit is suspended, or whose application for permit renewal is refused by the railroad commission may file a petition in an action to set aside the railroad commission's act within the 30-day period immediately following the day he receives notice of the railroad commission's action.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.020. Suit to Compel Railroad Commission to Act

If the railroad commission does not act within a reasonable time after a person applies for a permit or for renewal of a permit, the applicant may notify the railroad commission of his intention to file suit. After 10 days have elapsed since the day the notice was given, the applicant may file a petition in an action to compel the railroad commission to show cause why it should not be directed by the court to take immediate action.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.021. Venue

The venue in actions under Sections 29.019 and 29.020 of this code is fixed exclusively in the district courts of Travis County.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 29.022 to 29.030 reserved for expansion]

SUBCHAPTER C. RULES

§ 29.031. Rulemaking Power

The railroad commission shall adopt rules to effectuate the provisions of this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.032. Copies of Rules

The railroad commission shall print the rules and provide copies to persons who apply for them. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.033. Effective Date of Rules

No rule or amendment to a rule is effective until after the 30-day period immediately following the day on which a copy of the rule is filed with the Secretary of State.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 29.034 to 29.040 reserved for expansion]

SUBCHAPTER D. OFFENSES; PENALTIES

§ 29.041. Hauling Without Permit

No hauler may haul and dispose of salt water off the lease, unit, or other oil or gas property where it is produced unless the hauler has a permit issued under this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.042. Exception

A person may haul salt water for use in connection with drilling or servicing an oil or gas well without obtaining a hauler's permit under this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.043. Using Haulers Without Permit

No person may knowingly utilize the services of a hauler to haul and dispose of salt water off the lease, unit, or other oil or gas property where it is produced if the hauler does not have a permit as required under this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.044. Disposing of Salt Water

(a) No hauler may dispose of salt water on public roads or on the surface of public land or private property in this state in other than a railroad commission-approved disposal pit without written authority from the railroad commission.

(b) No hauler may dispose of salt water on property of another without the written authority of the landowner.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.045. Use of Unmarked Vehicles

No person who is required to have a permit under this chapter may haul salt water in a vehicle that does not bear the owner's name and the hauler's permit number. This information shall appear on both sides and the rear of the vehicle in characters not less than three inches high.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 29.046. Penalty

A person who violates any provision of this chapter is guilty of a misdemeanor and upon conviction is punishable by a fine of not less than \$100 nor more than \$1,000 or by confinement in the county jail for not more than 10 days or by both.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

CHAPTER 30. REGIONAL WASTE DISPOSAL

SUBCHAPTER A. GENERAL PROVISIONS

- Section
- 30.001. Short Title.
- 30.002. Purpose.
- 30.003. Definitions.
- 30.004. Cumulative Effect of Chapter.
- 30.005. Construction of Chapter.

SUBCHAPTER B. REGIONAL WASTE DISPOSAL SYSTEMS

- 30.021. Disposal System.
- 30.022. Purchase and Sale of Facilities.
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- 30.024. Operating Agreements.
- 30.025. Waste Disposal Contracts by District.
- 30.026. Contracts by River Authority.
- 30.027. Contract With Public Agency.
- 30.028. Contract Provisions.
- 30.029. Continued Use of District Facilities.
- 30.030. Source of Contract Payments.
- 30.031. Rates.
- 30.032. Service to More Than One Public Agency.
- 30.033. Property Acquired by Condemnation or Otherwise.
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SUBCHAPTER C. DISTRICT REVENUE BONDS

- 30.051. Issuance of Bonds.
- 30.052. Form, Denomination, Interest Rate.
- 30.053. Refunding Bonds.
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- 30.056. Attorney General's Examination
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- 30.058. Validation Suit.
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- 30.061. Investment Securities Under Uniform Commercial Code.
- 30.062. Bonds as Authorized Investments.
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SUBCHAPTER D. RIVER AUTHORITY PLANNING

Section

- 30.101. Authorization of Regional Plans.
- 30.102. Planning in Related Fields.
- 30.103. Joint Planning.
- 30.104. Coordination With Other Planning Agencies.
- 30.105. Financial Assistance.
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SUBCHAPTER A. GENERAL PROVISIONS

Acts 1977, 65th Leg., p. 2207, ch. 870, revised Title 2 of the Water Code, effective September 1, 1977. For disposition of provisions of former Title 2 in the revised Title, see Disposition Table preceding § 5.001.

§ 30.001. Short Title

This chapter may be cited as the Regional Waste Disposal Act.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.002. Purpose

The purpose of this chapter is to authorize public agencies to cooperate for the safe and economical collection, transportation, treatment, and disposal of waste in order to prevent and control pollution of water in the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.003. Definitions

In this chapter:

(1) "City" means any incorporated city or town, whether operating under general law or under its home-rule charter.

(2) "District" means any district or authority created and existing under Article XVI, Section 59 or Article III, Section 52 of the Texas Constitution, including any river authority.

(3) "Public agency" means any district, city, or other political subdivision or agency of the state which has the power to own and operate waste collection, transportation, treatment, or disposal facilities or systems, and any joint board created under the provisions of Section 14, Chapter 114, Acts of the 50th Legislature, Regular Session, 1947 (Article 46d-14, Vernon's Texas Civil Statutes).

(4) "River authority" means any district or authority created by the legislature which contains an area within its boundaries of one or more counties and which is governed by a board of directors appointed or designated in whole or in part by the governor, or by the Texas Water Commission, including without limitation the San Antonio River Authority.

(5) "River basins" and "coastal basins" mean the river basins and coastal basins now defined and designated by the Texas Water Development Board as separate units for the purposes of water development and inter-watershed transfers, and as they are made certain by contour maps on file in the offices of the Texas Department of Water Resources, including but not limited to the rivers and their tributaries, streams, water, coastal water, sounds, estuaries, bays, lakes, and portions of them, as well as the lands drained by them.

(6) "Waste" means sewage, industrial waste, municipal waste, recreational waste, agricultural waste, waste heat, or other waste that may cause impairment of the quality of water in the state, including storm waters.

(7) The terms "sewage," "municipal waste," "recreational waste," "agricultural waste," "industrial waste," "other waste," "pollution," "water," or "water in the state," and "local government" shall have the meanings defined in Section 26.001 of this code.

(8) "Sewer system" means pipelines, conduits, storm sewers, canals, pumping stations, force mains, and all other constructions, devices, and appurtenant appliances used to transport waste.

(9) "Treatment facility" means any devices and systems used in the storage, treatment, recycling, and reclamation of waste to implement Chapter 26 of this code or necessary to recycle or reuse water at the most economical cost over the estimated life of the works, including intercepting sewers, outfall sewers, pumping, power, and other equipment and their appurtenances; extensions, improvements, remodeling, additions, and alterations thereof; elements essential to provide a reliable recycled supply, such as standby treatment units and clear well facilities; any works, including sites therefor and acquisition of the land that will be part of or used in connection with the treatment process or is used for ultimate disposal of residues resulting from such treatment; and any plant, disposal field, lagoon, canal, incinerator, area devoted to sanitary landfills, or other facilities installed for the purpose of treating, neutralizing, or stabilizing waste or facilities to provide for the collection, control, and disposal of waste heat.

(10) "Disposal system" means any system for disposing of waste, including sewer systems and treatment facilities.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.004. Cumulative Effect of Chapter

(a) This chapter is cumulative of other statutes governing the Texas Department of Health Resources¹ and the Texas Department of Water Resources relating to:

- (1) the issuance of bonds;
- (2) the collection, transportation, treatment, or disposal of waste; and
- (3) the design, construction, acquisition, or approval of facilities for these purposes.

(b) The powers granted to districts and public agencies by this chapter are additional to and cumulative of the powers granted by other laws. This chapter is full authority for any district or public agency to enter into contracts authorized by it and for any district to authorize and issue bonds under its provisions without reference to the provisions of any other law or charter. No other law or charter provision which limits, restricts, or imposes additional requirements on matters authorized by this chapter shall apply to any action or proceeding under this chapter unless expressly provided to the contrary in this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹Name changed to Department of Health; see Civil Statutes, art. 4418g.

§ 30.005. Construction of Chapter

The terms and provisions of this chapter shall be liberally construed to accomplish its purposes.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 30.006 to 30.020 reserved for expansion]

SUBCHAPTER B. REGIONAL WASTE DISPOSAL SYSTEMS

§ 30.021. Disposal System

A district may acquire, construct, improve, enlarge, extend, repair, operate, and maintain one or more disposal systems.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.022. Purchase and Sale of Facilities

A district may contract with any person to purchase or sell by installments over such term as considered desirable any waste collection, transportation, treatment, or disposal facilities or systems.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.023. Lease of Facilities

A district may lease to or from any person for such term and on such conditions as may be considered desirable any waste collection, transportation, treatment, or disposal facilities or systems.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.024. Operating Agreements

A district may make operating agreements with any person for such terms and on such conditions as may be considered desirable for the operation of any waste collection, transportation, treatment, or disposal facilities or systems of any person by the district.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.025. Waste Disposal Contracts by District

A district may make contracts with any person, including any public agency located inside or outside the boundaries of the district, under which the district will collect, transport, treat, or dispose of waste for the person.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.026. Contracts by River Authority

Each river authority may make contracts authorized by this chapter with any person, including any public agency situated wholly or partly inside its boundaries and any public agency situated wholly or partly inside the river basin and any public agency situated wholly or partly inside the coastal basins adjoining its boundaries, but a river authority may not make contracts to serve a public agency situated wholly inside the boundaries of another river authority or to serve facilities of a person situated wholly within the boundaries of another river authority, except with the consent of the other river authority.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.027. Contract With Public Agency

A public agency may make contracts with a district under which the district will make a disposal system available to the public agency and will furnish waste collection, transportation, treatment, and disposal services to the public agency, group of public agencies, or other persons through the district's disposal system.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.028. Contract Provisions

(a) The contract may provide for:

- (1) duration of the contract for a specified period or until issued and unissued bonds and refunding bonds of the district are paid;
- (2) assuring equitable treatment of parties who contract with the district for waste collection, transportation, treatment, and disposal services from the same disposal system;
- (3) requiring the public agency to regulate the quality and strength of waste to be handled by the disposal system;

(4) sale or lease to or use by a district of all or part of a disposal system owned or to be acquired by the public agency;

(5) the district operating all or part of a disposal system owned or to be acquired by the public agency; and

(6) other terms the district or the governing body of the public agency consider appropriate or necessary.

(b) The contract shall specify the method for determining the amounts to be paid by the public agency to the district.

(c) A contract made by a city may provide that the district shall have the right to use the streets, alleys, and public ways and places inside the city during the term of the contract.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.029. Continued Use of District Facilities

After amortization of the district's investment in the disposal system, the public agency is entitled to continued performance of the service during the useful life of the disposal system, on payment of reasonable charges reduced to take into consideration the amortization.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.030. Source of Contract Payments

(a) A public agency may pay for the waste collection, transportation, treatment, and disposal services with income from its waterworks system, sanitary sewer system, or both systems, or its combined water and sanitary sewer system, as prescribed by the contract. In the alternative, a joint board defined as a public agency in Section 30.003, Subdivision (3), may pay for these services from any revenue or other funds within its control specified in the contract if the city councils of the cities which created the joint board approve, by ordinance, the contract between the joint board and the district. These payments constitute an operating expense of each system whose revenue is so used.

(b) The obligation of contract payments on the income of the public agency's water system is subordinate to the obligation imposed by any bonds that are payable solely from the water system net revenue and that are outstanding at the time the contract is made, unless the ordinance or resolution authorizing the bonds expressly reserved the right to give the contract payments a priority over the bond requirements.

(c) If a public agency having taxing power holds an election substantially according to the applicable provisions of Chapter 1, Title 22, Revised Civil Statutes of Texas, 1925, as amended,¹ relating to the issuance of bonds by cities and it is determined that

the public agency is authorized to levy an ad valorem tax to make all or part of the payments under a contract with a district, then the contract is an obligation against the taxing power of the public agency to the extent authorized, and payments under the contract may be payable from and constitute solely an obligation against the taxing powers of the city or may be payable both from taxes and from revenue prescribed in the contract. Otherwise, neither the district nor the holders of the district's bonds are entitled to demand payment of the public agency's obligation out of any tax revenue.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

¹ Civil Statutes, art. 701 et seq.

§ 30.031. Rates

(a) When all or part of the payments under a contract are to be made from revenue of the waterworks system, sanitary sewer system, both systems, or a combination of both systems, the public agency shall establish, maintain, and periodically adjust the rates charged for services of the systems, so that the revenue, along with any taxes levied in support of the indebtedness, will be sufficient to pay:

(1) the expenses of operating and maintaining the systems;

(2) the obligations to the district under the contract; and

(3) the obligations of bonds that are secured by revenue of the systems.

(b) The contract may require the use of consulting engineers and financial experts to advise the public agency on the need for adjusting rates.

(c) Notwithstanding any provision of this chapter or any other law to the contrary, a district may use the proceeds of bonds issued for the purpose of constructing a waste disposal system or systems, and payable wholly or in part from ad valorem taxes, for the purchase of capacity in, or a right to have the wastes of the district treated in, a waste collection, treatment, or disposal system and facilities owned or to be owned exclusively or in part by another public agency, and a district may issue bonds payable wholly or in part from ad valorem taxes specifically for such purpose if a majority of the resident electors of the district have authorized the governing body of the district to issue bonds for that purpose or for the purpose of constructing a waste disposal system or systems. The bonds shall be issued in accordance with the provisions of, and shall be subject to the same terms and conditions of, the laws authorizing the district to issue bonds for the purpose of constructing waste collection, treatment, and disposal systems, except as otherwise provided in this subsection.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.032. Service to More Than One Public Agency

A contract or group of contracts may provide for the district to render services concurrently to more than one person through constructing and operating a disposal system and may provide that the cost of these services be allocated among the persons as provided in the contract or group of contracts. [Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.033. Property Acquired by Condemnation or Otherwise

(a) To accomplish the purposes of this chapter, a district may acquire by purchase, lease, gift, or in any other manner all or any interest in property inside or outside the boundaries of the district and may own, maintain, use, and operate it.

(b) To accomplish the purposes of the chapter, a district may exercise the power of eminent domain to acquire all or any interest in property inside or outside the boundaries of the district. The power shall be exercised according to the laws applicable or available to the district.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.034. Cost of Relocating, Altering, Etc.

If a district makes necessary the relocating, raising, rerouting, changing the grade of, or altering the construction of any highway, railroad, electric transmission line, pipeline, or telephone or telegraph properties or facilities in the exercise of powers granted under this chapter, the district shall pay all of the actual cost of the relocating, raising, rerouting, changing in grade, or altering of construction and shall pay all of the actual cost of providing comparable replacement of facilities without enhancement, less the net salvage value of the facilities.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.035. Elections

No election is required for the exercise of any power under this chapter except for the tax levy as provided by Section 30.030(c) of this code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 30.036 to 30.050 reserved for expansion]

SUBCHAPTER C. DISTRICT REVENUE BONDS

§ 30.051. Issuance of Bonds

In order to acquire, construct, improve, enlarge, extend, or repair disposal systems, the district may issue bonds secured by a pledge of all or part of the revenue from any contract entered into under this chapter and other income of the district.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.052. Form, Denomination, Interest Rate

The governing body of the district shall prescribe the form, denomination, and rate of interest for the bonds.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.053. Refunding Bonds

A district may refund any bonds issued under this chapter on the terms and conditions and at the rate of interest the governing body prescribes.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.054. Sale or Exchange of Bonds

A district may sell bonds issued under this chapter at public or private sale at the price or prices and on the terms determined by the governing body, or it may exchange the bonds for property or any interest in property of any kind considered necessary or convenient to the purposes authorized in this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.055. Interim Bonds

Pending the issuance of definitive bonds, a district may issue negotiable interim bonds or obligations eligible for exchange or substitution by use of definitive bonds.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.056. Attorney General's Examination

(a) After issuance of the bonds is authorized, the bonds and the record relating to their issuance may be submitted to the attorney general for examination.

(b) When the bonds recite that they are secured by a pledge of the proceeds from a contract between the district and a public agency, a copy of the contract and the proceedings of the public agency authorizing the contract may also be submitted to the attorney general.

(c) If the attorney general finds that the bonds are authorized and that the contract is made in accordance with the constitution and laws of this state, he shall approve the bonds and the contract.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.057. Registration by Comptroller

After the bonds have been approved by the attorney general, they shall be registered by the state comptroller.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.058. Validation Suit

(a) Instead of or in addition to obtaining the approval of the attorney general, the district may have the bonds validated by suit in the district court as provided in Chapter 316, Acts of the 56th Legislature, Regular Session, 1959 (Article 717m, Vernon's Texas Civil Statutes).

(b) The governing body of the district may wait until after termination of the validation suit to fix the interest rate and sale price of the bonds.

(c) If the proposed bonds recite that they are secured by the proceeds of a contract between the district and a public agency, the petition shall so allege, and the notice of the suit shall mention this allegation and shall specify the public agency's funds or revenues from which the contract payments are to be made.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.059. Bonds Incontestable

After the bonds are approved by the attorney general and registered with the comptroller, the bonds and the contract are incontestable.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.060. Negotiable Instruments

Bonds issued under this subchapter are negotiable instruments.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.061. Investment Securities Under Uniform Commercial Code

Bonds issued under this subchapter are investment securities governed by Chapter 8, Uniform Commercial Code.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.062. Bonds as Authorized Investments

Bonds issued under this chapter are legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, insurance companies, fiduciaries, and trustees, and for the sinking funds of cities, towns, villages, school districts, and other political corporations or subdivisions of the state.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.063. Security for Deposits

The bonds are eligible to secure deposits of any public funds of the state or any political subdivision of the state and are lawful and sufficient security for the deposits to the extent of their value when accompanied by unmatured coupons attached to the bonds.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.064. Funds Set Aside From Bond Proceeds

The district may set aside out of the proceeds from the sale of bonds:

(1) interest to accrue on the bonds and administrative expenses to the estimated date when the disposal system will become revenue producing; and

(2) reserve funds created by the resolution authorizing the bonds.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.065. Investment of Proceeds

Pending their use, proceeds from the sale of bonds may be invested in securities or time deposits as specified in the resolution authorizing the issuance of the bonds or the trust indenture securing the bonds. The earnings on these investments shall be applied as provided in the resolution or trust indenture.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.066. Rates and Charges

While any bonds are outstanding, the governing body of the district shall fix, maintain, and collect for services furnished or made available by the disposal system rates and charges adequate to:

(1) pay maintenance and operating costs of and expenses allocable to the disposal system;

(2) pay the principal of and interest on the bonds; and

(3) provide and maintain the funds created by the resolution authorizing the bonds.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Sections 30.067 to 30.100 reserved for expansion]

SUBCHAPTER D. RIVER AUTHORITY PLANNING**§ 30.101. Authorization of Regional Plans**

Each river authority may prepare regional plans for water quality management, control, and abatement of pollution in any segment of its river basin and adjoining coastal basins which:

(1) are consistent with any applicable water quality standards established under current law within the river basin;

(2) recommend disposal systems which will provide the most effective and economical means of collection, storage, treatment, and purification of waste, and means to encourage rural, municipal, and industrial use of the works and systems; and

(3) recommend maintenance and improvement of water quality standards within the river basin and methods of adequately financing the facilities necessary to implement the plan.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.102. Planning in Related Fields

River authorities may conduct planning in related or affected fields reasonably necessary to give meaning to the water quality management and pollution control planning carried out under this subchapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.103. Joint Planning

(a) River authorities may join in the performance of planning functions with any district or public agency and enter into planning agreements for the term and on the conditions considered desirable to provide coordinated planning on a basin-wide scale, including adjacent coastal basins.

(b) River authorities may provide for river basin planning committees as entities with powers, responsibilities, functions, and duties conferred by mutual agreement.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.104. Coordination With Other Planning Agencies

A river authority performing planning functions under this subchapter shall coordinate its efforts and cooperate with other public planning agencies having significant planning interests in any segment of the river basin in or for which the planning is being conducted by the river authority.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.105. Financial Assistance

River authorities may make applications and enter into contracts for financial assistance in comprehensive planning which are appropriate under Section 3(c) of the Federal Water Pollution Control Act, as amended under 33 U.S.C. Section 1926 et seq., under 40 U.S.C. Section 461 et seq., and under any other relevant statutes.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

§ 30.106. Supervision by Texas Department of Water Resources

The Texas Department of Water Resources is authorized to exercise continuing supervision on behalf of the state of comprehensive plans prepared under this chapter.

[Amended by Acts 1977, 65th Leg., p. 2207, ch. 870, § 1, eff. Sept. 1, 1977.]

[Chapters 31 to 40 reserved for expansion]

TITLE 3. RIVER COMPACTS

CHAPTER 41. RIO GRANDE COMPACT

Section

41.0031. Application of Sunset Act [NEW].

§ 41.0031. Application of Sunset Act

The office of Rio Grande Compact Commissioner for Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished, and this chapter expires effective September 1, 1985.

[Added by Acts 1977, 65th Leg., p. 1845, ch. 735, § 2.093, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

CHAPTER 42. PECOS RIVER COMPACT

Section

42.0031. Application of Sunset Act [NEW].

§ 42.0031. Application of Sunset Act

The office of Pecos River Compact Commissioner for Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished, and this chapter expires effective September 1, 1985.

[Added by Acts 1977, 65th Leg., p. 1845, ch. 735, § 2.091, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

CHAPTER 43. CANADIAN RIVER COMPACT

Section

43.0031. Application of Sunset Act [NEW].

§ 43.0031. Application of Sunset Act

The office of Canadian River Compact Commissioner for Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished, and this chapter expires effective September 1, 1985.

[Added by Acts 1977, 65th Leg., p. 1844, ch. 735, § 2.090, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

CHAPTER 44. SABINE RIVER COMPACT

Section

44.0031. Application of Sunset Act [NEW].

§ 44.0031. Application of Sunset Act

The office of Sabine River Compact Administrator for Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished, and this chapter expires effective September 1, 1985.

[Added by Acts 1977, 65th Leg., p. 1845, ch. 735, § 2.094, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

CHAPTER 45. NEGOTIATION OF RED RIVER COMPACT

Section

45.0011. Application of Sunset Act [NEW].

§ 45.0011. Application of Sunset Act

The office of Red River Compact Commissioner for Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished, and this chapter expires effective September 1, 1985.

[Added by Acts 1977, 65th Leg., p. 1845, ch. 735, § 2.092, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

TITLE 4. GENERAL LAW DISTRICTS

CHAPTER 50. PROVISIONS GENERALLY APPLICABLE TO DISTRICTS

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Section

50.025. Service on Districts [NEW].

50.055. Fire Departments [NEW].

SUBCHAPTER G. DISSOLUTION OF INACTIVE DISTRICTS

50.257. Assets Escheat to State [NEW].

SUBCHAPTER I. NOTICE

50.303. Posting Notice in the District [NEW].

SUBCHAPTER K. AUDIT OF DISTRICTS

50.377. Financially Dormant Districts [New].

50.378. Audit Report Exemption [New].

50.379. Fiscal Year [New].

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 50.024. Disqualification of Members of Governing Boards

(a) A person is disqualified from serving as a member of a governing board of a district proposing to provide or actually providing water and sewer services or either of these services to household users as the principal functions of the district and created by special act of the legislature if:

(1) he is related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the governing board of the district, or the manager, engineer, or attorney for the district;

(2) he is an employee of any developer of property in the district or any director, manager, engineer, or attorney for the district;

(3) he is a developer of property in the district;

(4) he is serving as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a developer of property in the district in connection with the district or property located in the district; or

(5) he is:

(A) a party to a contract with or along with the district except for the purchase of public services furnished by the district to the public generally; or

(B) a party to a contract with or along with a developer of property in the district relating to the district or to property within the district, other than a contract limited solely to the purpose of purchasing or conveying real property in the district for the purpose of either establishing a permanent residence or establishing a commercial business within the district.

(b) Within 60 days after the governing board determines a relationship or employment which constitutes a disqualification under Subsection (a) of this section, it shall replace the person serving as a member of the governing board with a person who would not be disqualified.

(c) Any person who willfully occupies an office as a member of a governing board and exercises the powers and duties of that office when disqualified under the provisions of Subsection (a) of this section is guilty of a misdemeanor, and on conviction, shall be fined not less than \$100 nor more than \$1,000.

(d) As used in this section, "developer of property in the district" means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision of any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

(e) Any rights obtained by any third party through official action of a board of a district covered by this section are not impaired or affected by the disqualification under this section of any member of the board to serve, provided that the third party had no knowledge at the time the rights were obtained of the fact that the member of the board was disqualified to serve.

[Amended by Acts 1975, 64th Leg., p. 600, ch. 248, § 1, eff. May 20, 1975.]

§ 50.025. Service on Districts

The president or the general manager of any district shall be the agent of the district on whom process, notice, or demand required or permitted by law to be served upon the district may be served.

[Added by Acts 1975, 64th Leg., p. 1838, ch. 568, § 1, eff. June 19, 1975.]

SUBCHAPTER C. POWERS AND DUTIES

§ 50.055. Fire Departments

Text of section conditioned on 1978 constitutional amendment

(a) A district may establish, operate, and maintain a fire department to perform all fire-fighting activi-

ties within the district as provided in this section and may issue, with voter approval, bonds for financing the establishment of the fire department including the construction and purchase of necessary buildings, facilities, and equipment and the provision of an adequate water supply.

(b) After approval of the district electors of a plan to operate or jointly operate a fire department, the district or districts shall provide an adequate system and water supply for fire-fighting purposes and may construct and purchase necessary buildings, facilities, and equipment and may employ all necessary personnel including supervisory personnel to operate the fire department.

(c) Bonds issued for establishment of the fire department shall be authorized and issued as provided by law for authorization and issuance of other bonds of the district.

(d) Two or more districts may contract to operate a joint fire department for their districts and shall include in the contract a system for joint administration and operation of the fire department, the extent of services to be provided, a method for funding the department from funds of each district, and any other terms and conditions the parties consider necessary.

(e) A district may contract with any other person to perform fire-fighting services within the district.

(f) Before a district establishes a fire department, contracts to operate a joint fire department, or contracts with another person to perform fire-fighting services within the district, the district must comply with the provisions of Subsections (g), (h), and (i) of this section.

(g) A district or districts proposing to act jointly shall develop a detailed plan for the establishment, operation, and maintenance of the proposed department, including a detailed presentation of all financial requirements. If a district is entering into a contract under Subsection (e) of this section, the district shall develop a plan that describes in detail the facilities and equipment to be devoted to service to the district and all proposals for providing the service and that includes a presentation of the financial requirements under the contract. Before adoption of a plan and any contract by the district, the governing board of the district shall hold a hearing at which any person residing in the district may present testimony for and against the proposed plan and any proposed contract. Notice of the hearing and the place at which the plan and any contract may be examined shall be posted in two public places within the district at least 10 days before the date of the hearing.

(h) After adoption of the plan and any contract by the governing board, the plan and financial presentation, together with any contract and a written report in a form prescribed by the commission de-

scribing existing fire departments and fire-fighting services available within 25 miles of the boundaries of the district, shall be submitted to the commission for approval under rules adopted by it. Before approval or disapproval, the commission shall hold a hearing. Notice of the hearing before the commission shall be posted by the governing board of the district in at least two public places in the district at least five days before the hearing. Before the commission approves the plan, it must find that it is economically feasible for the district to implement the plan and meet the provisions of any contract and shall take into consideration in giving its approval the general financial condition of the district and the economic feasibility of the district carrying out the plan or meeting the obligations of the contract and the availability of fire-fighting equipment and facilities within the vicinity of the district that might serve as an alternative source of fire-fighting services for the district.

(i) After approval by the commission, the district shall submit to the electors of the district at the election to approve bonds for financing the plan, or if no bonds are to be approved, at an election called for approval of the plan, the proposition of whether or not the plan should be implemented or entered into by the district. The ballots at the election shall be printed, as applicable, to provide for voting for or against the proposition: "The implementation of the plan for (operation/joint operation) of a fire department"; or "The plan and contract to provide fire-fighting services for the district."

(j) No funds of the district may be used to establish a fire department, to enter into joint operation of a fire department, or to contract for fire-fighting services without the approval of a plan by the electors as provided in this section. However, the district may use available funds for preparation of a plan and any contract.

[Added by Acts 1977, 65th Leg., p. 1404, ch. 568, § 1.]

Section 2 of the 1977 Act provided:

"This Act takes effect only on adoption by the qualified electors of the constitutional amendments proposed in H. J. R. No. 42 of the 65th Legislature."

SUBCHAPTER G. DISSOLUTION OF INACTIVE DISTRICTS

§ 50.257. Assets Escheat to State

Upon the dissolution of a district by the commission, all assets of the district shall escheat to the State of Texas. The assets shall be administered by the state treasurer and shall be disposed of in the manner provided by Article 3272a, Revised Civil Statutes of Texas, 1925, as amended.

[Added by Acts 1977, 65th Leg., p. 1510, ch. 610, § 1, eff. Aug. 29, 1977.]

SUBCHAPTER I. NOTICE

§ 50.303. Posting Notice in the District

(a) Any district created under this title or by special act of the legislature, which is providing or proposing to provide, as the district's principal function, water and sewer services, or either of these services to household users, shall, within 30 days after the effective date of this section or the creation of the district, post signs indicating the existence of the district at at least two principal entrances to the district.

(b) The size and exact location of and the information contained on the signs shall be determined by the commission.

[Added by Acts 1975, 64th Leg., p. 246, ch. 96, § 1, eff. Sept. 1, 1975.]

[Sections 50.304 to 50.330 reserved for expansion]

SUBCHAPTER K. AUDIT OF DISTRICTS

§ 50.371. Duty to Audit

(a) The governing board of each district created under the general law or by special act of the legislature shall have the district's fiscal accounts and records audited annually at the expense of the district.

(b) In all areas of conflict the provisions of this subchapter shall take precedence over all prior statutory enactments.

(c) The person who performs the audit shall be a certified public accountant or public accountant holding a permit from the Texas State Board of Public Accountancy.

(d) The audit required by this section shall be completed within 120 days after the close of the district's fiscal year, except for districts audited by the state auditor; district audits by the state auditor shall be completed within 12 months of the close of the district's fiscal year.

[Amended by Acts 1975, 64th Leg., p. 624, ch. 255, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 68, ch. 35, § 1, eff. Aug. 29, 1977.]

§ 50.372. Form of Audit

The commission shall adopt an accounting and auditing manual, and except as otherwise provided by this manual, the audit shall be performed according to the generally accepted auditing standards adopted by the American Institute of Certified Public Accountants, hereinafter referred to as generally accepted auditing standards, and shall include the auditor's representation that the financial statements have been prepared in accordance with generally accepted accounting principles as adopted by the American Institute of Certified Public Accountants, hereinafter referred to as generally accepted accounting principles.

[Amended by Acts 1977, 65th Leg., p. 68, ch. 35, § 2, eff. Aug. 29, 1977.]

§ 50.374. Filing of Audits, Affidavits, and Financial Reports

(a) After the governing board of the district has approved the audit, it shall submit a copy of the report to the Texas Water Rights Commission for filing within 135 days after the close of the district's fiscal year unless the audit is performed by the state auditor, in which case it will be filed in accordance with Section 50.104 of this code.

(b) If the governing board of the district refuses to approve the annual audit report, the governing board shall submit a copy of the report to the commission for filing accompanied by a statement from the board explaining the reasons for its failure to approve the report within 135 days after the close of the district's fiscal year, except as specified in Subsection (a) of this section.

(c) Copies of the audit or the annual financial dormancy affidavit or annual financial report described in Sections 50.377 and 50.378 of this code shall be filed annually in the office of the district and with the city secretary or other designated city official in whose extraterritorial jurisdiction the district is located. If the district is not located within the extraterritorial jurisdiction of a city, the audit, annual financial dormancy affidavit, or annual financial report shall be filed annually with the clerk of the county within which the district is located; provided, however, this subsection shall not apply to any district which is located within all or parts of more than two counties; however, each such district shall file a copy of its annual audit, annual financial dormancy affidavit, or annual financial report with the county clerk of the county within which the greater part of the district resides.

(d) Each district shall file with the commission an annual filing affidavit in a format prescribed by the commission, executed by the current president or chairman of the board, or by a county judge who is presiding as chairman of the governing board, stating that all copies of the annual audit report, annual financial dormancy affidavit, or annual financial report have been filed under this section.

(e) The annual filing affidavit shall be submitted to the commission within 15 days after the applicable annual document has been submitted to the commission for filing as prescribed by this subchapter.

(f) The commission shall file with the attorney general the names of any districts that do not comply with the provisions of this section.

(g) Any district that violates the provisions of this section is subject to a civil penalty of not less than \$50 nor more than \$100 a day for each act of violation and for each day a violation continues. Before a district is subject to the penalty provided in this subsection, it must continue to violate this section after receipt of written notice of violation from

the commission sent by certified mail, return receipt requested.

[Amended by Acts 1975, 64th Leg., p. 247, ch. 97, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 624, ch. 255, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 68, ch. 35, § 3, eff. Aug. 29, 1977.]

§ 50.375. Review by Commission

(a) The Texas Water Rights Commission shall review the audit report of each district, and if the commission has any objections or determines any violations of generally accepted auditing standards or accounting principles, statutes, or commission rules, or if the commission has any recommendations, it shall notify the governing board of the district.

(b) Before the audit report may be accepted by the commission as being in compliance with the provisions of this subchapter, the governing board and the auditor shall remedy objections and correct violations of which they have been notified by the commission.

[See Compact Edition, Volume 1 for text of (c)]
 [Amended by Acts 1977, 65th Leg., p. 69, ch. 35, § 4, eff. Aug. 29, 1977.]

§ 50.376. Access to and Maintenance of District Records

(a) The commission shall have access to all vouchers, receipts, district fiscal and financial records, and other district records which the commission considers necessary for the review, analysis, and approval of an audit report.

(b) All district fiscal records shall be prepared on a timely basis and maintained in an orderly manner in accordance with generally accepted accounting principles. The fiscal records shall be available for public inspection during regular business hours. A district's fiscal records may be removed from the district's office for the purpose of recording its fiscal affairs and for preparing an audit, during which time the fiscal records are under the control of the district's auditor. Those districts proposing to provide or actually providing water and sewer services or either of these services to household users as the principal function of the district and having at least 100 qualified electors residing in the district shall maintain all district fiscal records in a district office located in the district.

[Amended by Acts 1977, 65th Leg., p. 69, ch. 35, § 5, eff. Aug. 29, 1977.]

§ 50.377. Financially Dormant Districts

(a) Those districts which can satisfy the criteria contained in this section may elect to submit to the commission for filing a financial dormancy affidavit in lieu of compliance with Section 50.371 of this code:

(1) the district had no revenue from operations, tax assessments, or any other sources during the fiscal period;

(2) the district had no expenditures of funds during the fiscal period; and

(3) the district had no bonds or any other liabilities outstanding during the fiscal period.

(b) The required annual affidavit shall be prepared in a format prescribed by the commission and shall be submitted for filing by the district's current president or chairman of the board, its attorney, or by a county judge who is presiding as chairman of the governing board.

(c) The affidavit must be filed annually with the commission and other governmental entities prescribed by Subsection (c) of Section 50.374 of this code within 30 days after the anniversary date of the district's creation, until such time as the district becomes financially active and the governing board adopts a fiscal year; thereafter, the district shall file annual audit reports as prescribed by this subchapter.

(d) A district that becomes financially dormant after having been financially active shall be required to file annual financial dormancy affidavits within 30 days after the close of the district's fiscal year, and each succeeding year thereafter, until such time the district is either dissolved or again becomes financially active.

(e) Districts governed by this section are subject to periodic audits by the commission.

[Added by Acts 1977, 65th Leg., p. 70, ch. 35, § 6, eff. Aug. 29, 1977.]

§ 50.378. Audit Report Exemption

(a) A district may elect to file annual financial reports with the commission and the other governmental entities prescribed by Subsection (c) of Section 50.374 of this code in lieu of the district's compliance with Section 50.371 of this code provided:

(1) the district had no bonds or other long-term (more than one year) liabilities outstanding during the fiscal period;

(2) the district did not have gross income in excess of \$5,000 during the fiscal period; and

(3) the district's cash, receivables, and temporary investments were not in excess of \$20,000 during the fiscal period.

(b) The annual financial report must be accompanied by an affidavit attesting to the accuracy and authenticity of the financial report signed by the district's current president or chairman of the board, or by a county judge who is presiding as chairman of the governing board.

(c) The annual financial report and affidavit in a format prescribed by the commission must be on file with the commission and other governmental enti-

ties prescribed by Subsection (c) of Section 50.374 of this code within 45 days after the close of the district's fiscal year.

(d) Districts governed by this section are subject to periodic audits by the commission.

[Added by Acts 1977, 65th Leg., p. 70, ch. 35, § 7, eff. Aug. 29, 1977.]

§ 50.379. Fiscal Year

When a district becomes financially active, the governing board of that district shall adopt a fiscal year by a formal board resolution and so note it in the district's minutes. The president or chairman of the governing board shall notify the commission of the adopted fiscal year within 30 days after adoption.

[Added by Acts 1977, 65th Leg., p. 71, ch. 35, § 8, eff. Aug. 29, 1977.]

CHAPTER 51. WATER CONTROL AND IMPROVEMENT DISTRICTS

SUBCHAPTER O. ADDING AND EXCLUDING TERRITORY AND CONSOLIDATING DISTRICTS

Section

- 51.737. Exclusion of Land [NEW].
- 51.738. Applicable Only to Land Annexed After Formation of District [NEW].
- 51.739. Application to Exclude Land [NEW].
- 51.740. Hearing [NEW].
- 51.741. Notice of Hearing [NEW].
- 51.742. Hearing Procedure [NEW].
- 51.743. Grounds for Exclusion [NEW].
- 51.744. Findings by the Board [NEW].
- 51.745. Excluding Land [NEW].
- 51.746. Payment of Taxes [NEW].
- 51.747. Review [NEW].

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 51.0721. Disqualification of Members of the Board

(a) A person is disqualified from serving as a member of the board of a district proposing to provide or actually providing water and sewer services or either of these services to household users as the principal functions of the district, if:

(1) he is related within the third degree of affinity or consanguinity to a developer of property in the district, any other member of the board, or the manager, engineer, or attorney for the district;

(2) he is an employee of any developer of property in the district or any director, manager, engineer, or attorney for the district;

(3) he is a developer of property in the district;

(4) he is serving as an attorney, consultant, engineer, manager, architect, or in some other

professional capacity for the district or a developer of property in the district in connection with the district or property located in the district; or

(5) he is:

(A) a party to a contract with or along with the district except for the purchase of public services furnished by the district to the public generally; or

(B) a party to a contract with or along with a developer of property in the district relating to the district or to property within the district, other than a contract limited solely to the purpose of purchasing or conveying real property in the district for the purpose of either establishing a permanent residence or establishing a commercial business within the district.

(b) Within 60 days after the board determines a relationship or employment which constitutes a disqualification under Subsection (a) of this section, it shall replace the person serving as a member of the board with a person who would not be disqualified.

(c) Any person who willfully occupies an office as a director and exercises the powers and duties of that office when disqualified under the provisions of Subsection (a) of this section is guilty of a misdemeanor, and on conviction, shall be fined not less than \$100 nor more than \$1,000.

(d) As used in this section, "developer of property in the district" means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision of any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

(e) Any rights obtained by any third party through official action of a board of a district covered by this section are not impaired or affected by the disqualification under this section of any member of the board to serve, provided that the third party had no knowledge at the time the rights were obtained of the fact that the member of the board was disqualified to serve.

[Amended by Acts 1975, 64th Leg., p. 601, ch. 248, § 2, eff. May 20, 1975.]

§ 51.0731. Election Date for Certain Directors

The election date for directors of a district proposing to provide or actually providing water and sewer services or either of these services to household users as the principal functions of the district shall be the first Saturday in April.

[Amended by Acts 1975, 64th Leg., p. 625, ch. 256, § 1, eff. Sept. 1, 1975.]

SUBCHAPTER D. POWERS AND DUTIES

§ 51.139. **Contracts for Materials, Machinery, Construction, Etc., for more than \$10,000**

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

(f) Repealed by Acts 1977, 65th Leg., p. 379, ch. 187, § 2, eff. Aug. 29, 1977.

[Amended by Acts 1977, 65th Leg., p. 379, ch. 187, § 2, eff. Aug. 29, 1977.]

§ 51.140. **Construction Bids**

(a) A person who desires to bid on proposed construction work shall submit to the board a written sealed bid together with a cashier's check on a responsible bank in the state for at least two percent of the total amount of the bid, or a bid bond of at least two percent of the total amount of the bid issued by a surety legally authorized to do business in this state.

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

(c) If the successful bidder fails or refuses to enter into a proper contract with the district or fails or refuses to furnish the bond required by law, he forfeits the amount of the cashier's check which accompanied his bid, or if a bid bond has been given, the district shall have the legal remedies available under the bond.

[Amended by Acts 1977, 65th Leg., p. 378, ch. 187, § 1, eff. Aug. 29, 1977.]

§ 51.184. **Preference in Use of Water**

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

(d) The board may implement the action prescribed in Subsection (b) or in Subsections (b) and (c) above, and shall obtain necessary amendments to the district's permit, certified filing, or certificate of adjudication in the manner provided in Section 5.1211 of this code.

[Amended by Acts 1975, 64th Leg., p. 1250, ch. 473, § 1, eff. June 19, 1975.]

Section 2 of the 1975 Act provided:

"No action or proceeding commenced prior to the effective date of this Act and no right accrued by actual change prior to the effective date of this Act shall be affected by the enactment of this Act."

Section 3 thereof, the emergency provision, provided in part:

"The fact that a recent decision of the Austin Court of Civil Appeals may have limited the primary jurisdiction of the Texas Water Rights Commission to supervise and regulate changes in water rights and may have affected the jurisdiction of the commission to regulate and cancel water rights, and to administer the Water Rights Adjudication Act, creates an emergency * * *"

SUBCHAPTER I. GENERAL FISCAL PROVISIONS

§ 51.356. **Selection of Depository**

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

(b) The depository shall execute a good and sufficient bond or security that will be the same as provided by law for a county depository approved by the board to fully protect the district and to guaran-

tee the preservation of the funds and the accountability of the depository as provided by law. The bond or security shall be recorded in the district office and kept in a fireproof vault or safe.

[See Compact Edition, Volume 1 for text of (c)]
[Amended by Acts 1975, 64th Leg., p. 566, ch. 223, § 1, eff. May 20, 1975.]

SUBCHAPTER O. ADDING AND EXCLUDING TERRITORY AND CONSOLIDATING DISTRICTS

§ 51.734. **Governing Consolidated Districts**

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

(f) The consolidation agreement may provide for the establishment of five voting precincts described in the agreement and for the election of one director from each precinct. A district that adopts the precinct method of election will retain that method if it elects to be governed by another chapter of this code.

[Amended by Acts 1977, 65th Leg., p. 1764, ch. 712, § 1, eff. Aug. 29, 1977.]

§ 51.737. **Exclusion of Land**

After a district is organized, acquires facilities, and votes, issues, and sells bonds for the purposes for which the district was organized, any land that has been added to the district by an order resulting from a petition of the owner or owners of the land added, may be excluded from the district by complying with the provisions of Sections 51.738 through 51.747 of this code.

[Added by Acts 1977, 65th Leg., p. 1260, ch. 485, § 1, eff. Aug. 29, 1977.]

§ 51.738. **Applicable Only to Land Annexed After Formation of District**

Sections 51.737 through 51.747 of this code shall only be applicable to land which was annexed after the district was formed and bonds were voted, issued, and sold.

[Added by Acts 1977, 65th Leg., p. 1260, ch. 485, § 1, eff. Aug. 29, 1977.]

§ 51.739. **Application to Exclude Land**

(a) A petition for exclusion of land under Sections 51.737 through 51.747 of this code must accurately describe the land to be excluded by metes and bounds or by reference to a plat recorded in the plat records of the county or counties in which the district is located.

(b) A petition for exclusion by the owner or owners of the land to be excluded shall be filed with the district at least 15 days before the hearing on the petition for exclusion and shall state clearly the particular grounds on which the exclusion is sought. Only the stated grounds shall be considered.

[Added by Acts 1977, 65th Leg., p. 1260, ch. 485, § 1, eff. Aug. 29, 1977.]

§ 51.740. Hearing

On receipt of a petition to exclude land as provided in Sections 51.737 through 51.747 of this code, the board shall hold a hearing to consider the petition for exclusion.

[Added by Acts 1977, 65th Leg., p. 1260, ch. 485, § 1, eff. Aug. 29, 1977.]

§ 51.741. Notice of Hearing

When the board sets a hearing as provided in Section 51.740 of this code, the board shall publish notice once a week for two consecutive weeks in one or more newspapers with general circulation in the district. The first publication shall appear at least 15 days and not more than 40 days before the date of the hearing.

[Added by Acts 1977, 65th Leg., p. 1260, ch. 485, § 1, eff. Aug. 29, 1977.]

§ 51.742. Hearing Procedure

The board may adjourn the hearing from one day to another and until all persons desiring to be heard are heard. At the hearing, the board shall first consider the petition or petitions for exclusion of land and shall hear evidence as to the grounds for exclusion. The board shall then give any voter or property owner within the district or other interested party an opportunity to be heard and present evidence with regard to approval of or protest against the proposed exclusion.

[Added by Acts 1977, 65th Leg., p. 1260, ch. 485, § 1, eff. Aug. 29, 1977.]

§ 51.743. Grounds for Exclusion

The board shall exclude land meeting the prerequisites of Sections 51.737 and 51.738 of this code, if it finds that either of the following grounds are present:

(1) to provide to the land to be excluded the necessary benefits, services, and protections on a basis substantially equal with the remainder of the district would create an undue economic burden on the remainder of the district, the land to be excluded, or the facilities of the district; or

(2) the anticipated or necessary financing for or availability of the necessary facilities, benefits, services, or protections to the land to be excluded are not reasonably available and no economically feasible alternative exists to provide the necessary facilities, benefits, services, or protections.

[Added by Acts 1977, 65th Leg., p. 1260, ch. 485, § 1, eff. Aug. 29, 1977.]

§ 51.744. Findings by the Board

Before determining to exclude any land under Sections 51.737 through 51.747 of this code, the board shall make the following findings:

(1) no district facilities have been installed on the land to be excluded;

(2) no district funds have been spent to construct or enlarge the facilities of the district for the sole purpose of providing benefits, services, or protections to the land to be excluded; and

(3) no bonds have been approved by the voters and issued by the district after the land to be excluded was annexed to the district.

[Added by Acts 1977, 65th Leg., p. 1260, ch. 485, § 1, eff. Aug. 29, 1977.]

§ 51.745. Excluding Land

After considering all engineering data and other evidence presented to it, if the board makes the findings provided in Section 51.744 of this code and determines that it would be in the best interest of the district to exclude the land, the board shall enter an order excluding all land meeting the conditions and shall redefine the boundaries of the district in order to embrace all land not excluded.

[Added by Acts 1977, 65th Leg., p. 1260, ch. 485, § 1, eff. Aug. 29, 1977.]

§ 51.746. Payment of Taxes

Before an order excluding land under Sections 51.737 through 51.747 of this code becomes effective, all taxes levied and assessed by the district on the land to be excluded shall be fully paid.

[Added by Acts 1977, 65th Leg., p. 1260, ch. 485, § 1, eff. Aug. 29, 1977.]

§ 51.747. Review

Any person owning an interest in land affected by the order excluding land may file a petition within 20 days after the effective date of the order to review, set aside, modify, or suspend the order. The venue of the action shall be in a district court located in the county in which the district is located and shall be tried in accordance with Sections 51.699 through 51.701 of this code.

[Added by Acts 1977, 65th Leg., p. 1260, ch. 485, § 1, eff. Aug. 29, 1977.]

CHAPTER 53. FRESH WATER SUPPLY DISTRICTS

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 53.0631. Disqualification of Members of the Board

(a) A person is disqualified from serving as a member of the board if:

(1) he is related within the third degree of affinity or consanguinity to a developer of property in the district or to a member of the board or the manager, engineer, or attorney for the district;

(2) he is an employee of any developer of property in the district or any other director, or the manager, engineer, or attorney for the district;

(3) he is a developer of property in the district;

(4) he is serving as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a developer of property in the district in connection with the district or property located in the district; or

(5) he is:

(A) a party to a contract with or along with the district except for the purchase of public services furnished by the district to the public generally; or

(B) a party to a contract with or along with a developer of property in the district relating to the district or to property within the district, other than a contract limited solely to the purpose of purchasing or conveying real property in the district for the purpose of either establishing a permanent residence or establishing a commercial business within the district.

(b) Within 60 days after the board determines a relationship or employment which constitutes a disqualification under Subsection (a) of this section, it shall replace the person serving as a member of the board with a person who would not be disqualified.

(c) Any person who willfully occupies an office as a supervisor and exercises the powers and duties of that office when disqualified under the provisions of Subsection (a) of this section is guilty of a misdemeanor, and on conviction, shall be fined not less than \$100 nor more than \$1,000.

(d) As used in this section, "developer of property in the district" means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots or building lots, or any lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

(e) Any rights obtained by any third party through official action of a board of a district covered by this section are not impaired or affected by the disqualification under this section of any member of the board to serve, provided that the third party had no knowledge at the time the rights were obtained of the fact that the member of the board was disqualified to serve.

[Amended by Acts 1975, 64th Leg., p. 602, ch. 248, § 3, eff. May 20, 1975.]

CHAPTER 54. MUNICIPAL UTILITY DISTRICTS

SUBCHAPTER B. CREATION OF DISTRICT; CONVERSION OF DISTRICT

Section
54.0161. Review of Creation by County [NEW].

SUBCHAPTER D. POWERS AND DUTIES

54.2271. County Standards [NEW].

SUBCHAPTER F. ISSUANCE OF BONDS

54.5161. Review of Bond Projects by Counties [NEW].

SUBCHAPTER B. CREATION OF DISTRICT; CONVERSION OF DISTRICT

§ 54.016. Consent of City

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

(b) If the governing body of a city fails or refuses to grant permission for the inclusion of land within its extraterritorial jurisdiction in a district within 120 days after receipt of a written request, a majority of the electors in the area proposed to be included in the district or the owner or owners of 50 percent or more of the land to be included may petition the governing body of the city and request the city to make available to the land the water or sanitary sewer service contemplated to be provided by the district.

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

[Amended by Acts 1975, 64th Leg., p. 247, ch. 98, § 1, eff. Sept. 1, 1975.]

§ 54.0161. Review of Creation by County

(a) If all or part of a proposed district is to be located outside the extraterritorial jurisdiction of a city, the commissioners court of the county in which the district is to be located may review the petition for creation and other evidence and information relating to the proposed district that the commissioners consider necessary. Petitioners for the creation of a district shall submit to the county commissioners court any relevant information requested by the commissioners court in the event a review is done.

(b) In the event of a review, the commissioners court shall submit to the commission, at least 10 days before the date set for the hearing on the petition, a written opinion stating whether or not the county would recommend the creation of the proposed district and stating any findings, conclusions, and other information that the commissioners think would assist the commission in making a final determination on the petition.

(c) In passing on a petition under this subchapter, the commission shall consider the written opinion submitted by the county commissioners.

[Added by Acts 1975, 64th Leg., p. 1293, ch. 485, § 1, eff. Sept. 1, 1975.]

§ 54.021. Granting or Refusing Petition

(a) After the hearing of the petition if it is found that the petition conforms to the requirements of Section 54.015 of this code and that the project is feasible and practicable and is necessary and would be a benefit to the land to be included in the district, the commission shall so find by its order and grant the petition.

(b) In determining if the project is feasible and practicable and if it is necessary and would be a benefit to the land included in the district, the commission shall consider:

(1) the availability of comparable service from other systems, including but not limited to water districts, municipalities, and regional authorities;

(2) the reasonableness of projected construction costs, tax rates, and water and sewer rates; and

(3) whether or not the district and its system and subsequent development within the district will have an unreasonable effect on the following:

- (A) land elevation;
- (B) subsidence;
- (C) groundwater level within the region;
- (D) recharge capability of a groundwater source;
- (E) natural run-off rates and drainage;
- (F) water quality; and
- (G) total tax assessments on all land located within a district.

(c) If the commission finds that not all of the land proposed to be included in the district will be benefited by the creation of the district, the commission shall so find and exclude all land which is not benefited from the proposed district and shall redefine the proposed district's boundaries accordingly.

(d) If the commission finds that the petition does not conform to the requirements of Section 54.015 of this code or that the project is not feasible, practicable, necessary, or a benefit to the land in the district, the commission shall so find by its order and deny the petition.

(e) A copy of the order of the commission granting or denying a petition shall be mailed to each city having extraterritorial jurisdiction in the county or counties in which the district is located who requested notice of hearings as provided in Section 54.019 of this code.

[Amended by Acts 1975, 64th Leg., p. 1292, ch. 484, § 1, eff. Sept. 1, 1975.]

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 54.1021. Disqualification of Members of the Board

(a) A person is disqualified from serving as a member of the board of a district proposing to provide or actually providing water and sewer services or either of these services to household users as the principal functions of the district, if:

(1) he is related within the third degree of affinity or consanguinity to a developer of property in the district or to a member of the board or the manager, engineer, or attorney for the district;

(2) he is an employee of any developer of property in the district or any other director, manager, engineer, or attorney for the district;

(3) he is a developer of property in the district;

(4) he is serving as an attorney, consultant, engineer, manager, architect, or in some other professional capacity for the district or a developer of property in the district in connection with the district or property located in the district; or

(5) he is:

(A) a party to a contract with or along with the district except for the purchase of public services furnished by the district to the public generally; or

(B) a party to a contract with or along with a developer of property in the district relating to the district or to property within the district, other than a contract limited solely to the purpose of purchasing or conveying real property in the district for the purpose of either establishing a permanent residence or establishing a commercial business within the district.

(b) Within 60 days after the board determines a relationship or employment which constitutes a disqualification under Subsection (a) of this section, it shall replace the person serving as a member of the board with a person who would not be disqualified.

(c) Any person who willfully occupies an office as director and exercises the powers and duties of that office when disqualified under the provisions of Subsection (a) of this section is guilty of a misdemeanor, and on conviction, shall be fined not less than \$100 nor more than \$1,000.

(d) As used in this section, "developer of property in the district" means any person who owns land located within a district covered under this section and who has divided or proposes to divide the land into two or more parts for the purpose of laying out any subdivision or any tract of land or any addition to any town or city, or for laying out suburban lots

or building lots, or any lots, and streets, alleys, or parks or other portions intended for public use, or the use of purchasers or owners of lots fronting thereon or adjacent thereto.

(e) Any rights obtained by any third party through official action of a board of a district covered by this section are not impaired or affected by the disqualification under this section of any member of the board to serve, provided that the third party had no knowledge at the time the rights were obtained of the fact that the member of the board was disqualified to serve.

[Amended by Acts 1975, 64th Leg., p. 600, ch. 248, § 4, eff. May 20, 1975.]

§ 54.103. Election of Directors; Term of Office
[See Compact Edition, Volume 1 for text of (a)]

(b) On the first Saturday in April following the confirmation election, an election shall be held in a district for the election of two directors who shall be elected to serve two years. On the first Saturday in the second April, following the confirmation election, an election shall be held in the district for the election of three directors who shall be elected to serve two years. Thereafter, on the first Saturday in April of each following year, there shall be an annual election of two directors in one year and three directors in the next year in continuing sequence.

[Amended by Acts 1975, 64th Leg., p. 263, ch. 109, § 1, eff. Sept. 1, 1975.]

§ 54.2271. County Standards

Construction work of a district located wholly or partly outside the extraterritorial jurisdiction of a city shall meet standards established by the commissioners court of the county in which the district is located to protect local drainage and to prevent flooding in flood-prone areas.

[Added by Acts 1975, 64th Leg., p. 1294, ch. 485, § 2, eff. Sept. 1, 1975.]

SUBCHAPTER F. ISSUANCE OF BONDS

§ 54.5161. Review of Bond Projects by Counties

(a) Before the commission gives final approval on any bond issue for the purpose of financing a project of a district located wholly or partly outside the extraterritorial jurisdiction of a city, the commission shall notify the county commissioners of the county in which the district is located that an application has been filed and give the county an opportunity within 30 days after notification to examine all information on file and submit a written opinion from the commissioners court stating any findings, conclusions, or other information that the commissioners court considers important to the commission's final determination.

(b) In passing on the approval of a bond issue under this section, if a written opinion is submitted by the commissioners court, the commission shall consider the written opinion before taking final action.

[Added by Acts 1975, 64th Leg., p. 1294, ch. 485, § 3, eff. Sept. 1, 1975.]

CHAPTER 56. DRAINAGE DISTRICTS

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

Section

56.0641. Election Procedures [NEW].

56.0642. Applicability to Special Law Districts [NEW].

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 56.064. Election of Directors

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

(d) The first elected directors of the district hold office until the next regular election for state and county officers, and subsequent directors of the district are elected every two years at the general election except as otherwise provided by Subsection (e).

(e) The first elected directors of the districts in Calhoun, Galveston, Matagorda, and Victoria Counties hold office until April 15 of the next succeeding odd-numbered year or until their successors have qualified. Subsequent directors of the district are elected every two years on the first Saturday in April in each odd-numbered year, for a term of two years beginning on April 15 following the election.

[Amended by Acts 1975, 64th Leg., p. 1847, ch. 575, §§ 1 and 2, eff. Sept. 1, 1975.]

Section 5 of the 1975 amendatory act provided:
 "In all drainage districts subject to this Act, the directors elected at the general election held on November 5, 1974, continue to hold office under the provisions of Article XVI, Section 17, of the Texas Constitution, until the directors chosen at the election on April 2, 1977, have qualified."

§ 56.0641. Election Procedures

(a) In those districts referred to in Subsection (e) of Section 56.064, until otherwise ordered by the board of directors, the three persons receiving the highest number of votes at each election are elected. By order made before the 60th day preceding an election for directors, the board of directors in those districts referred to in Subsection (e) of Section 56.064 may order that the election of directors for that district shall be by position or place, designated as Place No. 1, Place No. 2, and Place No. 3. The order shall designate the place numbers in relation to the directors then in office, and these place designations shall be observed in all future elections. The person receiving the highest number of votes for each position or place is elected. Once the board of directors has adopted the place system for election,

neither that board nor their successors may rescind the action.

(b) A person wishing to have his name printed on the ballot as a candidate for director in those districts referred to in Subsection (e) of Section 56.064 shall file a signed application with the secretary of the board of directors not later than 5 p.m. of the 31st day preceding the election.

(c) The board of directors in those districts referred to in Subsection (e) of Section 56.064 shall order the election, appoint the election judges, canvass the returns, and declare the results of the election. In other respects, the procedures for conducting the election and for voting are as specified in the Texas Election Code. The expenses of holding the election shall be paid out of the construction and maintenance fund of the district.

[Added by Acts 1975, 64th Leg., p. 1847, ch. 575, § 3, eff. Sept. 1, 1975.]

§ 56.0642. Applicability to Special Law Districts

Subsection (e) of Section 56.064 and Section 56.0641 of this code apply to drainage districts created or governed by special law where the special law expressly adopts the provisions of Section 56.064 of this code or its predecessor statute (Article 8119, Revised Civil Statutes of Texas, 1925) or repeats its provisions, without change in substance, as those provisions existed at the time the special law was enacted; but they do not apply to any district established, reestablished, or otherwise affected by special law where the special law contains specific provisions relating to the method of selecting the governing body of the district which were at variance with the provisions of Section 56.064 of this code or its predecessor at the time the special law was enacted. [Added by Acts 1975, 64th Leg., p. 1848, ch. 575, § 4, eff. Sept. 1, 1975.]

SUBCHAPTER D. POWERS AND DUTIES

§ 56.119. Eminent Domain

(a) Any district may exercise the power of eminent domain to condemn and acquire the right-of-way over and through public and private lands necessary for making canals, drains, levees, and improvements in the district and for making necessary outlets thereto in any county in the state. A district which is not operating under Article XVI, Section 59, of the Texas Constitution may not condemn property used for cemetery purposes. No district may condemn right-of-way through any part of any incorporated city without the consent of the lawful authorities.

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

[Amended by Acts 1975, 64th Leg., p. 253, ch. 102, § 1, eff. April 30, 1975.]

CHAPTER 57. LEVEE IMPROVEMENT DISTRICTS

SUBCHAPTER F. GENERAL FISCAL PROVISIONS

Section

57.178. Alternative Authority for Appointment and Duties of District Officials [New].

SUBCHAPTER G. ISSUANCE OF BONDS

57.217. Eligibility of District Bonds for Investments and Public Funds [New].

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 57.057. Election of Board of Directors

After creation of a district, an election may be held to determine whether or not directors for the district will be elected rather than appointed.

[Amended by Acts 1977, 65th Leg., p. 1248, ch. 483, § 5a, eff. Aug. 29, 1977.]

§ 57.058. Number of Elected Directors

In districts which have elected boards, there shall be five directors on the board. In countywide districts, one director shall be elected by the electors of the entire district and one director elected from each county commissioners precinct by the electors of that precinct. In other districts, all five directors shall be elected from precincts within the district to be established by the commissioners court.

[Amended by Acts 1977, 65th Leg., p. 1248, ch. 483, § 5b, eff. Aug. 29, 1977.]

§ 57.060. Petition

Before an election is held under Section 57.057 of this code, a petition, signed by at least 25 electors in each county commissioners precinct who are qualified to vote at an election for directors if a countywide election, or by 50 electors if less than countywide, shall be presented to the county judge requesting that an election be held in the district to determine whether or not directors for the district should be elected and, if so, to elect directors to serve until the next regular election for state and county officers. The petition shall include the name of one or more nominees for each director's position.

[Amended by Acts 1977, 65th Leg., p. 1249, ch. 483, § 5c, eff. Aug. 29, 1977.]

§ 57.061. Procedure for Election

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

(b) The election order shall designate the polling places which shall be the same as the polling places used in the last general election in the county, if a countywide election is held.

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

(e) The district shall pay all expenses incident to calling and holding the election.

[Amended by Acts 1977, 65th Leg., p. 1249, ch. 483, § 5d, eff. Aug. 29, 1977.]

SUBCHAPTER D. POWERS AND DUTIES

§ 57.092. General Powers of District

(a) The district may enter into all necessary and proper contracts and employ all persons and means necessary to purchase, acquire, build, construct, complete, carry out, maintain, protect, and in case of necessity, add to and rebuild all works and improvements within the district necessary or proper to fully accomplish a reclamation plan lawfully adopted for the district.

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

[Amended by Acts 1977, 65th Leg., p. 1247, ch. 483, § 1, eff. Aug. 29, 1977.]

§ 57.108. Conditions of Contract

(a) In order to complete the acquisition or construction of planned improvements for the amount of money or bonds available for that purpose, the contract shall include all levee improvements proposed to be constructed and authorized by the approved plan of reclamation.

(b) Contracts may be awarded or entered in sections for the purpose of the purchase, acquisition, construction, and improvement of pumping equipment, reservoirs, culverts, bridges, and drainage improvements as these may become necessary, but as funds are available, the district shall comply with Section 57.104.

[Amended by Acts 1977, 65th Leg., p. 1247, ch. 483, § 2, eff. Aug. 29, 1977.]

§ 57.109. Contractor's Bond

The contractor shall execute corporate surety bonds as required by general law for public works to guarantee the completion of the contract and the payment of laborers, subcontractors, materialmen, and suppliers.

[Amended by Acts 1977, 65th Leg., p. 1248, ch. 483, § 3, eff. Aug. 29, 1977.]

SUBCHAPTER F. GENERAL FISCAL PROVISIONS

§ 57.172. District Depository

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

(b) The depository so selected shall provide for the security of the district's funds deposited in demand or time deposits in the manner provided by general law for the security of county deposits.

[Amended by Acts 1977, 65th Leg., p. 1248, ch. 483, § 4, eff. Aug. 29, 1977.]

§ 57.178. Alternative Authority for Appointment and Duties of District Officials

Notwithstanding any section or provision of this chapter to the contrary, the commissioners court of jurisdiction on its own motion may adopt and enter upon the minutes of such court an order permitting the district to select and appoint a treasurer, tax assessor and collector, and board of equalization for

the district. Thereafter, the board shall annually select and appoint the district's treasurer, tax assessor and collector, and board of equalization and provide for their oaths, bonds, and compensation. Upon the appointment and qualification of such officials, the board and the district treasurer, district tax assessor and collector, and district board of equalization shall have the powers, functions, duties, and responsibilities with respect to the levy of taxes, including maintenance taxes, when authorized, and the accounting, payment, investment, and handling of the district's funds, the assessment and collection of taxes of the district, and the equalization of taxes and assessments, as would otherwise be conferred in this chapter upon the county judge or commissioners court and the county treasurer, county tax assessor and collector, and commissioners court sitting as the district's board of equalization, respectively.

[Added by Acts 1977, 65th Leg., p. 1248, ch. 483, § 5, eff. Aug. 29, 1977.]

SUBCHAPTER G. ISSUANCE OF BONDS

§ 57.202. Petition

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

(b) The petition shall state the maximum rate of interest to be borne by the bonds and shall request that an election be held in the district to determine whether or not bonds should be issued by the district for the purposes indicated in this section and for the amount stated and whether or not taxes should be levied in the district to pay for the bonds.

(c) The amount of bonds stated in the petition shall not be more than the sum of:

(1) the estimated cost of the acquisition or construction of improvements to be made according to the adopted plan of reclamation approved by the water development board;

(2) an amount to pay interest on the bonds during the period stated in the engineer's report, which shall not be more than two years from the time the bonds are issued as approved by the water development board;

(3) the cost of maintenance of the improvements for two years as estimated by the water development board;

(4) an additional 10 percent to meet emergencies, modifications, and charges lawfully made; and

(5) all damages awarded against the district.

[Amended by Acts 1977, 65th Leg., p. 1249, ch. 483, § 6, eff. Aug. 29, 1977.]

§ 57.208. Issuance of Bonds

(a) If the issuance of bonds and the levy of taxes to pay for the bonds are approved by the electors of the district, the board may order the issuance of the bonds in one or more installments as the board may deem necessary from time to time up to the amount approved at the election.

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

(c) The bonds shall be:

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

(2) signed by the chairman of the board; and

(3) attested by the secretary of the board with the seal of the district affixed to the bonds.

(d) The board shall fix the denominations, terms and conditions of the bonds and make them payable at an expedient time not more than 30 years from the date on the bonds.

[Amended by Acts 1977, 65th Leg., p. 1249, ch. 483, § 7, eff. Aug. 29, 1977.]

§ 57.209. Approval of Bonds by Attorney General

(a) Before the bonds are delivered to the purchasers, a certified copy of all proceedings relating to organization of the district and issuance of the bonds and other relevant information shall be sent to the attorney general.

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

[Amended by Acts 1977, 65th Leg., p. 1249, ch. 483, § 7, eff. Aug. 29, 1977.]

§ 57.211. Sale of Bonds

(a) After the bonds are approved by the electors of the district, the board may appoint the county judge or another suitable person to assist in the sale of the bonds on the best terms and for the best price possible.

(b) The board shall give notice of all bond sales in the manner prescribed by Section 50.053, Water Code, as added by Chapter 262, Acts of the 63rd Legislature, Regular Session, 1973, and shall approve all bond sales, and no sale is complete until approved by the board.

(c) The county judge or other person appointed by the district to assist in selling the bonds is entitled to receive, as full compensation for his services in selling the bonds, an amount approved by the board.

(d) The board shall promptly pay the proceeds from the bond sales to the proper treasurer or depository, to the credit of the district.

[Amended by Acts 1977, 65th Leg., p. 1250, ch. 483, § 8, eff. Aug. 29, 1977.]

§ 57.217. Eligibility of District Bonds for Investments and Public Funds

A district's bonds, when certified and approved by the attorney general and registered by the comptroller as herein provided, shall be legal and authorized investments for all banks, trust companies, building and loan associations, savings and loan associations, insurance companies of all kinds and types, fiduciaries, and trustees and for all interest and sinking funds and other public funds of the State of Texas and all agencies, subdivisions, and instrumentalities of the state, including all counties, cities, towns, villages, school districts, and all other kinds and

types of districts, public agencies, and bodies politic. A district's bonds shall be eligible and lawful security for all deposits of public funds of the State of Texas and all agencies, subdivisions, and instrumentalities of the state, including all counties, cities, towns, villages, school districts, and all other kinds and types of districts, public agencies, and bodies politic, to the extent of the market value of the bonds, when accompanied by any unmatured interest coupons attached to them.

[Added by Acts 1977, 65th Leg., p. 1250, ch. 483, § 9, eff. Aug. 29, 1977.]

SUBCHAPTER H. TAX PROVISIONS

§ 57.251. Levy of Taxes on the Ad Valorem Basis

(a) If a district levies taxes on the ad valorem basis, it shall levy and have assessed and collected taxes on all taxable property in the district.

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

[Amended by Acts 1977, 65th Leg., p. 1251, ch. 483, § 10, eff. Aug. 29, 1977.]

§ 57.252. Assessment of Property in the District

The county assessor and collector shall assess all property inside the district and list it for taxation in books or rolls furnished to him by the commissioners court. The property of the district shall be assessed at the percentage of its actual value determined necessary by the board from year to year.

[Amended by Acts 1977, 65th Leg., p. 1251, ch. 483, § 10, eff. Aug. 29, 1977.]

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SUBCHAPTER A. GENERAL PROVISIONS

§ 58.001. Definitions

In this chapter:

- (1) "District" means an irrigation district.

(2) "Board" means the board of directors of a district.

(3) "Director" means a member of the board of directors of a district.

(4) "Commissioners court" means the commissioners court of the county in which a district or part of a district is located.

(5) "Commission" means the Texas Water Rights Commission.¹

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

¹ See, now, the Department of Water Resources, § 5.001 et seq.

[Sections 58.002 to 58.010 reserved for expansion]

SUBCHAPTER B. CREATION OF DISTRICT;
CONVERSION OF DISTRICT

§ 58.011. Creation of District

An irrigation district may be created under and subject to the authority, conditions, and restrictions of either Article III, Section 52, of the Texas Constitution, or Article XVI, Section 59, of the Texas Constitution.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.012. Composition of District

(a) A district may include all or part of one or more counties, including any town, village, or municipal corporation, and may include any other political subdivision of the state or any defined district, providing the land contained therein is agricultural in character.

(b) The areas composing a district do not have to be contiguous but may consist of separate bodies of land separated by land not included in the district; however, each segregated area, before it may be included in the district, must cast a majority vote in favor of the creation of the district.

(c) No district may include territory located in more than one county except by a majority vote of the electors residing within the territory in each county sought to be included in the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.013. Petition

(a) A petition requesting creation of a district shall be signed by a majority of the persons who hold title to land in the proposed district which represents a total value of more than 50 percent of the value of all the land in the proposed district as indicated by the county tax rolls. If there are more than 50 persons holding title to land in the proposed district, the petition is sufficient if signed by 50 of them.

(b) The petition may be signed and filed in two or more copies.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.014. Contents of Petition

The petition shall include:

- (1) the name of the district;
- (2) the area and boundaries of the district;
- (3) the provision of the Texas Constitution under which the district is to be organized;
- (4) the purpose or purposes of the district;
- (5) a statement of the general nature of the work to be done and the necessity and feasibility of the project, with reasonable detail and definiteness to assist the court or commission passing on the petition in understanding the purpose, utility, feasibility, and need; and
- (6) a statement of the estimated cost of the project based on the information available to the person filing the petition at the time of filing.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.015. Place of Filing; Recording

(a) The petition shall be filed in the office of the county clerk of the county in which the district is located. If land in more than one county is included in the district, copies of the petition certified by the clerk shall be filed in the office of the county clerk of each county in which a portion of the district is located.

(b) The petition shall be recorded in a book kept for that purpose in the office of the county clerk.

(c) If more than one petition is filed and the petitions are identical except for the signature, one copy of the petition shall be recorded and all signatures on the other petitions shall be included.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.016. Board or Commission to Consider Creation of District

If the land to be included in a district is within one county, the creation of the district shall be considered and ordered by the commissioners court, but if the land to be included in a district is in two or more counties, the creation of the district shall be considered and ordered by the commission.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.017. Single-County District; Hearing

(a) If a petition is filed for the creation of a district within one county, the county judge shall issue an order setting the date of hearing on the

petition by the commissioners court and shall endorse the order on the petition or on a paper attached to the petition.

(b) After the order is issued, the county clerk shall issue notice of the hearing.

(c) The petition may be considered at a regular or special session of the court.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.018. Single-County District; Notice of Hearing

(a) The notice of hearing on the petition shall include a statement of the nature and purpose of the district and the date, time, and place of hearing.

(b) The notice shall be prepared with one original and three copies. The county clerk shall retain one copy of the notice in his files and deliver the original and two copies to the county sheriff.

(c) The sheriff shall post one copy of the notice at the courthouse door 15 days before the day of the hearing and shall publish one copy in a newspaper of general circulation in the county once a week for two consecutive weeks. The first newspaper publication shall be made at least 20 days before the day of the hearing.

(d) Before the hearing, the sheriff shall make due return of service of the notice with copy and affidavit of publication attached to the original.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.019. Single-County District; Name

(a) A district located in one county may be named the _____ County Irrigation District Number _____ (insert the name of the county and proper consecutive number).

(b) A district may be known and designated by any term descriptive of the location of the district and descriptive of the principal powers to be exercised by the district; however, the word "district" shall be included in the designation and a consecutive number shall be assigned to it if other districts of the same name have been created in the county.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.020. Single-County District; Testimony at Hearing

(a) At the hearing on the petition, any person whose land is included in or would be affected by the creation of the district may appear and contest the creation of the district and may offer testimony to show that the district:

- (1) is or is not necessary;
- (2) would or would not be a public utility or benefit to land in the district; and
- (3) would or would not be feasible or practicable.

(b) The hearing may be adjourned from day to day.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.021. Single-County District; Granting or Refusing Petition

(a) The commissioners court or the commission shall grant the petition requesting the creation of a district if it appears at the hearing that:

(1) organization of the district as requested is feasible and practicable;

(2) the land to be included and the residents of the proposed district will be benefited by the creation of the district;

(3) there is a public necessity or need for the district; and

(4) the creation of the district would further the public welfare.

(b) If the commissioners court or the commission fails to make the findings required by Subsection (a) of this section, it shall refuse to grant the petition.

(c) If the commissioners court or the commission finds that any of the land sought to be included in the proposed district will not be benefited by inclusion in the district, it may exclude that land not to be benefited and shall redefine the boundaries of the proposed district to include only the land that will receive benefits from the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.022. Single-County District: Appeal from Order of Commissioners Court

(a) If the commissioners court grants or refuses to grant the petition, any person who signed the petition or any person who appears and protests the petition and offers testimony against the creation of the district may appeal from the order of the court by giving notice of appeal in open court at the time of the entry of the order, which shall be entered on the court's docket, and by filing with the clerk of the commissioners court within five days a good and sufficient appeal bond in the amount of \$2,500.

(b) The appeal bond shall be approved by the clerk of the commissioners court payable to the county judge conditioned for the prosecution of the appeal with effect and the payment of all costs incurred with the appeal in the event the final decree of the court is against the appellant.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.023. Single-County District: Record on Appeal; Notice of Appeal

(a) On completion of an appeal as provided in Section 58.022 of this code, the clerk of the commissioners court shall, within 10 days, prepare a certi-

fied transcript of all orders entered by the commissioners court and transmit them with all original documents, processes, and returns on processes to the clerk of the district court to which the appeal is taken.

(b) All persons shall be charged with notice of the appeal without notice or service of notice. No person who fails to appear by petition, in person, or by attorney in the commissioners court may be permitted to intervene in the district court trial.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.024. Single-County District: Hearing in District Court; Procedure

(a) The district court, either in term time or in vacation time, shall schedule the appeal for hearing with all reasonable dispatch, and the judge shall give the appeal precedence over all causes that are not of like character.

(b) In the proceeding in the district court, formal pleadings shall not be required but, with the court's permission, may be filed.

(c) The trial and decision shall be by the court without the intervention of a jury, and the hearing shall be conducted as though the jurisdiction of the district court were original jurisdiction.

(d) The following matters may be contested in the district court:

(1) all matters that were or might have been presented in the commissioners court;

(2) the validity of the Act under which the district is proposed to be created; and

(3) the regularity of all previous proceedings.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.025. Single-County District: Judgment of District Court; Appeal

(a) In the appeal, the district court shall apply to the determination its full powers to the end that substantial justice may be done.

(b) An appeal from the judgment of the district court may be taken as in other civil causes, but appeals filed under Section 58.022 of this code shall be given precedence on the docket of any higher court over all causes that are not of similar public concern.

(c) The final judgment of the district court, or other court to which an appeal may be prosecuted, shall be certified and transmitted to the clerk of the commissioners court with all original documents and processes which were transmitted from the commissioners court to the district court on appeal.

(d) The commissioners court shall enter its order on the petition to conform to the decree entered by

the court of final jurisdiction and shall enter other and further orders as may be required by law to execute the intent of the certified decree.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.026. Single-County District: Appointment of Directors; Bond

(a) If the commissioners court grants a petition for creation of a district, it shall appoint five directors who shall serve until their successors are elected or appointed in accordance with law.

(b) Each director shall, within 15 days after appointment, file his official bond in the office of the county clerk, and the county clerk shall present the bond to the county judge for approval. The county judge shall pass on the bond and approve it, if it is proper and sufficient, or disapprove it and shall endorse his action on the bond and return it to the county clerk.

(c) If approved, the bond of a director shall be recorded in a record kept for that purpose in the office of the county clerk, but if a bond is not approved, a new bond may be furnished within 10 days after disapproval.

(d) If any director appointed under this section fails to qualify, the commissioners court shall appoint another person to replace him.

(e) Each director appointed under this section shall take the oath of office as provided by Section 58.077 of this code.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.027. Multicounty District: Hearing by Commission

(a) The commission shall have exclusive jurisdiction and power to hear and determine all petitions for creation of a district that will include land or property located in two or more counties.

(b) The orders of the commission concerning the organization of a district shall be final, unless an appeal is taken from the orders as provided in this subchapter.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.028. Multicounty District: Notice of Hearing

(a) When a petition is filed, the commission shall give notice of a hearing in the manner provided in Section 58.018 of this code.

(b) The notice shall be posted at the courthouse door, on the bulletin board used for posting legal notices, in each county in which the district may be located.

(c) The notice shall be published in one or more newspapers with general circulation in the area of the proposed district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.029. Multicounty District: Deposit Accompanying Petition

(a) A petition to create a multicounty district shall be accompanied by a deposit of \$250 for the use of the state, and no part of the deposit may be returned except as provided in Subsection (c) of this section.

(b) The deposit shall be placed with the state treasurer to be held in trust outside the state treasury until the commission either grants or refuses the petition. At the time of action on the petition, the commission shall direct the state treasurer to transfer the deposit into the general revenue fund.

(c) If at any time before the hearing on the petition, the petitioners withdraw the petition, and only in that event, the commission shall direct the refund of the deposit to petitioners or their attorney of record. The receipt of the attorney of record shall be sufficient receipt for the return of the money.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.030. Multicounty District: Hearing of Commission; Procedure

(a) The commission shall hear, consider, and determine on the issues a petition filed under Section 58.028 of this code.

(b) At the hearing of the petition, the commission shall be governed by the provisions of Section 58.021 of this code.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.031. Multicounty District: Appeal from Commission Decision

(a) When the commission grants or refuses a petition, any person who comes within the requirements specified in Sections 58.020–58.025 of this code may prosecute an appeal from the judgment of the commission under Sections 58.022–58.025 of this code.

(b) The appeal may be taken to any district court in any county in which part of the proposed district is located or to a district court in Travis County.

(c) The time within which an appeal bond may be approved and filed is 15 days after the entry of the final order by the commission.

(d) On the perfection of the appeal, the appellant shall pay the actual cost of the transcript of the record, which will be assessed as part of the costs incurred on the appeal.

(e) Whenever practicable, the original documents and processes with the returns attached shall be sent to the district court.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.032. Multicounty District: Appointment of Directors by Commission; Bond

(a) If the commission grants the petition for creation of the district, it shall appoint five directors, who shall serve until their successors are elected or appointed.

(b) A certified copy of the order of the commission granting a petition and naming the directors shall be filed in the office of the county clerk of each county in which a portion of the district is located.

(c) Each director named in the order shall, within 15 days after appointment, file his official bond in the office of the county clerk of the county of his residence. The county clerk shall present the bond to the county judge for approval.

(d) The county judge shall act on each bond in the manner provided in Section 58.026 of this code.

(e) If any director appointed under this section fails to qualify, the commissioners court of the county in which he lives shall appoint some qualified person to replace him.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.033. Order of Confirmation Election; Holding of Election; Preliminary Bond Proposition

(a) Within 30 days after the date of the first meeting of the board and before the district may incur any indebtedness other than for its operation and the holding of an election, the board shall issue and publish an order calling an election in the district to confirm the creation of the district.

(b) The ballots for the election shall be printed to provide for voting for or against the proposition: "Confirmation of the district."

(c) The election shall be held in the manner provided for other elections.

(d) At the election, the proposition for the issuance of preliminary bonds may also be submitted to the district electors. Separate ballot boxes shall be provided for the different classifications of voters.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.034. Result of Election; Entry of Order

(a) If the majority of those voting at an election held under Section 58.033 of this code vote in favor of the confirmation of the district, the district is

confirmed and ratified, but if the majority of those voting at the election vote against the confirmation of the district, the district shall have no further authority, except that any debts incurred shall be paid and the organization of the district shall be maintained until all the debts are paid.

(b) If the majority of those voting at the election favor the confirmation of the district and the result is declared, the board shall enter in their minutes an order substantially as follows: "An election having been held in _____ district on the ___ day of ___, for the purpose of voting on the confirmation of the creation of the district and the results of the election resulted in a vote of ___ votes for confirmation and ___ votes against confirmation of the district. The district is therefore declared to have been legally organized with the following boundaries: (Describe boundaries)."

(c) The order shall be signed by a majority of the board and acknowledged by the president of the board. The order shall be filed for record in the office of the county clerk of any county in which the district is situated and recorded in the deed records. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.035. Inclusion of City, Town, or Municipal Corporation in District

(a) No city, town, or municipal corporation may be included within any district created under this chapter unless the proposition for the creation of the district has been adopted by a majority of the electors in the city, town, or municipal corporation.

(b) Any municipal corporation included within a district shall be a separate voting district, and the ballots cast within the municipal corporation shall be counted and canvassed separately from the remainder of the district.

(c) No district that includes a city, town, or municipal corporation may include land outside of the municipal corporation unless the election to confirm and ratify the creation of the district favors the creation of the district independent of the vote within the municipal corporation.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.036. Confirmation Election in District Including Land in More Than One County

No district, the major portion of which is located in one county, may be organized to include land in another county unless the election held in the other county to confirm and ratify the creation of the district is adopted by those voting in the other county.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.037. Exclusion of Parts of District; Dissolution

(a) If any portion of a district governed by Sections 58.035 and 58.036 of this code votes against the creation of the district and the remainder of the district votes for the creation, the district is confirmed and ratified in those portions of the district voting for the creation, and the district is composed only of those portions.

(b) The excluded portions of the district shall be excluded from all debts and obligations incurred after the election; however, all land and property included in the original district shall be subject to the payment of taxes for the payment of all debts and obligations, including organizational expenses, incurred while it was a part of the district.

(c) If a district is created and portions of the proposed district are excluded by the vote in those portions, 10 percent of the voters in the district may file with the Board a petition asking for a new election on the issue. A new election shall be ordered and held for the remaining portion of the district or the district organization may be dissolved by order of the board and a new district formed.

(d) A petition requesting a new election shall be filed within 30 days after the day on which the result of the election is canvassed and declared by the board.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.038. Conversion of Certain Districts Into Districts Operating under This Chapter

(a) Any water improvement district or water control and improvement district which furnishes water for irrigation and does not furnish treated water or sewer services may be converted into a district operating under this chapter.

(b) The governing body of a district which desires to convert into a district operating under this chapter shall adopt and enter in the minutes of the governing body a resolution declaring that, in its judgment, conversion into an irrigation district operating under this chapter and under Article XVI, Section 59, of the Texas Constitution, would serve the best interest of the district and would be a benefit to the land and property included in the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.039. Conversion of District; Notice

(a) Notice of the adoption of a resolution under Section 58.038 of this code shall be given by publishing the resolution in a newspaper with general circulation in the county or counties in which the district is located.

(b) The notice shall be published once a week for two consecutive weeks with the first publication not

less than 14 full days before the time set for a hearing.

(c) The notice shall:

- (1) state the time and place of the hearing;
- (2) set out the resolution in full; and

(3) notify all interested persons to appear and offer testimony for or against the proposal contained in the resolution.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.040. Conversion of District; Findings

(a) If, on a hearing, the governing body of the district finds that conversion of the district into one operating under this chapter would serve the best interest of the district and would be a benefit to the land and property included in the district, it shall enter an order making this finding and the district shall become a district operating under this chapter.

(b) If the governing body finds that the conversion of the district would not serve the best interest of the district and would not be a benefit to the land and property included in the district, it shall enter an order against conversion of the district into one operating under this chapter.

(c) The findings of the governing body of a district entered under this section are final and not subject to appeal or review.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.041. Effect of Conversion

A district that converts into a district operating under this chapter shall:

(1) be constituted an irrigation district operating under and governed by this chapter;

(2) be a conservation and reclamation district under the provisions of Article XVI, Section 59, of the Texas Constitution; and

(3) have and may exercise all the powers, authority, functions, and privileges provided in this chapter in the same manner and to the same extent as if the district had been created under this chapter.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.042. Reservation of Certain Powers for Converted Districts

(a) Any water improvement district or water control and improvement district, after conversion under Section 58.038 of this code, may continue to exercise all necessary specific powers under any specific conditions provided by the chapter of this code under which the district was operating before conversion, except that no district, after conversion, may engage in the treatment or delivery of treated

water for domestic consumption or the construction, maintenance, or operation of sewage facilities.

(b) At the time of making the order of conversion, the governing body shall specify in the order the specific provisions of the chapter of the code under which the district had been operating which are to be preserved and made applicable to the operations of the district after conversion into a district operating under this chapter.

(c) A reservation of a former power under Subsection (a) of this section may be made only if this chapter does not make specific provision concerning a matter necessary to the effectual operation of the converted district.

(d) In all cases in which this chapter does make specific provision, this chapter shall, after conversion, control the operations and procedure of the converted district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[Sections 58.043 to 58.070 reserved for expansion]

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 58.071. Board of Directors

The governing body of a district is the board of directors, which shall consist of five directors.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.072. Qualifications

To be qualified for election as a director, a person must be a resident of the state, be the owner of record of fee simple title to land in the district, and be at least 18 years of age.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.073. Election of Directors; Term of Office

(a) An election shall be held in the district on the second Tuesday in January following the creation of the district to elect five directors.

(b) The three directors receiving the highest number of votes shall serve as directors for two years, and the other two directors shall serve for one year.

(c) At the second election of directors, two directors shall be elected to serve for two years.

(d) After the second election of directors, an election shall be held each year with two directors elected one year and three the next year in continuing sequence.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.074. Election to Replace Directors Temporarily Appointed by Commission

(a) A district organized by order of the commission shall elect five directors at the election which is held to confirm the creation of the district. The names of the five appointed directors shall be placed on the ballot, with a blank space left to write in the names of other persons.

(b) If the appointed directors are elected, they shall be confirmed without the necessity of furnishing new bonds and shall continue in office.

(c) If any of the appointed directors are not elected, the person or persons elected in their places must furnish bond, which shall be approved in the manner provided for directors first appointed.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.075. Application to Get on Ballot

A candidate for the office of director or other elective office may file an application with the secretary of the board to have his name printed on the election ballot. The application must be signed by the applicant or by at least 10 qualified electors of the district and must be filed at least 20 days before the date of the election.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.076. Organization of Board

After a district is created and the directors have qualified, the board shall meet, elect a president, vice-president, and secretary, and begin the discharge of its duties.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.077. Director's Oath

Each director shall take the oath of office prescribed by law for county commissioners.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.078. Director's Bond

(a) Each director shall execute a good and sufficient bond for \$5,000, payable to the district, conditioned on the faithful performance of his duties.

(b) After the creation of the district and the qualification of the first board of directors, all bonds required to be given by a director or other officer of the district are subject to the approval of the board.

(c) The county clerk of the county in which the director lives shall record each bond in the bond records of the county. The bond also shall be recorded in a bond record in the district office and filed for safekeeping in the depository of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.079. Compensation of Directors

(a) A director is entitled to receive compensation of not more than \$25 a day for each day he actually spends performing his duties as a director, but the fees shall not be more than \$100 for any one month.

(b) Before a director may receive compensation for his services, he shall file with the secretary a verified statement showing the number of days actually spent in the service of the district. The statement shall be filed on the last day of the month or as soon after that time as possible.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.080. Officers; Quorum

(a) The president is the chief executive officer of the district and presides at all meetings of the board. The vice-president shall act as president in case of the absence or disability of the president. The secretary is secretary of the board and is responsible for seeing that all records and books of the district are properly kept. In the case of the absence or inability of the secretary to act, the board shall select a secretary pro tem.

(b) Three directors constitute a quorum for any meeting, and a concurrence of three is sufficient for transacting any business of the district except letting construction contracts and drawing warrants on the depository for payment of the contracts, which require the concurrence and signatures of four directors. Warrants to pay current expenses, salaries, and accounts may be drawn by an officer or employee designated by standing order entered in the minutes when these accounts have been contracted and ordered paid by the directors.

[Added by Acts 1977, 65th Leg., p. 1527, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.081. Vacancies

(a) All vacancies on the board and in other offices shall be filled for the unexpired term by appointment of the board.

(b) If the number of directors is reduced to fewer than three, the vacancies shall be filled by special election order by the remaining members of the board. If the director or directors fail to order an election within 15 days after the vacancies occur, any voter or creditor of the district may petition the district judge of any judicial district in which land of the district is located, and the judge may order the election, fixing the date, ordering the publication of notice by any county sheriff, and naming the officers to hold the election.

(c) The returns of the election ordered by a district judge shall be made and filed in the office of the clerk of the court and he shall declare the result of the election.

(d) The officers elected shall furnish bond and qualify in the manner provided in this chapter for directors first appointed for a district on its creation. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.082. General Manager

The board may employ a general manager and give him full authority in the management and operation of the affairs of the district subject only to the orders of the board.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.083. Director as Manager

A director may be employed as general manager with compensation fixed by the other four directors. When so employed, he shall continue to perform the duties of a director.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.084. District Tax Assessor and Collector

The board may appoint one person to the office of tax assessor and collector, or it may order an election to fill that office.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.085. Tax Assessor and Collector's Bond

(a) The tax assessor and collector shall execute a good and sufficient bond for \$5,000, signed by at least two sufficient sureties or a surety company and approved by the board. The bond shall be conditioned on the faithful performance of his duties and on his paying to the depository all money or other things of value that he received in his capacity as tax assessor and collector.

(b) The board may require the tax assessor and collector to give additional bonds or security of a larger bond at any time.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.086. Deputy Tax Assessor and Collector

(a) The board may appoint one or more deputies to assist the tax assessor and collector for a period not to exceed one year.

(b) Each deputy may be required to furnish a bond with similar conditions to the bond required by the tax assessor and collector.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.087. Compensation of Tax Assessor and Collector and Deputies

The board shall fix the compensation of the tax assessor and collector and each deputy.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.088. Additional Duties

The board may require the tax assessor and collector to perform duties other than those specified in this chapter.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.089. Bonds of Officers of a District Acting as Fiscal Agent or Collecting Money for the United States

(a) If a district is appointed fiscal agent for the United States or if a district is authorized to make collections of money for the United States in connection with a federal reclamation project, each director and officer of the district including the tax assessor and collector shall execute an additional bond in the amount required by the Secretary of the Interior, conditioned on the faithful discharge of his respective office and on the faithful discharge by the district of its duties as fiscal or other agent of the United States under its appointment or authorization.

(b) The additional bonds shall be approved, recorded, and filed as provided in this chapter for other official bonds.

(c) Suit may be brought on the bonds by the United States or any person injured by the failure of the officers or directors of the district to fully, promptly, and completely perform their respective duties.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.090. Employees of the District

The board shall employ all persons necessary for the proper handling of the business and operation of the district, its plant and improvements. It may employ attorneys, bookkeepers, engineers, laborers, and a civil engineer, who shall be an officer of the district, to be known as "District Engineer."

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.091. Employees' Compensation and Terms of Employment

The board shall determine the term of office and compensation to be paid to the general manager and all employees. All employees may be removed by the board.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.092. Officer's and Employee's Bond

(a) The board shall require an officer or employee who collects, pays, or handles any funds of the district to furnish good and sufficient bond, payable to the district, for a sufficient amount to safeguard the district. The bond shall be conditioned on the

faithful performance of his duties and on accounting for all funds and property of the district coming into his hands.

(b) The bond may be signed by individual sureties or by surety companies authorized to do business in the state.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.093. District Office

The board shall maintain a regular office for conducting the business of the district. The office shall be located inside the district, or if the district does not include towns which are within or adjoining the territory included in the district, it may be located in a nearby town that is best suited for the transaction of business.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.094. Meetings

The board shall hold regular meetings at the district office on the first Monday in February, May, August, and November of each year at 10 a. m. and may hold meetings at other times when required for the business of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.095. Minutes and Records of the District

The board shall keep a true and complete account of all its meetings and proceedings, and shall preserve its minutes, contracts, records, notices, accounts, receipts, and records of all kinds in a fireproof vault or safe. All minutes, contracts, records, notices, accounts, receipts, and other records are the property of the district and subject to public inspection.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.096. Recording Proceedings

All proceedings of the board and all decrees and orders of any court affecting the creation, boundaries, or validity of the district must be recorded in a special record book kept for that purpose in the office of the county clerk of each county in which the district is located. This recording is in addition to other recording provisions in this chapter.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.097. Contracts

District contracts shall be executed by the board in the name of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.098. Suits

A district may sue and be sued in the courts of this state in the name of the district by and through its board. All courts shall take judicial notice of the creation of the district and of its boundaries.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.099. Payment of Judgment Against District

Any court in the state rendering judgment for debt against a district may order the board to levy, assess, and collect taxes or assessments to pay the judgment.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.100. Actions Contesting District, Bonds, or Contracts; Suit by Attorney General

(a) Except as provided in Subsection (b) of this section, and as provided in Sections 58.021-58.025 of this code, no suit may be instituted in any court of this state contesting:

(1) the validity of the creation and boundaries of a district created under this chapter;

(2) any bonds or other obligations authorized under this chapter; or

(3) the validity or the authorization of a contract with the United States by the district.

(b) The matters listed in Subsection (a) of this section may be judicially inquired into at any time and determined in any suit brought by the State of Texas, through the attorney general, on his own motion or on the motion of any person affected by the existence or plans of the district. The action shall be brought on good cause shown, except where otherwise provided by other provisions of this chapter or by the Texas Constitution.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[Sections 58.101 to 58.120 reserved for expansion]

SUBCHAPTER D. POWERS AND DUTIES

§ 58.121. Purposes of District

(a) Irrigation districts operating under this chapter are limited purpose districts established primarily to deliver untreated water for irrigation and to provide for the drainage of lands and such other functions as are incidental to the accomplishment of such limited purposes. An irrigation district shall not engage in the treatment or delivery of treated water for domestic consumption or the construction, maintenance, or operation of sewage facilities or provide any other similar municipal services. An irrigation district may cooperate with the United States under the federal reclamation laws for the purpose of:

(1) construction of irrigation and drainage facilities necessary to maintain the irrigability of the land;

(2) purchase, extension, operation, or maintenance of constructed facilities; or

(3) assumption, as principal or guarantor of indebtedness to the United States on account of district lands.

(b) An irrigation district operating under this chapter may contract with municipalities, political subdivisions, water supply corporations, or water users for the delivery of untreated water.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.122. Powers of District

The district has the functions, powers, authority, rights, and duties which will permit the accomplishment of the purposes for which it was created, including the investigation and, in case a plan for improvements is adopted, the construction, maintenance, and operation of necessary improvements, plants, works, and facilities, and the acquisition of water rights and all other properties, land, tenements, materials, borrow and waste ground, easements, rights-of-way, and everything considered necessary, incident, or helpful to accomplish by any practicable mechanical means any one or more of the objects authorized for the district, subject only to the restrictions imposed by the Constitutions of Texas or the United States. A district also may acquire property deemed necessary for the extension or enlargement of the plant, works, improvements, or service of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.123. Acquisition of Property

(a) A district may acquire the land material, borrow and waste ground, rights-of-way, easements, or other property by gift, grant, purchase, or condemnation.

(b) The district may acquire either the fee simple title to or an easement on all land, public or private, located inside or outside the district.

(c) The district may acquire the title to or an easement on property other than land held in fee. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.124. Planning

The board may make investigations and plans necessary to the operation of the district and the construction of improvements. It may employ engineers, attorneys, bond experts, and other agents and employees required to perform this duty.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.125. Construction of Improvements

A district may construct all works and improvements necessary:

- (1) for the irrigation of land in the district;
- (2) for the drainage of land in the district, including drainage ditches or other facilities for drainage; and
- (3) for the construction of levees to protect the land in the district from overflow.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.126. Purchase of Machinery and Supplies

The board may purchase machinery, materials, and supplies needed in the construction, operation, maintenance, and repair of district improvements.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.127. Adopting Rules

A district may adopt and make known reasonable rules to:

- (1) prevent waste or the unauthorized use of water; and
- (2) regulate residence, hunting, fishing, boating, and camping, and all recreational and business privileges on any body or stream of water, or any body of land, or any easement owned or controlled by the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.128. Effect of Rules

After the required publication, rules adopted by the district under Section 58.127 of this code shall be recognized by the courts as if they were penal ordinances of a city.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.129. Publication of Rules

(a) The board shall publish once a week for two consecutive weeks a substantive statement of the rules and the penalty for their violation in one or more newspapers with general circulation in the area in which the property of the district is located.

(b) The substantive statement shall be as condensed as is possible to intelligently explain the purpose to be accomplished or the act forbidden by the rule.

(c) The notice must advise that breach of the rules will subject the violator to a penalty and that the full text of the rules is on file with the principal office of the district where it may be read by any interested person.

(d) Any number of rules may be included in one notice.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.130. Effective Date of Rules

The penalty for violation of a rule is not effective and enforceable until five days after the publication of the notice. Five days after the publication, the published rules shall be in effect and ignorance of it is not a defense for a prosecution for the enforcement of the penalty.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.131. Penalties for Violation of Rule

(a) The board may set reasonable penalties for the breach of any rule of the district, which shall not exceed fines of more than \$200 or imprisonment for more than 30 days, or both.

(b) These penalties shall be in addition to any other penalties provided by the laws of the state and may be enforced by complaints filed in the appropriate court of jurisdiction in the county in which the district's principal office is located.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.132. Enforcement by Peace Officers

A district may employ its own peace officers with power to:

- (1) make arrests when necessary to prevent or abate the commission of any offense against the rules of the district and against the laws of the state when the offense or threatened offense occurs on any land, water, or easement owned or controlled by the district; or
- (2) make an arrest in case of an offense involving injury or detriment to any property owned or controlled by the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.133. Constructing Bridges and Culverts across and over County and Public Roads

The district shall build necessary bridges and culverts across and over district canals, laterals, and ditches which cross county or public roads. Funds of the district shall be used to construct the bridges and culverts.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.134. Constructing Culverts and Bridges across and under Railroad Tracks, Roadways, and Interurban or Street Railways

(a) The district, at its own expense, may build necessary bridges and culverts across or under any railroad tracks or roadways of any railroad or any interurban or street railway to enable the district to construct and maintain any canal, lateral, ditch, or other improvement of the district.

(b) Before the district builds a bridge or culvert, the board shall deliver written notice to the local agent, superintendent, roadmaster, or owner. The railroad company or its owner shall have 60 days in which to build the bridge at its own expense and according to its own plans.

(c) The canal, culvert, ditch, or structure shall be constructed of sufficient size and proper plan to serve the purpose for which it is intended.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.135. Right to Enter Land

The board, the district engineer, and the employees of the district may enter any land inside or outside the district to make surveys for reservoirs, canals, rights-of-way, dams, or other contemplated improvements and to attend to any business of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.136. Power to Contract

The district may enter into a contract for the use by another of its water, facilities, or service, either inside or outside the district, except that a contract may not be made which impairs the ability of the district to serve lawful demands for service within the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.137. Investigation and Report of Engineer

(a) The district engineer shall make a thorough study and investigation of all plans of the district and make and file in the district office a report on all plans for construction of plants and improvements.

(b) The board shall provide and keep a book in the district office, to be known as the "Engineer's Record," in which all reports and recommendations made by the district engineer shall be recorded. The "Engineer's Record" shall be open to public inspection.

(c) A contract for more than \$20,000 may not be made by the district unless the district has a district engineer who has made a proper study and report on it.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.138. Contracts for Materials, Machinery, Construction, Etc., for More Than \$10,000

(a) With the exception of a district operating under a contract with the United States, the board shall not let a contract for more than \$10,000 for the purchase of materials, machinery, and all things to constitute the plant, works, facilities, and improve-

ments of the district or for construction except as specified in Subsections (b)-(d) of this section.

(b) The board shall advertise the letting of a contract, including the general conditions, time, and place of opening of sealed bids. The notice shall be published in one or more newspapers with general circulation in the state, and one or more newspapers published in each county in which all or part of the district is located to give general circulation in the district. If there are more than four counties in the district, notice may be published in any newspaper with general circulation in the district. If no newspaper is published in the county or counties in which the district is located, publication in one or more newspapers with general circulation in the state is sufficient. The notice shall be published once a week for three consecutive weeks prior to the date that the bids are opened, and the first publication shall be at least 21 days before the opening of sealed bids.

(c) A contract may cover all the improvements to be provided by the district, or the various elements of the improvements may be segregated for the purpose of receiving bids and awarding contracts.

(d) A contract may provide for the payment of a total sum which is the completed cost of the improvement or may be based on bids to cover cost of units of the various elements entering into the work as estimated and approximately specified by the district's engineers.

(e) A contract may be let and awarded in any other form or composite of forms and to any responsible person or persons which, in the board's judgment, will be most advantageous to the district and result in the best and most economical completion of the district's proposed plant, improvements, facilities, and works.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.139. Construction Bids

(a) A person who desires to bid on proposed construction work shall submit to the board a written sealed bid together with a cashier's check on a responsible bank in the state for at least two percent of the total amount of the bid, or a bid bond of at least two percent of the total amount of the bid issued by a surety legally authorized to do business in the state.

(b) Bids shall be opened at the same time, and the board may reject any or all of the bids.

(c) If the successful bidder fails or refuses to enter into a proper contract with the district or fails or refuses to furnish the bond required by law, he forfeits the amount of the cashier's check which accompanied his bid, or if a bid bond has been given, the district shall have the legal remedies available under the bond.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.140. Reports Furnished to Prospective Bidders

The board shall furnish to any person who desires to bid on construction work, and who requests it in writing, a copy of the engineer's report which shows the work to be done and all details of it. The board may charge for each copy of the engineer's report an amount sufficient to cover the cost of making the copy.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.141. Provisions of Contracts for Construction Work

(a) Any contract made by the board for construction work shall conform to the provisions of this chapter, and the provisions of this chapter will be considered to be a part of the contract and shall prevail when the provisions of this chapter and the contract are in conflict.

(b) The contract shall contain, or have attached to it, the specifications, plans, and details for work included in the contract, and all work shall be done in accordance with these plans and specifications under the supervision of the board and the district engineer.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.142. Executing and Recording Construction Contract

(a) Contracts for construction work shall be in writing and signed by the board and the contractor.

(b) A copy of the contract shall be filed with the county clerk, and the county clerk shall record the contract in a book kept for that purpose.

(c) The contract shall be available for public inspection.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.143. Contractor's Bond

(a) The contractor shall execute a bond in an amount determined by the board, not to exceed the contract price, payable to the district, conditioned on the faithful performance of the obligations, agreements, and covenants of the contract.

(b) The bond shall provide that if the contractor defaults on the contract, he will pay to the district all damages sustained as a result of the default or complete the contract according to its terms.

(c) All sureties signing the bond are bound by it to the same extent that the principal is bound, regardless of the technical defenses.

(d) The bond shall be deposited in the district depository, and a true record of it shall be entered in a record book in the district office.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.144. Reports on Construction Work

During the progress of the construction work, the district engineer shall submit to the board detailed written reports showing whether or not the contractor is complying with the contract, and when the work is completed, the district engineer shall submit to the board a final detailed report showing whether or not the contractor has fully complied with the contract.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.145. Payments under Construction Contract

(a) The district shall pay the contract price of a contract as provided in this section.

(b) The district will make progress payments monthly as the work proceeds, or at more frequent intervals as determined by the district engineer, on estimates approved by the district engineer. If requested by the district engineer, the contractor shall furnish a breakdown of the total contract price showing the amount included therein for each principal category of the work, in such detail as requested, to provide a basis for determining progress payments. In the preparation of estimates the district engineer, at his discretion, may authorize material delivered on the site and preparatory work done to be taken into consideration. Material delivered to the contractor at locations other than the site may also be taken into consideration:

(1) if such consideration is specifically authorized by the contract; and

(2) if the contractor furnishes satisfactory evidence that he has acquired title to the material and that it will be utilized on the work covered by this contract.

(c) In making progress payments, there shall be retained 10 percent of the estimated amount until final completion and acceptance of the contract work. However, if the directors, at any time after 50 percent of the work has been completed, find that satisfactory progress is being made, they may authorize any of the remaining progress payments to be made in full. Also, whenever the work is substantially complete, the directors, if they consider the amount retained to be in excess of the amount adequate for the protection of the district, at their discretion, may release to the contractor all or a portion of the excess amount.

(d) On completion and acceptance of each separate project, public work, or other division of the contract, on which the price is stated separately in the contract, payment may be made without retention of a percentage.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.146. Partial Payment of Construction Work

The board may pay for a construction contract in partial payments as the work progresses, but partial payments shall not be more than 85 percent of the amount due at the time of the partial payment as shown by the report of the district engineer.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.147. Joint Ownership Contracts

(a) Two or more districts may enter into a contract to jointly own and construct irrigation works and reservoirs, levees, drainage systems, and all other plants, works, and improvements which they are authorized to own or construct. The contract may include provisions for joint construction and operation, but the terms and conditions may not conflict with the laws providing for the creation and operation of the districts.

(b) The parties joining in the contract shall have the terms of their agreement incorporated into a written or printed contract.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.148. Election to Approve a Joint Ownership and Construction Contract

(a) Before the districts may be bound by a joint ownership and construction contract made under Section 58.147 of this code, an election to approve the contract must be held in each of the districts.

(b) The election to approve the contract shall be held on the same day in each district.

(c) Notice of the election shall be the same as notice of the election for the creation of a district under this chapter.

(d) At least 15 days before the day of the election, a copy of the contract must be filed in the office of each of the districts and be made available for public inspection, and each district must furnish a copy of the contract to any elector who appears at the office and requests a copy.

(e) If a majority of the electors in each district approve the contract at the election, the contract is adopted and is binding.

(f) The contract may be amended in the manner provided for adopting the original contract.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.149. General Manager for Joint Projects

The boards of the districts which are parties to a joint ownership and construction contract may employ a general manager for the joint project. The duties of the general manager may be included in the provisions of the joint contract.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.150. Transactions in District Names under Joint Ownership and Construction Contract

All bids, bonds, contracts, and other transactions made under a joint ownership and construction contract may be made in the names of the districts which are parties to the contract.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.151. Joint Projects under Joint Ownership and Construction Contracts

(a) When districts operating under a joint ownership and construction contract plan to construct any improvements, the districts may call jointly for bids on these improvements.

(b) The bids may be opened and considered at the office of either of the districts which are parties to the contract.

(c) The boards shall approve the award of the contract and the contractor's bond. The boards may meet for this purpose either at an office outside the districts or at an office established for transaction of all business of the joint project.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.152. Additional Powers of Districts under Joint Ownership and Construction Contracts

Districts which are acting under a joint ownership and construction contract may exercise jointly all powers which may be exercised by a single district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.153. Contract with the United States

(a) The board may enter into a contract or other obligation with the United States for the investigation, construction, extension, operation, and maintenance of any federal reclamation project of benefit to the district and authorized under the National Reclamation Act of 1902, as amended.¹

(b) The board may contract to secure a district water supply from the federal reclamation project and to pay to the United States the agreed cost of it in the form of construction charges, operation and maintenance charges, and water rental charges, as shown by the contract and in accordance with the terms and conditions of the national reclamation law.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

¹ 43 U.S.C.A. § 372 et seq.

§ 58.154. Construction Charges under a Contract with the United States

The construction charges under a contract with the United States may include the cost of drainage and flood-control works necessary to control floods or to maintain the irrigability of district land. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.155. Election to Approve a Contract with the United States

(a) The electors of the district shall vote to approve every contract involving the payment of construction charges to the United States. The provisions of this chapter relating to the election to approve the validation of district bonds shall be followed, including the prosecution of an action in court to determine the validity of the contract.

(b) The notice of election shall state the maximum amount, exclusive of operation and maintenance charges, water rental charges, interest, and penalties, payable by the district to the United States under the contract.

(c) The ballot shall be printed to provide for voting for or against the proposition: "The contract with the United States and levy of taxes to make payments under the contract". This is the only proposition that may appear on the ballot. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.156. Conveying Property to the United States

A district may convey any property to the United States necessary for the construction, operation, or maintenance of federal reclamation works used or to be used for the benefit of the district. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.157. Consent of United States to Alter District's Boundaries

Until all money has been paid by the district which is due to the United States under a contract relating to a federal reclamation project, the United States must consent to any change in the boundaries of the district. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.158. Taxes Levied by District under Contract with the United States

(a) A district that enters into a contract with the United States shall levy annually sufficient taxes to provide payment of all installments required by the contract.

(b) The board may pay construction charges when provided by contract on the basis of the average

gross annual acre income of the land of the district or designated divisions or subdivisions of the district. The Secretary of the Interior shall determine the annual gross acre income.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.159. Assessments for Contracts with the United States

The board shall levy annually sufficient assessments to collect the money required to pay all of the district's obligations in full when due regardless of any delinquency in payment of assessments by any tract of land. If collections in any year are insufficient to pay the obligations of the district, the levy shall be increased sufficiently the following year to cover the deficit.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.160. Duration of Annual Levies for Contracts with the United States

The board shall continue annual levies for payment of construction charges each year against each tract of land in the district even though construction charges apportioned against other tracts of land in the district may be paid sooner or later.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.161. Superiority of Lien to Secure Contract with the United States

The lien against district land created by a contract with the United States shall be superior to the lien created by any district bonds approved subsequent to the date of the contract with the United States. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.162. District's Authority to Solicit Cooperation, Donations, and Contributions from Other Agencies

A district organized under the provisions of this chapter may solicit cooperation, donations and contributions from:

- (1) the United States, the state or nation;
- (2) any county, municipality, water improvement district, water control and improvement district, drainage district, or any other political subdivision of the state; or
- (3) any person, copartnership, corporation, or association.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.163. Expense of Procuring Cooperation and Contributions from Other Agencies

A district may incur reasonable expense to procure cooperation under Section 58.162 of this code in adding to the area of the district or with contributions to the cost of improvements made by the district. The contributions may be either a percentage of cost or a definite annual sum.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.164. Authority of Contributor

(a) Any water improvement district, water control and improvement district, levee improvement district, irrigation district, county, city, town, or other political subdivision of the state may contract to contribute to the cost of the construction of drainage and irrigation water distribution system improvements. The improvements to be constructed may be outside the contributing district, municipality, or other political subdivision of the state, and may be located outside the state or the United States.

(b) The works may be constructed by any agency.

(c) The contribution shall be proportionate to the benefit which the contributor will derive from the proposed improvements.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.165. Issuance of Bonds by Contributor

(a) The contract may provide for the issuance of bonds by the contributor and for direct payment from the proceeds of the bonds to contractors on the estimates of the engineer for the contributor.

(b) Before issuing bonds, a contributing political subdivision shall submit the contract for contribution to its electors for approval and for authority to issue the bonds, fix a lien to secure the bonds, and levy, assess, and collect taxes to retire the bonds. The procedure by a contributing political subdivision of the state shall conform to the applicable law under which the political subdivision was organized and authorized to create bonded indebtedness.

(c) The disposition of the proceeds of the bond shall conform to the approved contract of contribution.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.166. Annual Tax by Contributor

(a) The contract for contribution may provide that instead of issuing bonds the contributor may levy, assess, and collect an annual tax in a specific sum. The levy or assessment is a lien on the property subject to the contributor's taxing power.

(b) The contributor shall collect the tax at its own expense and pay it annually to the district to which the contribution is to be made. The district shall

hold the annual payment as a trust fund and annually apply it to the bonds issued by it to provide funds for the construction of the improvements to which the contribution is made.

(c) The contributor shall submit the contract of contribution to its electors for approval and for authority to levy and assess a sufficient tax to meet the annual payments fixed in the contract. The election for the approval of the contract and the authorized taxes for the fulfillment of the contract shall conform to appropriate law under which the contributing political subdivision was organized and authorized to create bonded indebtedness.

(d) Payment of the annual sums of contribution shall conform to the contract of contribution.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.167. Contributions from Unappropriated or Available Funds of Contributor

(a) If the proposed contributor has an unappropriated fund or a fund which is not required for actual use even though otherwise appropriated, the fund may be withdrawn from the project which does not need it and may be applied to pay contributions to the cost of the improvements considered to be a benefit to the contributor but to be constructed by another agency or jointly by the contributor and another agency.

(b) The board of the contributing political subdivision may contract for contributions and contribute from an unappropriated or available fund without submitting the contract and contributions to a vote of the electors of the contributor. However, the contributions shall not be made if they impair the ability of the contributor to meet any outstanding obligation or to adequately and economically discharge the contributor's duty to its electorate or constituency.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.168. Liability on Contracts of Acquired Irrigation System

If a district acquires an established irrigation system which has contracted to supply water to others and the holders of the contracts or the lands entitled to service of water are not within the district, the contracts and duties shall be performed by the district in the same manner and to the same extent that any other purchaser of the system would be bound.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.169. Authority to Lease Irrigation System Serving the District

(a) The board, by resolution, may lease all or part of any irrigation system serving all or part of the district, including distribution laterals, trunk or transmission canals, pumping plants, intakes, and all usual or necessary appurtenances. The board's resolution will specify the term of the lease, which may not be more than 40 years.

(b) The board may lease property located partly outside the boundaries of the district and may sell surplus untreated water to other districts and to other consumers.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.170. Covenants and Agreements Included in Lease

(a) The lease shall expressly state that the sums payable under the terms of the lease and the lease itself shall not constitute an indebtedness or pledge of the general credit of the district within the meaning of any constitutional or statutory limitation of indebtedness. The lease shall contain a statement that payments due under it are not payable from any funds raised or to be raised by taxation.

(b) The lease may contain covenants and agreements which are not inconsistent with the provisions of this code which authorize the lease for:

- (1) the management and operation of the leased properties;
- (2) the imposition and collection of charges for water;
- (3) the disposition of the proceeds of charges;
- (4) the insurance, protection, and maintenance of the leased properties;
- (5) the creation of other obligations payable from the revenues derived from the operation of the leased properties;
- (6) the keeping of books and records by the district; and
- (7) other pertinent provisions which the board considers desirable to assure the payment of amounts due under the lease.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.171. Revenue for Payment of Lease Rental

(a) All money due the lessor under the lease shall be payable solely from the revenue derived by the district from the sale of water supplied through the leased system.

(b) The board shall set and collect charges for the water supplied through the leased properties to produce sufficient revenue at all times to allow for delinquencies and to pay promptly all rental payments becoming due under the terms of the lease.

The board may agree to deposit this money in a separate fund as a first charge on the gross revenue received each year from sales of water, and which shall not be used for any other purpose.

(c) The board may agree in the lease to pay all expenses of operating and maintaining the leased properties from the fund provided by the board each year for the maintenance and operation expenses of the district so that the gross revenue from sale of water will be available exclusively for payment of rentals until the amount required for rentals each year is paid into the separate rental fund.

(d) If the board includes this agreement in the lease, the board shall provide for the payment of sums into the maintenance fund from sources other than the remaining portions of the gross revenue from the sale of water not required to pay rentals which are sufficient each year to pay all expenses of operating the district and maintaining and operating its properties and facilities, including the leased properties.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.172. Receiver for Leased Irrigation System

(a) If the district defaults in the payments due under a lease, the lessor may petition a court of competent jurisdiction to appoint a receiver for the leased properties.

(b) The receiver shall operate the properties and collect and distribute the revenue according to the terms of the lease and the direction of the court.

(c) The receiver has the same rights and powers as the board in its operation of the leased properties.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.173. Joint Lease by Two or More Districts

The boards of two or more districts may adopt resolutions to enter into a joint lease under the provisions of Section 58.169 of this code. The joint lease shall specify clearly the respective rights and liabilities of the districts and shall be subject to all the provisions of Sections 58.169 and 58.172 of this code.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.174. Authority to Acquire Irrigation System Subject to Mortgage

A district may acquire by gift, grant, or purchase any part of an irrigation system serving the district which is subject to a mortgage or encumbrance. The mortgage or encumbrances shall not be assumed by the district and shall not be an indebtedness of the district but shall constitute solely a charge on the encumbered property and the revenue from it.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.175. Revenue for Payment of Mortgage

(a) The board may determine conclusively by resolution whether the mortgage or encumbrance represents all or part of the cost of the acquired property and constitutes a purchase money lien on the property.

(b) The board may contract to use and pledge its revenue derived solely from the sale of water and services supplied through the acquired properties for the payment of a purchase money lien.

(c) The board also may use revenue from taxation or from the issuance and sale of bonds to pay all or part of the amount due under the encumbrance if a majority of the electors of the district voting at an election on this proposition approve its use.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.176. Election to Approve Revenue for Payment of Mortgage

(a) If tax and bond revenue is pledged to pay amount due under the encumbrance, the district must hold an election and receive the approval of the electors.

(b) An election to approve the use of tax and bond revenue shall be held in the same manner and with the same voters' qualifications as provided for elections on the issuance of the bonds of the district. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.177. Joint Acquisition of Mortgaged System by Two or More Districts

(a) Two or more districts jointly may acquire by gift, grant, or purchase any part of an irrigation system serving the districts subject to a mortgage or encumbrances in the same manner that a single district may acquire the system.

(b) In the proceedings authorizing the acquisition, the boards of the respective districts shall define clearly the respective rights, interest, and liability of the districts in the acquired property and in the mortgage or encumbrance.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.178. Authority to Lease Facilities to Water Customers

(a) A district may lease to any person, firm, or corporation which is a bona fide water customer of the district any of its facilities and may also lease any of the district's land which is appropriate to the utilization of the leased facilities, including, but not limited to land acquired by eminent domain.

(b) The board and the lessee shall agree on the form of the lease and its terms, conditions, provisions, and stipulations; however, the duration of the lease shall not be longer than the duration of the

water contract between the district and the lessee under the primary term of the water contract and any renewal or extension of it.

(c) After a lease to a water customer is authorized by the board, the lease shall be executed by the president or vice-president of the board and attested by the secretary. The lease is valid and effective without any other requirement or prerequisite by the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.179. Expense of Relocation of Facilities

If any district operating under this chapter requires the relocation, raising, lowering, rerouting, or change in grade or alteration in the construction of any railroad, electric transmission, telegraph or telephone lines, conduits, poles, properties, or facilities, or pipelines in the exercise of the power of eminent domain or police power, or any other power, all of the relocation, raising, lowering, rerouting or changes in grade or alteration of construction shall be the sole expense of the district. The term "sole expense" means the actual cost of relocation, raising, lowering, rerouting, or change in grade or alteration of construction to provide comparable replacement without enhancement of facilities, after deducting the net salvage value derived from the old facility. This section does not apply to projects under construction or financed or for which bonds were voted and approved by another type of district on or prior to August 27, 1961, and which such district has subsequently elected to convert into a district operating under this chapter, unless the acts of the district authorizing the construction or financing are contained in the provisions of this section.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.180. Amendments to Water Rights

The board may apply to the commission to amend its water rights as provided by Section 5.1211¹ of this code and the rules of the commission.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

¹ See, now, § 11.122.

§ 58.181. Suit to Protect Water Rights

The board may institute and maintain any suit or suits to protect the water supply or other rights of the district, to prevent any unlawful interference with the water supply or other rights of the district, or to prevent a diversion of its water supply by others.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.182. Transfer of Water Right

If there is land in a district which has a water right from a source of supply acquired by the district but the land is difficult or impracticable to irrigate from that source of supply, the district may allow transfer of the water right to other land which is adjacent to the district. The adjacent land may be admitted to the district with the same right of water service as the land from which the water was transferred.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.183. Selling Waterpower Privileges

(a) The district may enter into a contract to sell waterpower privileges if power can be generated from water flowing from the district's reservoirs within its canal system.

(b) The sale of waterpower privileges may not interfere with the district's obligation to furnish an adequate supply of water for the purpose for which the district was organized and for municipal purposes in districts that furnish water for municipal purposes.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.184. Selling Surplus Water

The district may sell any surplus district water for use in irrigation or for domestic or commercial uses to any person who owns or uses land in the vicinity of the district or to other districts which include land in the same vicinity.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.185. Pumping Water to Another District

If the board considers it advisable, it may contract to pump for or supply another district any water in which the other district has a right. The board shall provide the terms of the contract.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.186. Obtaining Topographic Maps and Data

The Texas Water Development Board shall furnish to a district topographic maps and data concerning projects undertaken by the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.187. Sale of Property not Required for District's Plans

The board may sell at a public or private sale any property or land owned by the district which is not required to carry out the plans of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.188. Notice of Sale of Property not Required for District's Plans

Before either a public or a private sale of property not required by the district's plans, the district shall give notice of the intent to sell by publishing notice once a week for two consecutive weeks in one or more newspapers with general circulation in the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.189. Use of Proceeds from Sale of Property not Required for District's Plans

(a) If the district has outstanding bonds, the proceeds of the sale of property not required for the district's plans shall be applied to retire outstanding emergency warrants, if any, issued to protect ultimate liability of the district in condemnation proceedings as provided in this chapter and the remainder, if any, to be placed in the interest and sinking fund account provided for the retirement of outstanding bonds of the district.

(b) If the district does not have money available from other sources to complete the plans for which its construction work and its bonds were authorized, the board may use the proceeds derived from the sale of the property or land not required to carry out the plans of the district to complete the work included in its plans for improvements to the degree required, and any excess of the proceeds shall be applied as provided in Subsection (a) of this section.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.190. Sale of Property not Acquired to Carry Out the Plans of the District

The board may sell property bid in by it at any sale under foreclosure of its tax lien or of its lien for charges or assessments, or any property acquired by it other than for the purpose of carrying out the plans of the district, without formally determining that the property is not required to carry out the plans of the district, without giving notice of the intent of the district to sell the property, and without applying the proceeds of the sale as provided in Sections 58.188 and 58.189 of this code.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[Sections 58.191 to 58.220 reserved for expansion]

SUBCHAPTER E. ELECTION PROVISIONS**§ 58.221. Election Procedure**

(a) The board shall provide for holding elections and giving notice and shall appoint officers to hold the election at the time the election is ordered.

(b) The officers for the election shall include a presiding judge and an assistant judge and two clerks. More clerks may be appointed if necessary.

(c) The board shall name the polling places, and if more than one polling place is necessary, the board shall divide the district into election precincts. The polling places may be changed from time to time as required.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.222. Notice of Election

(a) Notice of an election shall be given by order of the board.

(b) The notice shall be signed by the president and secretary of the board and shall state:

- (1) the purpose of the election;
- (2) the propositions and officers to be voted on;
- (3) the polling places; and
- (4) the names of the election officers.

(c) The notice shall be published once a week for three consecutive weeks in a newspaper with general circulation published in the county or counties in which the district is located. If no newspapers are published in these counties, the notice shall be published in the county nearest to the district. The first publication shall be not less than 21 days nor more than 35 days before the day of the election.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.223. Preparation and Delivery of Returns

(a) The election officers shall make and deliver the election returns in triplicate. One copy shall be retained by the election judge, one copy shall be delivered to the president of the board, and one copy shall be delivered to the secretary of the board.

(b) The election officers shall give to the newspapers and to other persons requesting them the returns of the election in that box at the time the returns are made.

(c) The ballot boxes and other election records and supplies shall be delivered to the secretary of the board at the district office.

(d) The ballot boxes containing the voted or mutilated ballots shall be preserved for one year after the date of the election subject to the order of any court in which a contest of the election is filed.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.224. Canvass of Returns

The board shall meet and canvass the returns of the election not less than five nor more than seven days after the day of the election. If the returns cannot be canvassed within seven days after the

date of the election, they shall be canvassed as soon as possible after that time.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[Sections 58.225 to 58.260 reserved for expansion]

SUBCHAPTER F. EMINENT DOMAIN

§ 58.261. Applicable Statutes

Districts operating under this chapter have the power of eminent domain and shall exercise that power in accordance with the general law of eminent domain contained in Articles 3264 through 3271, Revised Civil Statutes of Texas, 1925, as amended.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[Sections 58.262 to 58.300 reserved for expansion]

SUBCHAPTER G. WATER CHARGES AND ASSESSMENTS

§ 58.301. Statement Estimating Water Requirements and Payment of Charge

(a) Each person who desires to receive water at any time during the year shall furnish the secretary of the board a written statement of the acreage he intends to irrigate and the different crops he intends to plant with the acreage of each crop.

(b) At the time the acreage estimate is furnished to the secretary, each person applying for water shall pay the portion of the water charge or assessment set by the board.

(c) If a person does not furnish the statement of estimated acreage or does not pay the part of the water charge or assessment set by the board before the date for fixing the assessment, the district is not obligated to furnish water to that person during that year.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.302. Contracts with Person Using Water

(a) The board may require each person who desires to use water during the year to enter into a contract with the district which states the acreage to be watered, the crops to be planted, the amount to be paid for the water, and the terms of payment.

(b) If a person irrigates more land than his contract specifies, he shall pay for the additional service.

(c) The directors also may require a person using water to execute a negotiable note or notes for all or part of the amount owed under the contract.

(d) The contract is not a waiver of the lien given to the district under Section 58.309 of this code against the crops of a person using water for the service furnished to him.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.303. Authority to Determine Rules and Regulations

The board may adopt, alter, and rescind rules, and standing and temporary orders which do not conflict with the provisions of this subchapter and which govern:

- (1) methods, terms, and conditions of water service;
- (2) applications for water;
- (3) assessments for maintenance and operation;
- (4) payment and the enforcement of payment of the assessments;
- (5) furnishing water to persons who did not apply for it before the date of assessment; and
- (6) furnishing water to persons who wish to take water for irrigation in excess of their original applications or for use on land not covered by their original applications.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.304. Board's Estimate of Maintenance and Operation Expenses

The board, on or as soon as practicable after a date fixed by standing order of the board, shall estimate the expenses of maintaining and operating the irrigation system for the next 12 months.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.305. Distribution of Assessment

(a) Not less than one-third nor more than two-thirds of the estimated maintenance and operating expenses shall be paid by assessment against all land in the district to which the district can furnish water through its irrigation system or through an extension of its irrigation system.

(b) The assessments shall be levied against all irrigable land in the district on a per acre basis, whether or not the land is actually irrigated. The board shall determine from year to year the proportionate amount of the expenses which will be borne by water users.

(c) The remainder of the estimated expenses shall be paid by assessments against persons in the district who use or who make application to use water. The board shall prorate the remainder as equitably as possible among the applicants for water and may consider the acreage each applicant will plant, the

crop he will grow, and the amount of water per acre he will use.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.306. Notice of Assessments

(a) Public notice of all assessments shall be given by posting printed notices of the assessment in at least three public places in the district.

(b) Notice shall be mailed to each landowner at the address which the landowner shall furnish to the board.

(c) The notice shall be posted in a public place and mailed to each landowner five days before the assessment is due, and notice of special assessments shall be given within 10 days after the assessment is levied.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.307. Payment of Assessments

(a) All assessments shall be paid in installments at the times fixed by the board.

(b) If a crop for which water was furnished by the district is harvested before the due date of any installment payment, the entire unpaid assessment becomes due at once and shall be paid within 10 days after the crop is harvested and before the crop is removed from the county or counties in which it was grown.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.308. Collection of Assessments by Tax Assessor and Collector

(a) Under the direction of the board, the assessor and collector, or other person designated by the board, shall collect all assessments for maintenance and operating expenses.

(b) The assessor and collector shall execute a bond in an amount determined by the board, conditioned on the faithful performance of his duties and accounting for all money collected.

(c) The assessor and collector shall keep an account of all money collected and shall deposit the money as collected in the district depository. He shall file with the secretary of the board a statement of all money collected once each week.

(d) The assessor and collector shall use a duplicate receipt book, give a receipt for each collection made, and retain in the book a copy of each receipt, which shall be kept as a record of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.309. Lien Against Crops

The district shall have a first lien, superior to all other liens, against all crops grown on each tract of land in the district to secure the payment of the assessment, interest, and collection or attorney's fees.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.310. List of Delinquent Assessments

Within 10 days after any assessment is due, the board shall post in a public place in the district a list of all persons who are delinquent in paying their assessments and shall keep posted a correct list of all persons who are delinquent in paying assessments. If a person who owes an assessment has executed a note and contract as provided in Section 58.302 of this code, he shall not be placed on the delinquent list until after the maturity of the note and contract.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.311. Water Service Discontinued

If a landowner fails or refuses to pay a water assessment when due, his water supply shall be cut off, and no water may be furnished to the land until all back assessments are fully paid. The discontinuance of water service is binding on all persons who own or acquire an interest in land for which assessments are due.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.312. Suits for Delinquent Assessments

Suits for delinquent water assessments may be brought either in the county in which the district is located or in the county in which the defendant resides. All landowners are personally liable for assessments provided in this subchapter.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.313. Interest and Collection Fees

(a) All assessments shall bear interest from the date payment is due at the rate of 10 percent a year.

(b) If suit is filed to foreclose a lien on crops or if a delinquent assessment is collected by any legal proceeding, an additional amount of 10 percent on unpaid principal and interest shall be added as collection or attorney's fees.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.314. Rights of the United States

(a) If the board enters into a contract with the United States, the remedies in this subchapter available to the district also shall apply to enforce payment of charges due to the United States. The federal reclamation laws shall also apply.

(b) The directors shall distribute and apportion all water acquired by the district under a contract with the United States in accordance with acts of Congress, rules and regulations of the Secretary of the Interior, and provisions of the contract.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.315. Surplus Assessments

If assessments made under this subchapter are more than sufficient to pay the necessary expenses of the district, the balance shall be carried over to the next year.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.316. Insufficient Assessments

If the assessments made under this subchapter are not sufficient to pay the necessary expenses of the district, the unpaid balance shall be assessed pro rata, in accordance with the assessments made for the current year. The additional assessments shall be paid under the same conditions and penalties within 30 days after the date of assessment.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.317. Determining Maintenance and Operation Charges

The board may make, establish, and collect maintenance and operation charges for service on the basis of the quantity of water furnished or appropriate measure of the service rendered.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.318. Charges for Maintenance Expenses

(a) If maintenance charges are based on the quantity of water used, a fixed minimum charge may be made on all land, water connections, or other service entitled to receive and use water. An additional charge may be made for the use of more water than that covered by the minimum charge.

(b) The board may install proper measuring devices or require that they be installed.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.319. Charge to Cities and Towns

If a district supplies untreated water, the charge for the use of the water and the time and manner of payment shall be determined by the board or fixed by the contract made with the board.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.320. Loans for Maintenance and Operating Expenses

The board may borrow money to pay maintenance and operating expenses at an interest rate of not more than 10 percent a year and may pledge as security any of its notes or contracts with water users or accounts against them.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.321. Water Service: Refused

The board may refuse water service to any person who refuses to pay the charges and assessments for water service or who fails or refuses to pay any taxes levied against his property after six months from the date the taxes become delinquent.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[Sections 58.322 to 58.350 reserved for expansion]

SUBCHAPTER H. GENERAL FISCAL PROVISIONS

§ 58.351. Construction Fund

(a) The proceeds from the sale of bonds shall be deposited in the construction fund.

(b) Money deposited in the construction fund shall be used to pay expenses, debts, and obligations necessarily incurred in the creation, establishment, and maintenance of the district and to pay the purchase price of property and construction contracts, including purchases for which the bonds were issued.

(c) If the bonds were issued in accordance with a contract with the United States, debts and obligations may be paid from the construction fund under the terms of or incident to the contract.

(d) After the payment of obligations for which the bonds were issued, any remaining money in the construction fund may be transferred to the maintenance fund.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.352. Maintenance Fund

(a) The district shall have a maintenance fund which shall include money collected by assessment or other method for the maintenance, repair, and operation of the properties and plant of the district or for temporary annual rental due to the United States.

(b) The maintenance fund shall be used to pay all expenses of maintenance, repair, and operation of the district except the expenses of assessing and collecting taxes for the interest and sinking fund shall be paid from the interest and sinking fund.

(c) The district may pay from the maintenance fund other expenses for which the payment is not provided in this chapter.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.353. Amortization and Emergency Fund

(a) The board shall have a competent engineer make an inspection and valuation of the physical property of the district which is subject to decay, obsolescence, injury, or damage by sudden, accidental, or unusual causes, and based on the inspection and valuation, the engineer shall determine as nearly as he can a sufficient amount to be set aside annually to pay for replacement of each item of physical property at the end of its economic life or for the restoration or replacement of any item of physical property if it is lost, injured, or damaged.

(b) The board shall set aside a portion of the maintenance fund as it is collected equal to the amount determined under Subsection (a) of this section and shall place this money in the amortization and emergency fund. No part of this fund may be spent except to replace amortized property or to replace or restore lost, injured, or damaged property.

(c) Any amount in the amortization and emergency fund which is not spent for the purposes for which the fund was created may be invested in bonds or interest-bearing securities of the United States.

(d) The board is not required to create an amortization and emergency fund, but if the board does create the fund, it shall be kept up and maintained.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.354. Expenditure of District Funds

Funds of the district shall be paid out on order of the board with warrants drawn for that purpose.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.355. Depository

Before bonds are sold, the board shall select a depository for the district as provided in this chapter, and the proceeds of the bonds shall be placed in the depository and disbursed as provided in this chapter.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.356. Selection of Depository

(a) The board shall select a depository for the district in the manner provided for the selection of a county depository and shall perform all duties provided by law for the selection of a depository, acceptance and approval of bonds, and other acts.

(b) The depository shall execute a good and sufficient bond approved by the board to fully protect the district and to guarantee the preservation of the funds and the accountability of the depository as provided by law. The bond shall be recorded in the district office and kept in a fireproof vault or safe.

(c) Except as otherwise provided, the duties and the bond and security of the depository shall be the same as provided by law for a county depository. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.357. Functions and Duties of Depository

(a) Funds of the district shall be deposited in the depository and shall be paid out as provided in this chapter.

(b) The funds shall be deposited in the interest and sinking fund account, the construction account, or the maintenance account, and each account shall be maintained separately.

(c) No money may be paid from the interest and sinking fund account except to pay interest and principal on bonds and to pay the expenses of assessing and collecting taxes to pay for the bonds.

(d) The depository shall make a report of all money received and paid out by it at the end of each month and shall file the report and the vouchers with the records of the district in the depository vault. A copy of the report shall be made available for inspection by any taxpayer and shall be delivered to the successor of the depository.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.358. Selecting a Bank as Depository in Which a District Director Has an Interest

(a) If the highest and best bidder to become the district depository is a bank in which a district director is a stockholder or a director, the bank may be selected as the depository if the interested director does not vote on the selection and the approval of the bond.

(b) Before the selection of the bank and the approval of the bond are effective, they must be submitted to and approved by the county judge in the county in which the district is located.

(c) If the county judge fails to approve the depository selected or the bond, new bids shall be requested and another bank selected as district depository. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.359. District Audit

The board shall have a yearly audit prepared and filed in accordance with the provisions of Sections 50.371 through 50.376 of this code, but the board shall have the authority to select its own fiscal year. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.360. Maintenance Tax

(a) A district may levy and collect a tax for maintenance purposes, including funds for planning,

maintaining, repairing, and operating all necessary plants, properties, facilities, and improvements of the district and for paying costs of proper services, engineering and legal fees, and organization and administrative expenses.

(b) A maintenance tax may not be levied by a district until it is approved by a majority of the electors voting at an election held for that purpose. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.361. Maintenance Tax Election

(a) The maintenance tax election may be held at the same time and in conjunction with the election to authorize bonds, and the procedure for calling the election, giving notice, conducting the election, and canvassing the returns shall be the same as the procedure for a bond election.

(b) If only a maintenance tax election is called, the order calling the election shall be issued at least 15 days before the day of the election, and the election notice shall be published at least twice in a newspaper of general circulation in the district. The first publication of the notice shall be at least 14 days before the day of the election.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.362. Expenditure of Surplus Maintenance Tax Funds

If a district has any surplus maintenance tax funds which are not needed for the purposes for which they were collected, the funds maybe used for any lawful purpose.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[Sections 58.363 to 58.390 reserved for expansion]

SUBCHAPTER I. BORROWING MONEY

§ 58.391. Authority to Borrow Money

The board may declare that funds are not available to meet lawfully authorized obligations of the district, thereby creating an existing emergency, and may borrow money at a rate of not more than 10 percent a year on notes of the district to pay obligations.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.392. Security for Loan

To secure the loan, the board may pledge up to 85 percent of any levied tax of the district which has not been collected by the district or may pledge as collateral any district bonds which have been authorized but not sold.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.393. Maturity Date of Loan

(a) If taxes are pledged to pay for the loan, the loan shall mature not later than the following April 1.

(b) If preliminary or construction bonds are pledged to pay the loan, the loan shall mature not later than six months from the date it is made. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.394. Loan Secured by Bonds

The amount of the loan may not be more than 25 percent of the district's unsold bonds and the par value of the bonds may not be more than 10 percent of the amount of the loan.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.395. Expenditure of Loan Proceeds

No money obtained from a loan under Section 58.391 of this code may be spent for any purpose other than the purposes for which the pledged tax was levied or the pledged bonds were authorized.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.396. Loans Accomplished by Sale of District Bonds

If the loan is secured by the sale of district bonds, the district may enter into an obligation to be conditioned conformably with the usages of investment banking to repurchase the bonds within the five-year period immediately following the date of the loan.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.397. Pledge of Commercial Income

(a) The term "commercial income" means income other than revenue derived from taxation.

(b) If required to do so, a district may pledge its existing and expected commercial income to secure a loan to the extent the pledge will not obviously substantively impair the ability of the district to pay obligations which are held by others.

(c) If a district expects commercial income in the future but does not have the demonstrated income in an amount adequate to discharge the loan when it matures, the district may pledge the expected commercial income as provided in Subsection (b) of this section and in addition, or as an alternative, may pledge with a power of sale its unsold bonds in a par amount which shall not be more than the amount of the loan plus 10 percent. The district is not required to impound the bonds. The rate of interest on the loan may not be more than six percent.

(d) After commercial income is pledged, it may not be used for any purpose except to pay the debt

which it secures, and it shall be applied to the reduction of the secured debt as rapidly as practicable.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.398. Evidence of Debt

To evidence loans which are not secured by the sale of bonds, the district may execute and deliver to the lender certificates of indebtedness, notes, or obligations and may pledge its full faith and credit for their payment to the same extent that it may be pledged by district bonds.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.399. Retiring Bonds

If bonds are impounded or pledged to secure a loan made to a district, as the loan is repaid a proportionate amount of the bonds may be withdrawn, cancelled, and retired.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[Sections 58.400 to 58.430 reserved for expansion]

SUBCHAPTER J. ISSUANCE OF BONDS**§ 58.431. Authority to Issue Bonds of Districts Operating under Article III, Section 52, of the Texas Constitution**

A district which is operating under Article III, Section 52, of the Texas Constitution, may issue bonds and lend its credit in an amount of not more than one-fourth of the assessed valuation of the real property in the district. However, the total indebtedness of any city or town may never be more than the limits imposed by the Texas Constitution.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.432. Authority to Issue Bonds of Districts Operating under Article XVI, Section 59, of the Texas Constitution

A district operating under Article XVI, Section 59, of the Texas Constitution, may incur debt evidenced by the issuance of bonds which is necessary to provide improvements and maintenance of improvements to achieve the purposes for which the district was created.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.433. Amount of Debt Limited by Constitution

No district may issue bonds or create indebtedness in an amount which is more than that authorized by the Texas Constitution.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.434. Issuance of Preliminary Bonds

A district may issue preliminary bonds to create a fund to pay:

- (1) costs of organization;
- (2) costs of making surveys and investigations;
- (3) attorney's fees;
- (4) costs of engineering work;
- (5) costs of the issuance of bonds; and
- (6) other costs and expenses incident to organization of the district and its operation in investigating and determining plans for its plant and improvements and in issuing and selling bonds to provide for permanent improvements.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.435. Election on Preliminary Bonds

(a) The proposition for the issuance of preliminary bonds shall be submitted to the electors of the district.

(b) The election may be held at the same time as the election to confirm the creation of the district or at a later time.

(c) The board shall make an estimate of the expenses to be paid with the proceeds of the preliminary bonds and shall include this estimate in the notice of election.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.436. Conditions of Preliminary Bonds

(a) After preliminary bonds have been authorized at an election, the board may order the issuance of the bonds in an amount which is not more than the amount stated in the notice of election.

(b) The bonds may be paid serially or on amortization at any time not more than 10 years from their date.

(c) Although the bonds will be known and designated in the records as preliminary bonds, it is not necessary to make this designation on the bonds.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.437. Tax to Pay Preliminary Bonds

At the time preliminary bonds are issued, a tax shall be levied to pay principal and interest as the bonds mature and to pay the cost of assessing and collecting the taxes.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.438. Issuance of Bonds

(a) After a district is created and has adopted plans for construction of a plant and improvements, it may issue bonds to pay for constructing the plant and improvements and to pay costs and charges incident to the construction including the cost of necessary property and the retirement of preliminary bonds.

(b) The maximum amount of bonds which may be issued may not be more than the amount of the engineer's estimate plus the additional amounts added by the board in the election order.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.439. Purposes for Issuance of Bonds

The district may issue bonds to include:

- (1) the cost of organization of the district;
- (2) incidental expenses;
- (3) the cost of investigation and making plans;
- (4) the engineer's work and other incidental expenses;
- (5) the cost of retirement of preliminary bonds;
- (6) the cost of issuing and selling bonds;
- (7) the estimated discount on the bonds;
- (8) the cost of operation of a district for the period of construction of the plant and improvements stated in the engineer's report;
- (9) an amount to pay interest on the bonds during the period stated in the engineer's report, which shall not be more than three years from the time the bonds are sold; and
- (10) any additional cost or expense made necessary by any change or modification made in the proposed work by the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.440. Engineer's Report

(a) Before an election is held to authorize the issuance of bonds, an engineer's report, which includes the plans and improvements to be constructed together with maps, plats, profiles, and data showing and explaining the engineer's report, shall be filed in the office of the district and shall be available for public inspection.

(b) The engineer's report shall contain a detailed estimate of the cost of improvements, including the cost of any property to be purchased, and an estimate of the time required to complete the improvements to the degree to which they may provide service.

(c) The board shall consider the engineer's report and may make changes in the report and note them in the minutes.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.441. Election Order

(a) After the engineer's report is filed and approved, the board may order an election in the district to authorize the issuance of bonds.

(b) In the order, the board shall estimate the total amount of money needed to cover the items listed in Section 58.439 of this code.

(c) The election order shall state:

(1) the proposed maximum interest rate on the bonds;

(2) the maximum maturity date of the bonds;

(3) the time and places for holding the election; and

(4) the names of the election officers.

(d) The election order shall be entered in the minutes of the board.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.442. Notice of Election

(a) Notice of the bond election, signed by the president and secretary of the board, shall be published once a week for four consecutive weeks in a newspaper with general circulation in the county or counties in which all or part of the district is located. The first publication shall be at least 28 days before the day of the election.

(b) The notice shall include:

(1) the maximum amount of bonds to be issued;

(2) the proposed maximum interest rate;

(3) the maximum maturity date;

(4) the time and places for holding the election;

(5) a substantial statement of the proposition;

(6) a summary of the engineer's estimate of the cost of the proposed improvements; and

(7) a statement of any estimate or estimates made by the board in its order calling the election.

(c) If a contract with the United States is proposed at the election, the notice shall state the maximum amount of money to be paid for construction purposes, exclusive of penalties and interest.

(d) A copy of the election notice, together with a copy of the published notice with publisher's affidavit attached, shall be filed in the office of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.443. Ballots

(a) The proposition to be voted on shall be the issuance of the total amount of bonds covered by the engineer's estimate plus additional estimates made by the board.

(b) The ballots shall be printed to provide for voting for or against: "The issuance of bonds and the levy of taxes to pay for the bonds."

(c) If a contract is proposed with the United States under the federal reclamation laws, the ballots shall be printed to provide for voting for or against: "The contract with the United States and the levy of a tax to pay the contract."

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.444. Vote at Election

(a) Bonds of a district operating under the provisions of Article III, Section 52, of the Texas Constitution, may be issued only with the approval of two-thirds of the electors of the district participating in the election.

(b) In a district organized under the provisions of Article XVI, Section 59, of the Texas Constitution, bonds may be issued or indebtedness created only with the approval of a majority of the electors of the district participating in the election.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.445. Order to Issue Bonds or Execute Contract

After the vote is canvassed and the results are declared to be favorable to the proposition, the board shall make and enter an order directing the issuance of the bonds or the execution of a contract with the United States. The bonds or contract shall be in a sufficient amount to pay for the improvements together with all necessary incidental expenses, but the amount may not be more than the amount specified in the election order and notice of election.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.446. Record of Bond Proceedings Submitted to Attorney General

(a) After a district issues bonds other than preliminary bonds, but before they are sold, the record showing all the proceedings in the creation of the district and the issuance of the bonds shall be filed in the office of the attorney general.

(b) The attorney general shall examine the record and give his opinion on it.

(c) The record may be presented to the attorney general before the bonds are printed, and the bonds may be executed after the record is completed.

(d) After the record is approved, the bonds shall be issued or duly executed.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.447. Approval and Registration of Bonds

(a) After the bonds are issued and executed, they shall be submitted to the attorney general for approval.

(b) If the attorney general finds that the bonds are issued according to law and are valid, binding obligations of the district, he shall officially certify the bonds and execute a certificate, which shall be filed with the comptroller and recorded in the book kept for that purpose.

(c) The bonds may not be registered with the comptroller until 20 days after the day of the election authorizing the issuance of the bonds.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.448. Validity of Bonds

After the bonds are approved by the attorney general and registered by the comptroller, they shall be held to be valid, binding obligations of the district in any suit testing their validity. Any person interested in the bonds may file a suit before the bonds are registered to test the validity, but may not bring suit to test validity after the bonds are registered.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.449. Conditions of Bonds

(a) The bonds may be issued to mature at the end of a term of years or to mature serially at any date which is not later than the maximum maturity date stated in the election order.

(b) The bonds may be issued at any rate of interest which is not more than the rate of interest set in the election order.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.450. Form of Bonds

(a) The bonds shall be issued in the name of the district and shall be signed by the president and attested by the secretary, with the seal of the district attached.

(b) The bonds shall be issued in denominations of \$100 or multiples of \$100 and shall be payable annually or semiannually.

(c) The board shall determine and include in the bonds the time, place, manner, and condition of payment of principal and interest on the bonds, but none of the bonds may be made payable more than 40 years from their date.

(d) The lien for payments due to the United States under a contract that was not accompanied by a deposit of bonds with the United States shall be a preferred lien to that of any issue of bonds of any series or any issue of bonds subsequent to the date of the contract.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.451. Authority of Commission over Issuance of District Bonds

(a) As used in this section and Section 58.452 of this code, "designated agent" means any licensed engineer selected by the commission to perform the functions specified in those sections.

(b) The commission shall investigate and report on the organization and feasibility of all districts that issue bonds under this chapter.

(c) Any district that desires to issue bonds under this chapter shall submit to the commission a written application for investigation, together with copies of the engineer's report and data, profiles, maps, plans, and specifications prepared in connection with the engineer's report.

(d) The commission or its designated agents shall examine the application and accompanying documents and shall visit and carefully inspect the project. The commission or its designated agents may request and shall be supplied with additional data and information requisite to a reasonable and careful investigation of the project and proposed improvements.

(e) The commission or its designated agents shall file in their office written suggestions for changes and improvements and shall furnish a copy of the report to the board of the district.

(f) If the commission approves or refuses to approve the project or the issuance of bonds for the improvements, it shall make a full written report which it shall file in its office and a copy of the report shall be furnished to the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.452. Commission Supervision of Projects and Improvements

(a) During construction of projects and improvements approved by the commission, no substantial alterations may be made in the plans and specifications without the approval of the commission.

(b) The commission or its designated agent may inspect the improvements at any time during construction to determine if the project is being constructed in accordance with the plans and specifications by the commission.

(c) If the commission finds that the project is not being constructed in accordance with the approved plans and specifications, it shall give written notice immediately by certified mail to each member of the board of the district and the district's manager.

(d) If within 10 days after the notice is mailed the board of the district does not take steps to insure that the project is being constructed in accordance with the approved plans and specifications, the commission shall give written notice of this fact to the attorney general.

(e) After the attorney general receives this notice, he may bring an action for injunctive relief or quo warranto proceedings against the directors. Venue for either suit is exclusively in a district court in Travis County.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.453. Validation Suit

(a) A district may file a suit to determine the validity of the creation of the district and the bonds.

(b) If requested by the Secretary of the Interior, the district shall file a suit to validate a contract made with the United States.

(c) If a validation suit is filed, the bonds do not have to be approved by the attorney general.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.454. Effect of Prior Registration

If bonds are approved by the attorney general and registered by the comptroller before a validation suit is filed, the filing of the suit cancels the prior registration.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.455. Procedure in Validation Suit

(a) A validation suit shall be brought by the district in the district court of any county in which all or part of the district is located or in a district court in Travis County.

(b) The suit shall be in the nature of a proceeding in rem.

(c) Any person who is interested in the suit may intervene and file an answer.

(d) The issue shall be tried and determined by the court and judgment shall be entered on the findings.

(e) A validation suit has preference over all other suits to allow a speedy determination.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.456. Notice of Validation Suit

(a) To obtain jurisdiction of all parties to the validation suit, a general notice shall be published.

(b) The notice shall be published once a week for at least two consecutive weeks before the term of the court at which the notice is to be returned. The notice shall be published in a newspaper with general circulation in the county or counties in which the district is located, but if no newspaper is published inside the district, the notice shall be published in a newspaper in the nearest county in which a paper is published.

(c) Notice also shall be served on the attorney general in the manner provided in civil suits.

(d) The attorney general may waive notice if he is furnished a full transcript of the proceedings held in connection with the creation of the district and the issuance of the bonds or held in connection with the authorization of a contract with the United States. A copy of the contract with the United States also must be furnished.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.457. Duties of Attorney General in Validation Suit

(a) The attorney general shall examine all the proceedings and shall require any further evidence and make any further examination which he considers advisable.

(b) The attorney general then shall file an answer to the suit, submitting the issue of whether the proceedings are valid and the bonds are legal and binding obligations of the district, or whether the contract with the United States is legal and binding on the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.458. Judgment in Validation Suit

(a) After the trial of the validation suit, if the judgment of the court is adverse to the district on any issue, the district may make an exception and point out the error, and the error may be corrected by the judge in the manner directed by the court.

(b) The judgment shall be rendered showing that the corrections have been made and that the bonds or the contract with the United States are binding obligations of the district.

(c) After the judgment is entered, it is res judicata in all cases which may arise in connection with:

(1) the collection of the bonds or their interests;

(2) any taxes levied to pay charges or any money required to pay a contract with the United States; and

(3) all matters relating to the organization and validity of the district or the validity of the bonds or contract.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.459. Effect of Validation Suit

(a) After a final judgment is rendered in the validation suit, the bonds or the contract with the United States shall be incontestable.

(b) No suit may be brought in any court of this state to contest or enjoin the validity of the creation of the district, any bonds which are issued, any contract with the United States, or the authorization of a contract with the United States, except in the

name of the State of Texas by the attorney general on his own motion or on the motion of any party affected on good cause shown.

(c) The attorney general may not file or prosecute such a suit unless it is based on allegations of fraud disclosed or found after the final judgment in the validation suit was rendered.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.460. Certified Copy of Decree

(a) After the judgment of the district court is entered, the clerk of the court shall make a certified copy of the decree which shall be filed with the comptroller. The comptroller shall record the decree in the book kept for that purpose.

(b) The certified copy of the decree or a certified copy of the comptroller's record of the decree shall be received in evidence in any suit which may affect the validity of the organization of the district or the validity of the bonds or the contract and shall be conclusive evidence of validity.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.461. Registration of Bonds and Decree

On the presentation of the bonds together with a certified copy of the decree of the court, the comptroller shall register the bonds in a book kept for that purpose. The comptroller shall attach to each bond a certificate stating that the court's decree has been filed and recorded in his office and shall sign the certificate and attach his official seal.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.462. Sale of Bonds

(a) After the bonds are issued by the district, the board shall sell the bonds on the best terms and for the best price possible.

(b) The board shall pay the proceeds from the sale of the bonds to the district depository.

(c) The district may exchange bonds for property acquired by purchase or to pay the contract price of work done for the use and benefit of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.463. Tax Levy

(a) At the time the bonds are voted, the board shall levy a tax on all property inside the district subject to district taxation in a sufficient amount to redeem and discharge the bonds at maturity.

(b) The board annually shall levy or have assessed and collected taxes on all property inside the district in a sufficient amount to pay installments and interest as they become due.

(c) If a contract is made with the United States, the board annually shall levy taxes on property inside the district in a sufficient amount to pay installments and interest as they become due.

(d) The board may issue the bonds in serial form or payable in installments, and the tax levy shall be sufficient if it provides an amount sufficient to pay the interest on the bonds, the proportionate amount of the principal of the next maturing bond, and the expenses of assessing and collecting the taxes for that year.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.464. Adjustment of Tax Levy

(a) The tax levy made in connection with the issuance of bonds shall remain in force from year to year until a new levy is made.

(b) The board may from time to time increase or diminish the tax to adjust it for the taxable values of the property subject to taxation by the district and the amount required to be collected.

(c) The board shall raise an amount sufficient to pay the annual interest of and principal on all outstanding bonds.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.465. Changing Tax Rate

If the tax levied is based on the assessed value obtained from the county tax rolls, or the tax rolls of the district for the preceding year and new tax rolls are approved before the time for collection of taxes, the board may change the tax rate provided the new rate is sufficient when applied to the new assessed value to raise the needed amount.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.466. Interest and Sinking Fund

(a) The district shall have an interest and sinking fund which shall include all taxes collected under this chapter.

(b) Money in the interest and sinking fund may be used only:

- (1) to pay principal and interest on the bonds;
- (2) to defray the expenses of assessing and collecting the taxes; and

- (3) to pay principal and interest due under a contract with the United States if bonds have not been deposited with the United States.

(c) Money in the fund shall be paid out of the fund on warrants by order of the board as provided in this chapter.

(d) The depository shall receive and cancel each interest coupon and bond as it is paid and shall deliver it to the board to be recorded, cancelled, and destroyed.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.467. Investment of Sinking Fund

(a) The board may invest any portion of the sinking fund of the district in bonds of the United States, the state, any county or city in the state, any irrigation or water improvement district, school district, or other tax bonds issued under the laws of the state.

(b) The funds may be invested if the bonds to be paid with them do not mature within three years from the time the investment is made and if it is necessary to preserve the best interest of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.468. Refunding Bonds

(a) The district may refund any bonds issued by it by issuing new bonds.

(b) Refunding bonds may be issued only if the old bonds are taken in exchange at their face value or less or new bonds can be sold at a premium and the old bonds retired without loss to the district.

(c) The comptroller may not register the refunding bonds until the old bonds for which the refunding bonds are being issued are presented to him for cancellation or until a valid contract providing for the purchase or exchange of the old bonds is executed and a copy filed in his office.

(d) The comptroller shall keep the refunding bonds until the old bonds are presented to him for exchange or payment, and if the old bonds are presented for payment, the district shall pay them before the refunding bonds are registered.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.469. Limitation of Authority to Incur Debt and Issue Bonds

(a) For the benefit of purchasers or holders of bonds to be issued or sold, the board of a district operating under the provisions of Article XVI, Section 59, of the Texas Constitution, may limit the authority of the district to incur debt or issue bonds.

(b) The board shall limit the authority by adopting a resolution which states that during a period of not more than 15 years the district will not issue bonds in an amount of more than 25 percent of the assessed value of taxable real property in the district according to the last assessment for district purposes or in an amount of more than a fixed sum or for certain named purposes.

(c) The board shall publish notice of the adoption of the resolution once a week for two consecutive weeks in a newspaper with general circulation in the district. The notice shall state that the resolution will take effect unless a petition against the proposed limitation signed by 20 percent of the electors

of the district is presented within 20 days after the first publication of the notice.

(d) If a petition is filed against the limitation, the resolution will not take effect until it is approved at an election held in the district.

(e) The ballots for the election shall be printed to provide for voting for or against: "The limitation during the term of years of the maximum debt of the district to _____." (The blank space shall be filled with the purpose of the election).

(f) If the limitation is approved at an election or if no petition is filed against the resolution, the district may not issue bonds under any statute or constitutional provision in excess of the limitation during the designated term of years except to complete and make repairs to improvements whose cost will be within the debt limitation.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.470. Issuing Bonds in Excess of Limitation

(a) A district may issue bonds in excess of a limitation made under Section 58.469 of this code only after the commission has approved the plans and specifications with the estimate of costs.

(b) If the plans, specifications, and estimate are approved, notice of the intention to issue the bonds shall be published once a week for three consecutive weeks in a newspaper with general circulation in the district. The notice shall include a statement of the purpose for issuing the bonds, the amount of the proposed bond issue, and the time the hearing is to be held, which may not be less than 30 days after the notice is first published.

(c) The board shall hold the hearing and any taxpayer, bondholder, or other interested person may appear and be heard.

(d) If the board approves the issuance of the additional bonds in the amount and for the purpose stated in the notice, the question of issuing the bonds shall be submitted to the electors of the district at an election.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.471. Modifications or Improvements

(a) After bonds are issued or a contract is entered into with the United States, the board may give notice of an election to be held to authorize the issuance of additional bonds or a further contract with the United States.

(b) Additional bonds may be issued or a supplemental contract made if the board considers it necessary to:

(1) make modifications in the district or its improvements;

(2) construct further or additional improvements and issue additional bonds on the report of the engineer;

(3) make a supplemental contract with the United States; and

(4) make, on its own motion, additional improvements or purchase additional property to accomplish the purposes of the district and to serve the best interest of the district.

(c) The board shall enter its findings in the minutes.

(d) The election shall be held and the returns made in the manner provided in this chapter for the original election.

(e) If the result of the election favors the issuance of the bonds or the supplemental contract with the United States, the board may order the bonds issued or the contract made with the United States in the manner provided in this chapter.

(f) If a supplemental contract is made with the United States and bonds are not to be deposited with the United States, it is not necessary to issue bonds. If the district is required to raise money in addition to the amount of the contract, the bonds shall be issued only in the additional amount needed. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.472. Issuance of Additional Bonds or Creation of Additional Indebtedness under Certain Conditions

(a) A district may issue additional bonds or create additional indebtedness:

(1) if works, improvements, and facilities constructed under a plan provided in Section 58.440 or 58.452 of this code are inadequate to accomplish the beneficial results which the district's location and conditions demand;

(2) if it is considered necessary to make repairs, replacements, or additions to the district's improvements which cost more than \$25,000; or

(3) if additional money is needed to complete the improvements as planned.

(b) The district shall provide the additional money for the particular purpose in accordance with the provisions of this chapter regulating the creation of bond obligations subject to every limitation with respect to the original proceedings and the substantial protection of the substantive rights of holders of any of the district's outstanding obligations.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.473. Interim Bonds

After bonds, other than preliminary bonds or notes, are voted by a district, the board may declare an existing emergency with relation to money being

unavailable to pay for engineering work, purchase of land, rights-of-way, construction sites, construction work, and legal and other necessary expenses and may issue interim bonds on the faith and credit of the district in the manner provided in Sections 58.474-58.479 of this code to pay these expenses. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.474. Limitations on Interim Bonds

(a) Interim bonds shall mature not later than 10 years from the date they are issued, and shall be redeemable at any time before they mature, as provided in this subchapter.

(b) The principal amount of the interim bonds may not be more than 25 percent of the principal amount of the district's bonds which have been voted but not sold.

(c) Before the issuance of the interim bonds, the board, by resolution, may limit the issue to any amount less than 25 percent, and after the amount is determined and fixed by the resolution, no additional interim bonds may be issued and sold until all outstanding interim bonds are paid.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.475. Issuance of Bonds and Levy of Tax

(a) After bonds other than preliminary bonds are voted, the board may authorize the issuance of the bonds in whole or in part as they are needed by the district.

(b) The board shall levy and annually assess and collect sufficient taxes to pay principal and interest on the bonds.

(c) The bonds may be approved by the attorney general and registered by the comptroller before the filing of the report of the Texas Water Rights Commission under Section 58.451 of this code.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.476. Deposit of Bonds to Secure Interim Bonds

(a) As the interim bonds are issued and sold, the board, by order, shall deposit bonds of the district which have been validated by a court or approved by the attorney general and registered by the comptroller as provided in Section 58.447 of this code in the district depository.

(b) The bonds deposited shall be credited to the interest and sinking fund account created to pay the interim bonds.

(c) The principal amount of the bonds deposited shall total at least 110 percent of the principal sum of the series of interim bonds which the bonds are deposited to secure.

(d) The interest rate on the interim bonds may not be more than the interest rate on the bonds deposited to secure them.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.477. Procedure for Issuance and Sale of Interim Bonds

(a) Interim bonds shall be issued in the name of the district, signed by the president, and attested by the secretary, with the district seal attached to each bond.

(b) The interim bonds may be issued in the denominations determined by the board and shall be approved by the attorney general and registered by the comptroller in the same manner as provided in Section 58.447 of this code.

(c) The interim bonds may be sold in the same manner and on the same terms provided by law for the sale of other bonds of the district.

(d) If interim bonds are sold at less than par value and accrued interest, the improvement bonds issued by the district must be sold at an increase over the price authorized by law in an amount sufficient to equal the discount allowed on the interim bonds.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.478. Payment of Interim Bonds

(a) The board shall appropriate the tax levied to pay the bonds deposited to the credit of the interest and sinking fund to pay the interim bonds or as much of that tax as necessary to secure the loan evidenced by the interim bonds.

(b) The proceeds of the tax shall be devoted exclusively to the payment of the principal and interest on the interim bonds.

(c) None of the provisions of this subchapter relating to interim bonds shall be construed as prohibiting the sale of bonds deposited to the credit of the interest and sinking fund to pay interim bonds or of any other bonds of the district, but if any of these bonds are sold, the district depository shall apply the proceeds to the payment of principal and accrued interest on the interim bonds and the remainder to the purposes for which the bonds were authorized.

(d) If none of the bonds are sold at the time an installment on the principal and interest of interim bonds matures, the depository shall cancel the deposited bonds and attached interest coupons in an amount equal to the principal and interest of the interim bonds paid off and discharged.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.479. Redemption of Interim Bonds

(a) At the option of the board, interim bonds may be redeemed at any time or times before maturity

on payment by the district of the principal and accrued interest to the date fixed for redemption by the board.

(b) When interim bonds are called for redemption before maturity, the secretary shall give written notice of the redemption to the bank or banking house named as the place of payment in the bonds or to its successor or assign.

(c) In the notice, the secretary shall designate the bond or bonds called for redemption and payment and shall state the number or numbers of the bonds.

(d) The notice shall include the redemption date which shall not be more than 60 days after the date notice of call for payment is made.

(e) If any of the bonds which are called for redemption are not presented, they shall cease to bear interest from and after the date fixed for redemption.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.480. Alternate Methods for Paying Bonds

(a) As used in this section and in Sections 58.481-58.484 of this code, "net revenue" means income or increment which may come from ownership and operation of the improvements which are encumbered less the proportion of the district's revenue income reasonably required to provide for administration, efficient operation, and adequate maintenance of the district's services and facilities which are encumbered. Net revenue does not include money derived from taxation.

(b) A district which expects net revenue from operations may secure its bonds in any one of the following:

(1) as provided in Section 58.463 of this code;

(2) by entering into a contract to pledge the net revenue of the district and to mortgage and encumber part or all of the property and facilities, franchise, revenue, and income from operations, and everything acquired or to be acquired by the district; or

(3) as provided in both Subdivisions (1) and (2) of this subsection.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.481. Taxes to Secure Certain Bonds

(a) If bonds are secured as provided in Section 58.480(b)(3) of this code, at the time that net revenue together with money derived from taxes accumulates a surplus in the sinking fund equal to the amount required in the succeeding year to liquidate the interest and principal on the district's bonds maturing in that year, the district's annual tax levies may be lowered to produce not less than 25 percent of the bond maturities for the succeeding year.

(b) If three successive years demonstrate that this net revenue is adequate to protect the district's bonds as they mature, the district's tax may be discontinued until further experience demonstrates the necessity to continue the tax to avoid default in the payment of the district's bonds as they mature. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.482. Election

(a) If the district proposes to issue bonds which will be secured under either Section 58.480(b)(2) or 58.480(b)(3) of this code, the proposition shall be presented at an election held under Section 58.443 of this code.

(b) The ballots for the election shall be printed to provide for voting for or against one of the following propositions:

- (1) "The issuance of bonds and the pledge of net revenue for the payment of the bonds.";
- (2) "The issuance of bonds, the pledge of net revenue, and the creation of a lien on physical property to secure payment of the bonds."; or
- (3) "The issuance of bonds, the pledge of net revenue, and the levy of adequate taxes to pay the bonds."

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.483. Hearing and Election on Certain Bonds

(a) A district which plans to issue bonds payable from and secured by a pledge of net revenue and a lien on the physical property, either or both, without the levy of taxes, is not required to hold a hearing to exclude land or adopt a plan of taxation.

(b) The proposition for issuance of bonds may be submitted at the election held to confirm the creation of the district or at an election called by the board.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.484. Hearing Before Issuing Certain Bonds

If a district issues its original bonds under Section 58.480(b)(2) of this code and later desires to issue bonds payable in whole or in part from taxes or to levy a tax for maintenance purposes, the district shall hold a hearing to exclude land, and at the time provided by law, shall hold another hearing to adopt a plan of taxation. These hearings shall be held before an election is called to approve the issuance of tax-supported bonds or the levy of a maintenance tax.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[Sections 58.485 to 58.500 reserved for expansion]

SUBCHAPTER K. TAX PLAN

§ 58.501. Tax to Pay Preliminary Bonds

Taxes to pay principal and interest on preliminary bonds shall be levied and collected on the ad valorem basis.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.502. Hearing to Determine Basis of Taxation

After the board adopts plans for construction of a plant and improvements to accomplish the purposes of the district and after an election is held to authorize the issuance of construction bonds and the levy of a tax to pay for the bonds, the board shall hold a public hearing to determine whether the taxes to pay the construction bonds and maintenance, operation, and administrative costs of the district shall be levied, assessed, and collected on:

- (1) the ad valorem basis;
- (2) the basis of assessment of specific benefits;
- (3) the basis of assessment of benefits on an equal sum per acre; or
- (4) the ad valorem basis for part of the total tax or defined area or property and on the benefit basis for the other part of the tax or defined area or property.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.503. Notice of Hearing

Notice of the time and place of the hearing and the proposition to be determined shall be published once a week for two consecutive weeks in one or more newspapers with general circulation in the district. The first publication shall be made not less than 10 days before the day of the hearing set in the notice.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.504. Conduct of Hearing

(a) At the hearing, any person who is a taxpayer in the district may appear and offer testimony to show which plan of taxation will be most conducive to equitable distribution of taxes.

(b) The hearing may be adjourned from day to day until all persons wishing to testify have been heard.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.505. Order

(a) The board shall adopt the plan of taxation which will, in its judgment under the evidence, be most conducive to the equitable distribution of the district's tax.

(b) If the plan adopted by the board is made under the provisions of Section 58.512 of this code, the order shall specify the proportion of the tax which falls under each designated classification.

(c) The order of the board is final and cannot be reviewed or questioned in any court except on the ground of fraud or palpable and arbitrary abuse of discretion.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.506. Changing Tax Plan

If after a tax plan is adopted the directors find that the best interest of the district and the necessity to maintain adequately and equitably the district's tax requires a change in the tax plan, the board may give notice, hold a hearing, and determine a new plan in the manner provided in Sections 58.502–58.505 of this code.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.507. Effect of Sections 58.501–58.506 of This Code

Nothing in Sections 58.501–58.506 of this code shall be held to alter provisions of this chapter relating to districts which have contracts with the United States or to alter or impair the provisions of this code relating to taxes levied to provide local improvements to a defined area which do not affect the entire district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.508. Unlimited Authority to Collect Service Charges and Taxes

The provisions of this subchapter do not alter or impair the right of a district:

(1) to make, establish, and collect maintenance and operation charges for service rendered;

(2) to levy and collect taxes to secure funds to maintain, repair, and operate all works and facilities; and

(3) to give and maintain proper service for the purposes of its organization.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.509. Lien Created; No Limitation

Taxes, charges, or assessments imposed by a district for maintenance and operation of works, facilities, and services of the district shall constitute a lien against the land to which the taxes, charges, or assessments have been established. No law providing limitation against actions for debt shall apply.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.510. Purpose of Sections 58.511–58.529 of Code

The purpose of Sections 58.511–58.529 of this code is to give a district the flexibility of taxing power which will permit and cause the tax of the district to be equitably distributed and which will give the highest practicable degree of service under the peculiar physical and economic conditions of the district. To this end, these sections shall be liberally and sympathetically construed.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.511. Authority to Adopt Alternative Plans of Taxation

A district operating under the provisions of Article XVI, Section 59, of the Texas Constitution, shall adopt a tax plan under the alternative provisions of Sections 58.512–58.529 of this code either at the time of its creation or before the appointment of commissioners of appraisal under this chapter.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.512. Alternative Plans of Taxation

(a) The district's taxes for all purposes, except to pay the cost of preliminary surveys, may be levied, assessed, and collected on an adopted basis to be chosen from the alternatives provided in this section.

(b) The district's tax plan may be based on any one of the following:

(1) ad valorem basis;

(2) benefit basis;

(3) ad valorem basis to obtain a part or percentage of the total tax or to apply to a specific part of the district and benefit basis applied to the other part of percentage of the tax or to the remaining part of the district; or

(4) either ad valorem or benefit basis on designated property or defined areas of the district to pay for improvements, facilities, or service peculiar to the defined part of the district and not generally and directly benefiting the district as a whole.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.513. Adoption of Plan of Taxation

(a) Except as provided in Section 58.512(b)(4) of this code, before the commission of appraisal is appointed and the construction bonds are sold, the board shall adopt a proposed plan of taxation as provided in Sections 58.502–58.505 of this code.

(b) If the tax plan is not based wholly on the ad valorem basis or on the benefit basis, the order adopting the proposed plan shall specify the portion of the tax to be based on the ad valorem basis and

the portion to be based on the benefit basis. The board also shall state the physical and economic reasons, the peculiar diverse local needs, or the comparative potential benefits of different areas of designated property in the district which make it necessary or equitable to levy all or part of the tax on a defined part of the district on the ad valorem or benefit basis.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.514. Notice of Adoption of Plan and Hearing

(a) After the tax plan is adopted, the board shall publish notice once a week for two consecutive weeks in one or more newspapers with general circulation in the county or counties in which the district is located.

(b) The notice shall state:

- (1) that the tax plan has been adopted;
- (2) that the plan is available for public inspection in the district's office;

(3) that a hearing on the plan will be held by the board at a specified place and at a particular time, which shall not be less than 15 days nor more than 20 days after the first publication of notice; and

(4) that all interested persons may appear and support or oppose all or part of the proposed tax plan and offer testimony.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.515. Order Adopting Tax Plan

(a) After all persons have been heard, the board may approve the proposed tax plan or may change or modify the plan.

(b) The board shall adopt a tax plan which it considers, under the evidence before it, most equitably distributes the tax burden and conserves the public welfare.

(c) The board shall enter its order establishing the tax plan, and the plan shall become the basis for the assessment and collection of taxes until the district adopts a different plan.

(d) The order is not subject to judicial review except on the ground of fraud, palpable error, or arbitrary and confiscatory abuse of discretion.

(e) A new plan may be adopted if required to preserve equity of distribution in the manner provided for adopting the original plan; however, no change may be made in the tax plan which will impair the ability of the district promptly to meet all outstanding obligations of the district within the intent of Sections 58.464 and 58.467 of this code.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.516. Obtaining Funds to Construct, Administer, Maintain, and Operate Improvements and Facilities in Defined Part of District

On adoption of the plan of taxation provided in Section 58.512(b)(4) of this code, the district, in the manner provided in Sections 58.517-58.523 of this code, may provide, pay for, maintain, and operate improvements, service, or facilities peculiar to a designated area or defined property which do not affect the whole district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.517. Defining Area and Designating Property to be Benefited by Improvements; Adopting Tax Plan

(a) The board shall define the particular area to be taxed by metes and bounds or designate the property to be served, affected, and taxed.

(b) The board shall adopt a plan for improvements in the defined area or to serve the designated property in the manner provided in Sections 58.440-58.441 of this code.

(c) The board shall adopt a plan of taxation to apply to the defined area or designated property which may or may not be in addition to other taxes imposed by the district on the same area or property. The proportional tax or income contributions of the defined area or designated property and the proportional and equitable interest of the entire district shall be taken into consideration in imposing any tax to an area or piece of property.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.518. Notice and Hearing

The board shall give notice and hold a hearing in the same manner and for the same purpose as provided in Sections 58.514-58.515 of this code.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.519. Board's Order

At the hearing, if the board decides to define and serve the proposed separate tax area or separate designated property, it shall enter an order in the record, and if the proposal involves the issuance of bonds, the board shall call an election in the whole district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.520. Procedure for Election

(a) The election shall conform to the provisions of this code relating to an election to authorize the issuance of construction bonds.

(b) The board shall submit the appropriate issues to the electors, and the issues may be submitted on the same ballot to be used in another election.

(c) The notice of election shall define the area to be designated and the plan of taxation to be applied. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.521. Election not Required in Separate Election Precinct

If proposed improvements are considered to be required to promote the public welfare or if the owners of the land in a defined area file a petition acknowledged as required for deeds requesting the district to provide improvements and assess a tax only in the defined area, it is not necessary to constitute the area a separate election precinct and have a separate election in that area.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.522. Ballots

The ballots for an election under this subchapter shall be printed to provide for voting for or against substantially the proposition: "Designation of the area, issuance of bonds, and levy of a tax to retire the bonds."

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.523. Declaring Result and Issuing Order

If a majority of the electors approve the proposal, the board shall declare the result and, by order, shall establish the area and define it by metes and bounds or designate the specific property and shall fix the tax basis for the area or property. A certified copy of the order shall be recorded in the minutes of the district and shall constitute notice.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.524. Pledge of Faith and Credit

If at an election the electors approve the issuance of bonds and the levy of a tax which applies only to a defined area, the district may issue bonds which pledge only the faith and credit based on the property values in the defined area; however, the district may pledge the full faith and credit of the entire district under the condition of authorization in Section 58.528 of this code.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.525. Election in Separate Election Precinct

(a) If the improvements to be provided in a defined area are considered peculiarly for the benefit of that area and not required to conserve the public or general welfare in the district as a whole,

and if the proposed improvements in that area will require the imposition of a tax only on the property in the area, the defined area is constituted a separate election precinct in which a separate election shall be held to determine if the improvements will be provided and a separate tax levied.

(b) The election shall be held in the manner provided for issuance of bonds under this subchapter.

(c) If a majority of the electors in the defined area approve the propositions, the district shall provide money when necessary and shall provide the improvements and levy the tax.

(d) At an election in the defined area, each qualified elector of the district who owns property in the defined area may elect to vote in the area and not in the precinct of his residence.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.526. Issuance of Bonds and Levy of Tax for Defined Area or Designated Property

(a) After the order is recorded, the district may issue its bonds to provide the specific plant, works, and facilities included in the plans adopted for the area or to serve the property and shall provide the plant, works, and facilities.

(b) In the appropriate case, the board shall levy, assess, and collect taxes on the property located in the defined area or on the designated property in conformity with the adopted tax plan.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.527. Contract to Provide Improvements, Facilities, and Services to Designated Property or Area

(a) Property or areas inside or outside the district may, by contract, be designated to obtain improvements, facilities, or service for the designated area or property.

(b) The designation shall be based on a written petition in conformity with the laws authorizing contracts by a petitioner or person owning, controlling, or governing the property or area to be designated.

(c) The board may make the designation in a contract to provide, administer, maintain, and operate the desired improvements, facilities, or service for the designated area or property, and the designated area or property shall be subject to a tax lien in an amount to retire the obligations incurred by the district to provide the facilities, improvements, or service and to cover the expenses necessary to administer, maintain, and operate the improvements and facilities under the contract.

(d) The contract may not violate the law of this state or the United States and may not result in

impairing a vested right or causing the district to fail to serve fully and permanently water demands in the district in the order of preference of uses.

(e) The contract may provide that one governing body may establish the contractual and statutory tax lien in behalf of the district and may levy, assess, and collect the tax for and on behalf of the district.

(f) The district may not issue bonds pledging the full faith and credit of the district under this section or under Section 58.517 of this code without submitting the proposition to the electors of the whole district under the provisions of this subchapter or under the provisions authorizing the issuance of construction bonds.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.528. Authority of District

(a) If a majority of the electors in the whole district approve the proposal, the district may issue its bonds to provide the plant, improvements, and facilities peculiar to the defined area or designated property or peculiar to a contract for services and may pledge the full faith and credit of the district to pay for the bonds.

(b) The district shall have a lien on the property in the defined area or on the designated property and may levy, assess, and collect or have levied, assessed, and collected taxes in the area or on the property to protect the district from or to compensate any liability incurred on behalf of the defined area or designated property.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.529. Administrative Authority of Board

The board shall administer all business incident to the creation and operation of a defined area or service to designated property unless otherwise provided by contract.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[Sections 58.530 to 58.560 reserved for expansion]

SUBCHAPTER L. TAXATION ON THE AD VALOREM BASIS

§ 58.561. Assessment of District Property

The assessor and collector shall assess all taxable property in the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.562. Law Governing Property Subject to Taxation

The property subject to taxation in the district shall be determined by and governed by the law relating to taxation for state and county purposes, and these laws shall apply unless otherwise provided.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.563. Rendition of Property

(a) The assessor and collector shall compile a record of all taxpayers and those subject to tax in the district and all taxable property and the name and post office address of the owners.

(b) On or before the first day of April of each year, the assessor and collector shall furnish to each taxpayer and to each owner of taxable property in the district a blank form for the rendition of property for taxation. The form may be delivered or mailed to the owner.

(c) Failure to receive the form furnished by the assessor and collector shall not excuse anyone from the duty of making and filing a statement and rendition. Any property owner failing to receive the form shall call at the office of the district for it.

(d) Each owner of taxable property in the district shall file in the office of the assessor and collector a full, accurate, and complete statement under oath of all property owned by him in the district which is subject to taxation.

(e) The statement shall include the true value of all property listed and owned by the party rendering it. In rendering land improvements and all other property, the statement shall show both the market value and the real value.

(f) The statement shall be filed on or before March 31 of each year.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.564. Failure or Refusal to File Rendition

A person who fails or refuses to file, under oath, a true, full, and complete statement and rendition of all property owned by him which is subject to district taxation shall be precluded from making an objection, protest, or contest against the assessment made against him by the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.565. Property Owner's Oath

(a) The statement and rendition shall have attached to it substantially the following oath:

"I _____, on my oath, state that the foregoing statement and rendition is a true, full, and complete statement of all property owned by me, for whom this rendition is made or by whom this rendition is

made, subject to taxation in the district. I have correctly stated the description, location, and value thereof and of each item thereof."

(b) The statement and oath shall be signed and made before an officer authorized by law to take oaths and acknowledgments.

(c) The officer taking the oath shall place on the oath his certificate substantially as follows: "Subscribed and sworn to by _____ before me this the ___ day of _____, _____." The officer also shall attach his official seal and signature.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.566. Agent May File Rendition Statement

The statement and rendition may be filed by any authorized agent of the owner of any property, but the agent shall state in the statement and rendition that he is filing as an agent.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.567. Verification of Rendition; Rendition of Property not Already Rendered

(a) The assessor and collector shall check, investigate, and verify each rendition of property and shall note on the rendition in writing his report. He shall include in the report any property omitted from the rendition with his estimate of the value of all the property not rendered at its full value or if the property is rendered at more than its full value.

(b) The assessor and collector shall make and file a rendition of all property in the district which is not rendered for taxation and shall file the rendition before June 1 of each year or as soon after that time as possible.

(c) In making the rendition of unrendered property, the assessor and collector shall include all property which is not rendered by the owner or his agent, and if the owner is unknown, the property shall be listed as being owned by "owner unknown."

(d) Property whose owner is unknown shall be taxed and taxes collected even though the owner is unknown and may be assessed against a person who is not the owner.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.568. Rendition of Property at a Later Date

On creation of the district, if it becomes necessary to have property rendered for taxation at a later date than provided for regular assessment, the board shall fix the time for the rendition to be made and the other necessary functions connected with it. After the first year, the assessments shall be made as provided in this subchapter.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.569. Authority to Administer Oaths

The assessor and collector may administer oaths to fully carry out his duties and assessment of property for taxation.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.570. Laws and Penal Statutes Applicable to Rendition of Property

The laws and penal statutes of this state providing for rendition of property for state and county purposes and providing penalties for making false oaths and for failing to render property shall apply to rendition of property by a district except as otherwise provided.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.571. Appointment of Board of Equalization

(a) The board, at their first meeting or as soon after that time as practicable and each following year, shall appoint three commissioners to the board of equalization.

(b) Each person appointed to the board of equalization shall be a qualified property taxpaying elector of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.572. First Meeting of Board of Equalization

(a) At the same meeting at which the first board of equalization is appointed, the board shall fix a time for the meeting.

(b) The board of equalization shall convene at the time designated by the board to receive all assessment lists or books of the assessor and collector for examination, correction, equalization, appraisal, and approval.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.573. Oath of Board of Equalization

(a) Before the board of equalization begins to perform its duties, each commissioner shall take and subscribe the following oath:

"I do solemnly swear (or affirm) that I will, to the best of my ability, make a full and complete examination, correction, equalization, and appraisal of all property contained in the district as shown by the assessment lists or books of the assessor and collector for the district and add all property not included of which I have knowledge."

(b) The oath shall be recorded in the minutes and shall be kept by the secretary of the board.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.574. Compensation of Board of Equalization

Members of the board of equalization shall receive the compensation fixed by the board.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.575. Secretary of Board of Equalization

The secretary of the board shall act as secretary of the board of equalization at all meetings and shall keep a permanent record of all the proceedings of the board of equalization.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.576. Annual Meeting Date of Board of Equalization

The board of equalization shall convene on the first Monday in June of each year and shall complete its work by September 1 or as soon after that time as possible.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.577. Powers and Duties of Board of Equalization

(a) At the time the board of equalization convenes, the assessor and collector shall bring to the meeting all assessment lists and books for examination so that the board of equalization may see whether or not each person has rendered his property at its full value.

(b) The board of equalization may send for persons and papers, administer oaths to persons who testify, and ascertain the value of all property subject to taxation.

(c) The board of equalization may raise or lower the valuation of any of the property, may correct any and all errors of assessments and renditions, and may add any unrendered property to the tax rolls.

(d) The board of equalization shall equalize as nearly as possible the value of all property rendered for taxation and fix the value of it for taxation.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.578. Complaints Filed with Board of Equalization

Any person may file with the board of equalization a complaint relating to the rendition and assessment of his own property or to any other property and the board of equalization shall consider all complaints.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.579. Lists of Persons and Property not on Tax Rolls Submitted to Board of Equalization

(a) Anyone may file with the board of equalization lists of property that is omitted from the tax rolls, and the board of equalization shall add to the tax rolls any property that has been omitted from them.

(b) The assessor and collector shall file with the board of equalization a list of all persons who fail or refuse to render their property.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.580. Hearing

After the board of equalization has passed on the renditions, it shall fix a date to hear protests from persons whose renditions have been raised.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.581. Notice of Hearing

At least 10 days before the hearing, the secretary shall mail written notice of the time and place of the hearing to all persons whose assessments have been raised. Failure to give the notice does not relieve the owner of the property of his duty to take notice of the hearing and to attend.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.582. Hearing Procedure

At the hearing, the board of equalization shall hear and consider all complaints and protests, reconsider the valuation of all property whose valuation is raised by them, and finally fix the valuation on all property.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.583. Final Approval of Tax Rolls

(a) After the assessor and collector makes his final tax rolls, the board of equalization shall meet and consider the tax rolls and make necessary corrections and endorse its approval on the rolls.

(b) The action of the board of equalization in approving the tax rolls is final and is not subject to revision by the board of equalization or any other tribunal.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.584. Preservation of Official Documents

(a) The assessor and collector shall prepare the tax rolls in duplicate and one copy shall be retained in his office, and one copy shall be filed in the district office.

(b) The minutes of the board of equalization, renditions, protests, and other papers filed in connection with the rendition of property and preparation of the tax rolls shall be preserved as official records in the district office.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.585. Permanent Finance Ledger

(a) The board shall provide a permanent finance ledger in which the assessor and collector shall be charged with the total assessment of property shown on the tax rolls.

(b) Credit shall be entered in the permanent finance ledger of all collections paid to the depository.

(c) The permanent finance ledger and the books and accounts of the assessor and collector shall be audited by the board semiannually on January 1 and July 1 of each year and at any other times ordered by the board.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.586. Date Taxes Are Due

All taxes are due and payable on October 1 of each year and shall be paid on or before January 31 of the following year.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.587. Delinquent Taxes

(a) All taxes which are not paid by January 31 become delinquent on February 1 of each year and shall be and remain a lien on the property for which they were assessed although the owner is unknown, the property is listed under the name of a person who is not the owner, or the ownership has changed.

(b) The property may be sold under a judgment of a court for all taxes, interest, penalty, and costs assessed against the property at any time after taxes become delinquent.

(c) The district may file suit to collect the delinquent taxes, and if the owner of the property is unknown, the suit may be filed against the unknown owner and the property sold under judgment of the court.

(d) Taxes are not barred by any statute of limitation, and no law providing for a period of limitation as to debts or actions shall apply to these taxes.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.588. Interest and Penalty on Delinquent Taxes

All delinquent taxes shall have a penalty of 10 percent of their amount added to them, which shall accrue at the time the taxes become delinquent. The delinquent taxes also shall bear interest at the

rate of six percent a year from the date on which they become delinquent.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.589. Preparing and Filing Delinquent Tax Roll

The assessor and collector shall prepare and file with the board a delinquent tax roll on or before April 1 of each year. The delinquent tax roll shall show all charges on the tax rolls which have not been paid.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.590. Notice of Delinquent Tax List

(a) The board shall publish the delinquent tax list once a week in a newspaper published in the county in which the district or part of the district is located. If no newspaper is published in the district, the notice shall be published in a newspaper outside the district.

(b) The delinquent tax list shall include:

- (1) the name of the owner;
- (2) a description of the property; and
- (3) the total amount of taxes due.

(c) The newspaper which publishes the notice shall be paid a reasonable fee fixed by agreement, but, the fee shall not be more than 20 cents for each rendition or tract of land using not more than three lines single column.

(d) The publisher of the newspaper which publishes the notice shall file in the district office a copy of each issue of the newspaper containing the notice with an affidavit of publication attached.

(e) The notice provided in this section is intended to be for the information of all taxpayers and shall not be held to be requisite to filing a suit for the collection of taxes. The suit may be filed without publishing notice.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.591. Attorney to File Suits to Collect Delinquent Taxes

(a) The board shall on or before April 1 of each year employ an attorney to file suits to collect all delinquent taxes.

(b) The attorney is entitled to receive a fee of 10 percent of the amount of all delinquent taxes collected or paid after suits are filed. The fees shall be charged as court costs.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.592. Delinquent Tax Suit

(a) A delinquent tax suit shall be filed as any other civil suit.

(b) If the owner of the property against which delinquent taxes are owed is unknown, the suit may be filed against the unknown owner and citation published in the manner provided for state and county taxes.

(c) All tax suits shall be for the collection of the amount due and foreclosure of the lien on the property against which the delinquent taxes are assessed.

(d) Costs of the suit shall be taxed in the order of sale.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.593. Sale of Property to Pay Delinquent Taxes

(a) Property on which delinquent taxes are owed shall be sold under order of sale.

(b) If more property is covered by the lien fixed by the judgment than is necessary to secure the amount due, the property may be divided and sold in parcels as necessary to collect the amount due.

(c) The officer executing the order of sale shall make deeds to the purchaser which shall be held to vest a good and perfect title in the purchaser, subject to contest only for fraud.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.594. Redemption of Property on Which Delinquent Taxes Are Owed

A person may redeem property on which delinquent taxes are owed at any time before the date of sale under a judgment by paying the taxes and all penalties, interest, attorney's fees, and court costs which have accrued.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.595. Authorizing Taxes to be Assessed and Collected by Assessor and Collector of County or City

(a) A majority of the board may adopt a resolution to have the district's taxes assessed and collected by the county assessor and collector or by the city assessor and collector of an incorporated city or town inside the boundaries of the district.

(b) The taxes shall be assessed and collected by the county or city assessor and collector in the manner provided by the board and turned over to the treasurer of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.596. Compensation of County or City Assessor and Collector

If the county or city assessor and collector is required to assess and collect the taxes of the district, he is entitled to receive one percent of the total

taxes shown on the completed roll for assessing the taxes and one percent for collecting the taxes. The compensation for collection of delinquent taxes shall be five percent of the amount collected.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.597. Alternate Method for Assessment, Equalization, and Collection of Taxes

Instead of having taxes assessed, equalized, and collected as provided in Sections 58.561-58.596 of this code, the board may enter into a contract for this service with the commissioners court of each county in which taxable property of the district is located.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.598. Consideration and Costs under Contract

(a) The consideration for services rendered under a contract entered into under Section 58.597 of this code shall be computed as fees of office of the county officers rendering the services under the contract.

(b) The service charge to be paid by the district under the contract may not be more than the reasonable cost which would be added to the county's cost for assessing and collecting taxes if there were no contract.

(c) If the service may be accomplished by an extension of an ad valorem tax levy by the district on the rolls to be used for state and county taxes, the cost shall not be more than \$1,800 a year for the assessment and equalization of taxes and shall not be more than \$1,500 a year for the collection of and accounting for the taxes, together with other acts which are lawful duties incident to collecting delinquent taxes.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.599. County Assessor and Collector's Bond

(a) The county assessor and collector shall be considered the assessor and collector of the district, and he may be required by the district to execute a surety company bond payable to the district. The premium on the bond shall be paid by the district.

(b) In the absence of a separate bond, the official bond of the county assessor and collector shall inure ratably to the benefit of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.600. Tax Assessment and Collection Procedure under Contract

(a) On entering into a contract under Section 58.597 of this code, the county assessor and collector shall perform for the contracting district the same

duties which he is required by law to perform in assessing and collecting state and county taxes.

(b) Before the district requires service under the contract, it shall levy an ad valorem tax or fix the specific assessment of benefits or tax per acre for each year for which service is to be rendered under the contract.

(c) Within the time which will not delay the preparation of the county's tax rolls, the district shall deliver to the county tax assessor and collector a certificate showing the rate or amount of the district's tax levy or specific assessment for the current taxing year.

(d) The county assessor and collector shall pay to the district or the district depository all money collected by him for the district during any calendar month and shall furnish to the district on or before the 15th day of the next succeeding month an itemized statement of the collections made in the previous month, unless the contract provides for more frequent accounting.

(e) The district shall keep a finance ledger in which the full amount of the completed tax rolls shall be charged to the county assessor and collector and the amount of taxes collected and paid over to the district shall be entered.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.601. Audit

(a) The district under the contract may elect to require the county auditor to audit annually the collections and accounts of the county assessor and collector and furnish the district with a report of his finding.

(b) The district shall pay to the county the actual cost of the audit.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[Sections 58.602 to 58.630 reserved for expansion]

SUBCHAPTER M. TAXATION ON THE BENEFIT BASIS

§ 58.631. Method of Taxation for District under Contract with the United States

A district which is operated under contract with the United States may adopt the plan to levy and collect taxes on the benefit basis instead of the ad valorem basis and determine taxes under the provisions of Sections 58.632-58.634 of this code.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.632. Assessment Record

When necessary, the board shall apportion and assess the benefits conferred on property subject to taxation in the district and shall make a record showing the amount and value of benefits to accrue on property in the district and the amount of taxes to be levied and collected on the property. No taxes assessed or adjudged against the property subject to taxation may be more than the benefit which accrues to the property from the organization, operation, and maintenance of the district and its improvements.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.633. Notice of Taxes

After the board makes the record, it shall mail to each property owner whose name appears in the record notice of the amount of taxes levied on his property and the date and place at which the property owner may appear and contest the correctness and equitableness of the tax.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.634. Decision after Hearing

After the hearing, the board shall determine whether or not the tax is equitable and shall sustain, reduce, or increase the tax to an amount which in the board's judgment is equitable. The decision of the board is final.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.635. Method of Taxation for District not under Contract with the United States

If a district which is not operating under contract with the United States adopts the benefit basis plan for taxation, the levy, assessment, equalization of property values, and collection of taxes shall be made in the manner provided in Sections 58.636-58.648 of this code.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.636. Commissioners of Appraisalment

As soon as practicable after the approval of the engineer's report and the adoption of the plan for improvements to be constructed, the board shall appoint three disinterested commissioners of appraisalment. The commissioners shall be freeholders but not owners of land within the district which they represent.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.637. Compensation of Commissioners

On approval by the board, each commissioner is entitled to receive \$25 a day for each day he actually serves, plus all necessary expenses.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.638. Notice of Appointment and Meeting

Immediately after the commissioners of appraisal are appointed, the secretary of the board shall give written notice to each appointee of his appointment and of the time and place of the first meeting of the commissioners.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.639. First Meeting of Commissioners

(a) The commissioners shall meet at the time specified in the notice from the secretary or as soon after that time as possible.

(b) At the meeting the commissioners shall take and subscribe an oath to discharge faithfully and impartially their duties as commissioners and make a true report of the work which they perform. They shall then organize by electing one commissioner as chairman and one commissioner as vice-chairman.

(c) The secretary of the board or, in his absence, a person appointed by the board shall serve as secretary to the commissioners of appraisal and shall furnish to the commissioners any information and assistance which is necessary for the commissioners to perform their duties.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.640. Assistance for Commissioners

Within 30 days after the commissioners qualify and organize, they shall begin to perform their duties, and in the exercise of their duties they may obtain legal advice and information relative to their duties from the district's attorney and, if necessary, may require the presence of the district engineer or one of his assistants at any time and for as long as necessary to properly perform their duties.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.641. Viewing Land and Other Property and Improvements in District

The commissioners shall view the land in the district which will be affected by the district's reclamation plans and shall assess the amount of the benefits and damages that will accrue to the irrigable land in the district from the construction of the improvement.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.642. Commissioners Report

(a) The commissioners shall prepare a report and file it with the secretary of the board. The report shall be signed by at least a majority of the commissioners.

(b) The report shall include:

(1) the name of the owner of each tract of land which is subject to assessment;

(2) a description of the property;

(3) the amount of the benefits or damages assessed on each tract of land;

(4) the time and place at which a hearing will be held on the report to hear objections; and

(5) the number of days each commissioner served and the actual expenses incurred during his service as commissioner.

(c) The day set in the report for the hearing may not be later than 20 days after the report is filed.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.643. Notice of Hearing

(a) After the commissioners' report is filed, the secretary of the board shall publish notice of the hearing on the report at least once a week for two consecutive weeks in a newspaper published in each county in which part of the district is located. The secretary shall mail written notice of the hearing to each person whose property will be affected if his address is known.

(b) The notice shall state:

(1) the time and place of the hearing;

(2) that the commissioners' report has been filed;

(3) that interested persons may examine the report and make objections to it; and

(4) that the commissioners will meet at the time and place indicated to hear and act on objections to the report.

(c) On the day of the hearing, the secretary shall file in his office the original notice and his affidavit stating the manner of publication, the names of persons to whom notice was mailed, and the names of persons to whom notice was not mailed because the secretary by reasonable diligence could not ascertain their addresses. Copies of the notice and affidavit shall also be filed with the commissioners of appraisal and the clerk of the commissioners court.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.644. Hearing

(a) At or before the hearing on the commissioners' report, an owner of land that is affected by the report or the reclamation plans may file exceptions to all or part of the report.

(b) At the hearing, the commissioners shall hear and make determinations on the objections submitted and may make necessary changes and modifications in the report for objections which are sustained.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.645. Witnesses at the Hearing

At the hearing, interested parties may appear in person or by attorney and are entitled, on demand, to have the chairman of the commissioners of appraisal issue process for witnesses. The commissioners shall have the same power as a court of record to enforce the attendance of witnesses.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.646. Costs of Hearing

The commissioners may adjudge and apportion the costs of the hearing in any manner they consider equitable.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.647. Commissioners' Decree

(a) After the commissioners have made a final decision, they shall issue a decree confirming their report insofar as it remains unchanged and shall approve and confirm changes in the report.

(b) The final decree and judgment of the commissioners shall be entered in the minutes of the board, and certified copies shall be filed as a permanent record with the county clerk of each county in which part of the district is located and shall be notice to all persons of the contents and purpose of the decree.

(c) The findings of the commissioners which relate to benefits and damages to irrigable land in the district are final and conclusive.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.648. Effect of Final Judgment and Decree

The final judgment and decree of the commissioners shall form the basis for all taxation in the district. Taxes shall be apportioned and levied on each tract of irrigable land in the district in proportion to the net benefits to the land stated in the final judgment and decree.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.649. Fixing Tax as Equal Sum on Each Acre

At the election at which the plan of taxation is determined or at any other time before the bonds are issued, the voters of any district operating under the provisions of Article XVI, Section 59, of the

Texas Constitution, may vote on the proposition of whether or not benefits for tax purposes shall be fixed as an equal sum on each acre of land that is irrigated or to be irrigated by gravity flow from the canal system of the district. The benefit per acre shall be voted on as it is applied to land in the district that can be irrigated by gravity flow from the irrigation system, and also the benefit to land in the district that cannot be irrigated by gravity flow.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.650. Election

(a) If the board desires to submit the question of whether or not to adopt the method of assessing benefits provided in Section 58.649 of this code, it shall order an election to be held in the district and shall submit the proposition in the manner provided for other district elections.

(b) The ballots for the election shall be printed to provide for voting for or against the proposition: "Uniform assessment of benefits of \$___ per acre on all irrigable land in the district."

(c) The board shall determine the amounts to fill the space in the proposition. The amount of charge per acre may be found by dividing the number of acres of land into the amount of debt to be incurred by the district in providing for irrigation.

(d) If a majority of the persons voting in the election vote in favor of the proposition, it shall be adopted.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.651. Setting Annual Value of Land Unnecessary

If the district adopts the uniform acreage valuation for taxation, the valuation shall be applied to all irrigable land and it is not necessary for the assessor and collector or the board of equalization to annually fix the value of the land or equalize the values. It is also unnecessary for the board to appoint a commission to ascertain or fix the value of the improvement to particular land.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.652. Preparing Tax Rolls

(a) The board of equalization shall examine the renditions and tax rolls to determine if all property subject to taxation appears on the tax rolls. The board of equalization shall add to the tax roll any property which was left off or was not rendered for taxation and shall examine, correct, and certify the tax roll.

(b) Any property owner may protest to the board of equalization that his property has not been properly classified. The board of equalization shall con-

sider the protest and enter its findings in the minutes in the manner provided by law.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.653. Rendition of Property

Land which is taxed on the uniform acreage valuation shall be rendered for taxation as subject to irrigation. When land is rendered, the value need not be stated, and it is unnecessary for the person rendering the property to include the value of the land in an affidavit or for the assessor and collector to set a value on the land.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.654. Law Governing Administration of Benefit Tax Plan

The rate of taxation, the collection of taxes, the assessment of property, and the rendition of property for taxation shall be governed by the law relating to ad valorem taxes.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.655. Irrigating Nonirrigable Land

If land which is classified as nonirrigable is later irrigated by the district, before the owner of the land receives the water, he shall pay to the district an amount equal to the entire amount that would have been charged to the owner if the land had been originally classified as irrigable.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[Sections 58.656 to 58.690 reserved for expansion]

SUBCHAPTER N. ADDING AND EXCLUDING TERRITORY AND CONSOLIDATING DISTRICTS

§ 58.691. Excluding Land from District

After a district is organized, preliminary surveys are completed, and plans adopted by the district for the construction of a plant and improvements, and before the board calls an election for the authorization of construction bonds, the board must exclude land or other property from the district under the provisions of Sections 58.692-58.701 of this code, if the exclusions are practicable, just, or desirable.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.692. Hearing to Announce Proposed Exclusions and to Receive Petitions

Before the election to authorize construction bonds, the board shall give notice of a time and place of a hearing to announce its own conclusions relating to land or other property to be excluded and to

receive petitions for exclusion of land or other property.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.693. Notice of Hearing

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

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

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.694. Petition

(a) A petition for exclusion of land must accurately describe by metes and bounds the land to be excluded. A petition for exclusion of other property must describe the property to be excluded for identification.

(b) A petition for exclusion shall be filed with the district at least 10 days before the hearing and shall state clearly the particular grounds on which the exclusion is sought. Only the stated grounds shall be considered.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.695. Grounds for Exclusion

Exclusions from the district may be made on the grounds that:

(1) to retain certain land or other property within the district's taxing power would be arbitrary, would be unnecessary to conserve the public welfare, would impair or destroy the value of the property desired to be excluded, and would constitute the arbitrary imposition of a confiscatory burden;

(2) to retain any given land or other property in the district and to extend to it, either presently or in the future, the benefits, service, or protection of the district's facilities would create an undue and uneconomical burden on the remainder of the district; or

(3) the land desired to be excluded cannot be served with water or drained so as to make it useful for irrigation purposes, or otherwise benefited by the district's proposed improvements.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.696. Hearing Procedure

The board may adjourn the hearing from one day to another and until all persons desiring to be heard are heard. The board immediately shall specifically describe all property which it proposes to exclude on its own motion and shall hear first any protests and evidence against exclusions proposed on the board's own motion.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.697. Order Excluding Land

After considering all engineering data and other evidence presented to it, the board shall determine whether the facts disclose the affirmative of the propositions stated in Subdivision (1) or (2) or, if appropriate, in Subdivision (3) of Section 58.695 of this code. If the affirmative exists, the board shall enter an order excluding all land or other property falling within the conditions defined by the respective subdivisions and shall redefine the boundaries of the district in the order to embrace all land not excluded.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.698. Suit to Review, Etc.

Any person owning an interest in land affected by the order may file a petition within 20 days after the effective date of the order to review, set aside, modify, or suspend the order.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.699. Venue of Suit

The venue in any action shall be in any district court which has jurisdiction in the county in which the district is located. If the district includes land in more than one county, the venue shall be in the district court having jurisdiction in the county in which the major portion of the acreage of the land sought to be excluded from the district is located.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.700. Trial Procedure

(a) A suit to review, modify, suspend, or set aside the order of the board shall be a trial de novo as that term is understood in an appeal from a justice of the peace court to a county court. The trial shall be strictly de novo with no presumption of validity or reasonableness or presumption of any character in favor of the order.

(b) The decision shall be made on a preponderance of the evidence and facts found in the trial as in other civil cases, independently of any action taken by the board.

(c) The procedure for the trial and the determination of the orders and judgments to be entered shall be governed solely by the rules of law, evidence, and procedure of the state courts according to the constitution, statutes, and rules of procedure for the trial of civil actions.

(d) The so-called "substantial evidence" rule enunciated by the courts for orders of other administrative or quasi-judicial agencies shall not apply in the trial.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.701. Appeal

A person may appeal from the judgment or order of a district court in a suit brought under the provisions of Sections 58.698-58.700 of this code to the court of civil appeals and supreme court as in other civil cases in which the district court has original jurisdiction. The appeal is subject to the statutes and rules of practice and procedure in civil cases.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.702. Exclusion of Nonagricultural and Nonirrigable Land from the District

After the district is organized, acquires facilities with which to function as an irrigation district, and votes, issues, and sells bonds for the purposes for which the district was organized, land within the district subject to taxation which is not agricultural land or cannot be irrigated in a practicable manner may be excluded from the district by complying with the provisions of Sections 58.703-58.713 of this code. The land may also be excluded pursuant to the provisions contained in either Chapter 119, Acts of the 47th Legislature, Regular Session, 1941, as amended, or Chapter 86, Acts of the 62nd Legislature, Regular Session, 1971,¹ in the same manner as if the district was a water control and improvement district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

¹ See Water Code Special Laws Table, arts. 7880-76c, 8280-3.2.

§ 58.703. Prerequisite to Application for Exclusion

The owner of land in the district which is not agricultural land or cannot be irrigated in a practicable manner may apply for its exclusion from the district if all taxes levied and assessed by the district on the land to be excluded have been fully paid, including all bond tax and flat water rate assessment.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.704. Substituting Land of Equal Acreage and Value

Land which can be irrigated in a practicable manner of at least equal acreage and equal value to the land being excluded must be added to the district simultaneously with the exclusion of the nonagricultural or nonirrigable land.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.705. Securing Application to Substitute Land

The board may require an owner of land in the district who has applied for the exclusion of his nonagricultural or nonirrigable land from the district to procure an application of the owner of land adjoining the boundaries or the canals of the district, and capable of being irrigated in a practicable manner from the facilities of the district, for inclusion in the district of his land in an amount and value at least equal to the land which is to be excluded under the application of the owner of nonagricultural or nonirrigable land. Each application shall set forth the facts concerning the land to be excluded from and the land to be added to the district, including evidence of their reasonable market value.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.706. Application of Owner of New Land to be Substituted

The owner of the new land to be added shall submit an application setting forth that the owner of the new land assumes the payment of all taxes to be levied on his land by the district after the date the land is added to the district. The application also shall set forth an agreement by the owner of the new land that the land will be subject to future taxes for bond tax and flat rate and all other assessments levied and assessed by the district as though the land had been incorporated originally in the district. The application also shall contain an agreement by the owner of the new land that the land will be subject to the same liens and provisions as all other land in the district and subject to the statutes governing all other land in the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.707. Consent of Outstanding Bondholders

(a) The board shall communicate the contents of the applications to exclude nonagricultural or nonirrigable land and to include an equal amount of irrigable land to the holders of outstanding bonds voted, issued, sold, and delivered by the district and payable from taxes levied on property in the district.

(b) If the consent in writing of 95 percent or more of the bondholders to the plan is filed with the board, the board may hold a hearing on the applications.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.708. Notice of Hearing on Applications

The board shall give notice of the hearing on the applications by publishing the time, place, and nature of the hearing one time in a newspaper published in a county in which all or part of the district is located. The newspaper must have been published regularly for more than 12 months preceding the date of the publication of the notice and must have circulation in the district. The notice shall be published not less than 10 days nor more than 20 days before the date of the hearing.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.709. Hearing Procedure

The board shall hear all interested parties and all evidence in connection with the applications.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.710. Board's Resolution to Substitute Land

If the board finds that all the conditions provided for the exclusion of land and inclusion of other land in the district exist, it may adopt and enter in its minutes a resolution to exclude land which is nonagricultural or nonirrigable in a practicable manner and include land which may be irrigated from the facilities of the district in a practicable manner.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.711. Liability of Excluded and Included Land

The land excluded from the district is free from any lien or liability created on the excluded land by reason of its having been included in the district. Land added to the district is subject to all laws, liens, and provisions governing the district and the land in the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.712. Duty to Advise Water Rights Commission

The board shall furnish the Texas Water Rights Commission a detailed description of the land excluded and a detailed description of the land included within 30 days after the exclusion and inclusion of land under the provisions of Sections 58.702-58.711 of this code.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.713. Right to Serve New Land Included in District

The district has the same right to furnish water service to the included land that it previously had to furnish service to the excluded land. The mere inclusion of a larger total acreage than that excluded

ed does not give the district the right to irrigate a larger total acreage or to appropriate a larger quantity or volume of public water for irrigation than the district would have had the right to irrigate or to appropriate before the exclusion and inclusion of the land.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.714. Adding Land by Petition of Landowner

The owner of land may file with the board a petition requesting that the land described by metes and bounds in the petition be included in the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.715. Petition Signed and Executed

The petition of the landowner to add his land to the district shall be signed and executed in the manner provided by law for the conveyance of real estate.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.716. Hearing and Determination of Petition

The board shall hear and consider the petition and may add to the district the land described in the petition if it is considered to be to the advantage of the district and if the water supply, canals, and other improvements are sufficient to supply the added land without injuring land already in the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.717. Recording Petition

A petition which is granted adding land to the district shall be filed for record and shall be recorded in the office of the county clerk of the county in which the land is located.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.718. Adding Certain Territory by Petition

Landowners of a defined area of territory not included in a district may file a petition requesting inclusion with the secretary of the board signed by a majority of the landowners in the territory or by 50 landowners if the number of landowners is more than 50.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.719. Hearing on Petition

The board by order shall set the time and place of the hearing on the petition to include the territory in the district. The hearing shall be held not less than 30 days from the date of the order.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.720. Notice of Hearing

(a) The secretary of the board shall issue notice of the time and place of the hearing, and the notice shall describe the territory proposed to be annexed.

(b) The secretary shall post copies of the notice in three public places in the district and one copy in a public place in the territory proposed to be annexed. The notices shall be posted for at least 15 days before the day of the hearing.

(c) The notice shall be published one time in a newspaper with general circulation in the county. The notice shall be published at least 15 days before the day of the hearing.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.721. Resolution to Add Territory

If the board finds on hearing the petition that the addition would be of benefit to the district and that the water supply, canals, and other improvements are sufficient to supply the added territory without injuring the land already in the district, it may add the territory to the district by resolution entered in its minutes. The board does not have to include all the territory described in the petition if it finds that a modification or change is necessary or desirable.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.722. Elections to Ratify Annexation of Land

(a) Annexation of the territory is not final until ratified by a majority vote of the electors at a separate election held in the district and by a majority vote of the electors at a separate election held in the territory proposed to be added.

(b) If the district has outstanding debts or taxes, the same election shall determine also whether or not the territory to be added will assume its proportion of the debts or taxes if the land is added to the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.723. Notice and Procedure of Election

The notice of the election, the manner and the time of giving the notice, the manner of holding the election, and qualifications of the voters shall be governed by the provisions of Subchapter E of this chapter.¹

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

¹Section 58.221 et seq.

§ 58.724. Liability of Added Territory

The added territory shall bear its pro rata part of all indebtedness or taxes that may be owed, contracted, or authorized by the district to which it is added.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.725. Liability of Land Added to a District Operating under Article XVI, Section 59, of the Texas Constitution

(a) If land is added to a district operating under Article XVI, Section 59, of the Texas Constitution, the order of the board adding the land to the district may contain an agreement that the added land will be taxed on the benefit basis instead of the ad valorem basis. The agreement may provide that the added land will be taxed on a uniform acreage basis or on the plan of a definite annual payment.

(b) The board, in its order adding land to the district, shall set the amount of the debts to be paid by the owner of the added land and levy annual taxes against the land to pay the debts. The taxes assessed by the board constitute a lien against the added land in the same manner and to the same extent as if the land had been a part of the district at the time the indebtedness was incurred or authorized by an election held for that purpose.

(c) The added land is a part of the district and is liable for debts subsequently incurred by the district in the same manner as other land in the district. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.726. Consolidation of Districts

Two or more districts governed by the provisions of this chapter may consolidate into one district as provided by Sections 58.727–58.730 of this code. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.727. Elections to Approve Consolidation

(a) After the directors of each district have agreed on the terms and conditions of consolidation, they shall order an election in each district to determine whether the districts should be consolidated.

(b) The directors of each district shall order the election to be held on the same day in each district and shall give notice of the election for at least 20 days in the manner provided by law for other elections.

(c) The districts may be consolidated only if the electors in each district vote in favor of the consolidation. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.728. Governing Consolidated Districts

(a) After two or more districts are consolidated, they become one district, except for the payment of debts created before consolidation, and are governed as one district.

(b) During a period of 90 days after the date of the election to approve consolidation, the officers of each district shall continue to act jointly as officers of the original districts to wind up the affairs of their respective districts.

(c) The consolidation agreement may provide that the officers of the original districts shall continue to act jointly as officers of the consolidated district until the next general election or name persons to serve as officers of the consolidated district until the next general election if all officers of the original districts agree to resign.

(d) New officers of the consolidated district must qualify as officers of the district within the period of 90 days after the election and shall assume their offices at the expiration of the 90-day period.

(e) The current board shall approve the bond of each new officer. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.729. Debts of Original Districts

After two or more districts are consolidated, the debts of the original districts are protected and are not impaired. These debts may be paid by taxes or assessments levied on the land in the original districts as if they had not consolidated or contributions from the consolidated district on terms stated in the consolidation agreement. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.730. Assessment and Collection of Taxes

After consolidation, the officers of the consolidated district shall assess and collect taxes on property in the original district to pay debts created by the original district. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[Sections 58.731 to 58.780 reserved for expansion]

SUBCHAPTER O. DISSOLUTION OF DISTRICT

§ 58.781. Dissolution of District Prior to Issuance of Bonds

(a) If the electors of a district reject the proposal to issue construction bonds by a constitutional or statutory majority vote, the board must dissolve the district and liquidate the affairs of the district as provided in Sections 58.781–58.792 of this code.

(b) Subject to the provisions of Subchapter G of Chapter 50 of this code,¹ if a district finds at any time before the authorization of construction bonds or the final lending of its credit in another form that the proposed undertaking for any reason is impracticable or apparently cannot be successfully and beneficially accomplished, the board may issue notice of a hearing on a proposal to dissolve the district.

(c) Subject to the provisions of Subchapter G of Chapter 50 of this code, if 20 percent of the qualified voters of a district petition the board for a hearing

on a proposal to dissolve the district and deposit with the board an amount estimated to cover the actual cost of giving notice and holding the hearing, the board shall publish notice of the hearing within 10 days and shall hold the hearing within 40 days after the filing of the petition, as provided in Sections 58.782-58.785 of this code. If the finding is against the petition, the deposit shall be applied to pay the cost of giving notice and holding the hearing.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

¹ Section 50.251 et seq.

§ 58.782. Notice of Hearing

The board shall post notice of the hearing on the bulletin board at the courthouse door of each county in which the district is located and at three or more other public places within the boundaries of the district. The notice must be posted at least 10 days before the hearing on the proposed dissolution of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.783. Hearing

The board shall hear all interested persons and shall consider their evidence at the time and place stated in the notice.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.784. Board's Order to Continue or Dissolve District

The board shall determine from the evidence whether the best interests of the persons, land, and property in the district will be promoted by prosecuting the district's plans or whether the best interests of the persons and property in the district will be served by dissolving the district, and the board shall enter the appropriate findings and order in the record.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.785. Judicial Review of Board's Order

The board's decree to continue or to dissolve the district shall be final and cannot be judicially reviewed except on the ground of fraud, palpable error, or gross abuse of discretion.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.786. Appointment of Trustee

(a) If the board orders the dissolution of the district, it shall appoint a director or some other competent person as trustee to close the affairs of the district as soon as practicable.

(b) The board shall determine the term of service and the amount of compensation for the trustee.
[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.787. Discharge of District's Obligations by Trustees

(a) The trustee shall reduce all assets and resources of the district to possession and money and apply them to discharge the outstanding obligations of the district, having regard to specific funds.

(b) If required, the board shall levy, assess, and collect sufficient additional taxes to pay all necessary expenses and outstanding obligations of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.788. Discharge of Trustee

The trustee shall be discharged when all obligations of the district are paid and the trustee's account is verified and settled.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.789. Final Order of Dissolution

After all obligations are paid and the trustee is discharged, the board shall enter its final order of dissolution and record the final order in the deed records of the county or counties in which the district is located.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.790. Water Rights of Dissolved District

Water rights held from the state shall revert to the state and may not be assigned by the district in anticipation of dissolution.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.791. Taxes in Excess of District's Obligations

(a) If taxes have been collected by the dissolved district in excess of the amount required to liquidate the obligations of the district, the excess shall be paid ratably to the county treasurer or treasurers of the county or counties in which the district was located.

(b) The commissioners courts shall credit the money received from the dissolved district to the interest and sinking fund for any outstanding county bonds. If the county has no outstanding bonds, the money may be applied as the commissioners court lawfully directs.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.792. Permanent Record of Dissolved District

All records, vouchers, and accounts of the district shall be delivered to the commissioners court of the county in which the district's principal office was located and shall be preserved as a permanent record.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.793. Dissolution of District for Failure to Complete Plant

Subject to the provisions of Subchapter G of Chapter 50 of this code,¹ if a district has not within 10 years from the date of its creation commenced and completed the construction of a plant and improvements to carry out the purposes of its creation in accordance with the plans adopted by the district, the board may enter a resolution in its minutes to dissolve the district under the provisions of Sections 58.794-58.828 of this code. After compliance with these provisions, a vote of the electors of the district, and the payment of its valid, enforceable indebtedness, the district may be dissolved.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

¹ Section 50.251 et seq.

§ 58.794. Resolution to Dissolve District

The board shall find in its resolution to dissolve the district that the plans of the district are impracticable or that the purposes of the district should be abandoned and shall state the reasons for the finding.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.795. Statements of Indebtedness and Expenses

The board shall prepare or have prepared and shall approve a statement of all valid, enforceable indebtedness of the district and shall enter the statement in the minutes. The board shall prepare or have prepared an estimate of all expenses incurred or to be incurred in the dissolution of the district and in the collection of sufficient taxes to pay all valid, enforceable indebtedness of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.796. Election to Approve Dissolution of District and Issuance of Dissolution Bonds

The board shall enter an order calling an election to determine whether or not the district shall be dissolved and bonds issued to pay the district's indebtedness and estimated expenses.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.797. Maximum Amount, Interest Rate, and Maturity of Bonds

The maximum amount of bonds to be voted on and issued shall not be more than the total amount of the approved valid, enforceable indebtedness and the estimate of expenses, exclusive of the estimated cost of collection of taxes. The maximum amount of bonds, exclusive of interest and expenses of collection, to be issued for fees and expenses of dissolution of the district shall not be more than an amount equal to \$2 times the number of acres in the district. The bonds shall mature serially over a period of not more than seven years.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.798. Notice of Election

(a) The president and secretary of the board shall issue notice of the election, stating:

- (1) the findings of the board with reference to the dissolution of the district;
- (2) the amount of bonds to be issued;
- (3) the interest rate on the bonds; and
- (4) the time and place of the election.

(b) The notice also shall contain a statement of the estimates and the expenses incurred and to be incurred in the dissolution of the district and the collection of taxes for the payment of the bonds and shall state that the bonds will be payable by the levy of taxes on the taxable property in the district in proportion to the values of the property as provided in Section 58.804 of this code.

(c) The notice shall be published once a week for two consecutive weeks in a newspaper with general circulation in the county or counties in which any part of the district is located. The first publication shall be at least 14 days before the day of the election.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.799. Procedure for Holding Election

(a) The ballots for the election shall be printed to provide for voting for or against the proposition: "Dissolution of the district and issuance of dissolution bonds and the levy of taxes for the payment of the bonds."

(b) The election shall be conducted and returns made and canvassed according to the provisions in this chapter for construction bond elections.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.800. Issuance and Sale of Dissolution Bonds

(a) If a majority of the electors at the election vote in favor of the dissolution of the district and the issuance of bonds and the levy of taxes for the

payment of the bonds, the board shall issue and sell the bonds or any part of them. The bonds shall be known as "dissolution bonds."

(b) The board may deliver the dissolution bonds or any part of them in satisfaction of the valid, enforceable indebtedness of the district for which the bonds are issued, or in payment of expenses incurred or to be incurred in connection with the dissolution of the district, or in payment of services rendered or to be rendered to the district.

(c) The dissolution bonds shall be:

- (1) serially numbered, commencing with the first maturities;
- (2) issued in the name of the district;
- (3) signed by the president; and
- (4) attested by the secretary, with the seal of the district attached.

(d) The board shall determine the maturities of the bonds not to exceed seven years from their date, the denominations of the bonds, and the interest. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.801. Destroying Unsold Bonds

If a majority of the electors at the election vote in favor of the dissolution of the district, the board shall destroy all unsold bonds of the district and enter an order cancelling all unissued and unsold bonds authorized by the electors. After the destruction and the entry of the order, the bonds shall have no further force or effect.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.802. Board's Authority to Contract

The board may contract with trustees, engineers, attorneys, and others it considers necessary or desirable to properly liquidate and wind up the affairs of the district. The board also may assume obligations made by others for the benefit of the district, or from which the district benefited, which in its judgment may be fair and equitable.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.803. Tax to Pay Dissolution Bonds

The order issuing the dissolution bonds shall provide that the principal of and interest on the bonds shall be payable from the proceeds of a tax to be levied on the taxable property located in the district. The tax shall be in an amount sufficient for the payment of the principal and interest.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.804. Determining Amount of Tax

(a) The value of all of the taxable property of the district shall be taken at the assessed value as determined and approved by the board in the manner provided in this subchapter, and an amount equal to the total of the principal and all interest to maturity on the bonds voted plus the estimated cost of collection of taxes shall be assessed against the taxable property of the district on the ad valorem basis.

(b) The tax against the taxable property of each owner shall be that portion of the total principal and interest of the dissolution bonds and costs of collection which the assessed value of the taxable property of the owner bears to the total assessed values in the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.805. Payment of Tax

The amount of the tax on the taxable property of each owner shall be payable in equal annual installments, during the period in which the bonds mature, on dates specified in the order issuing the bonds. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.806. Advance Payment of Taxes in Cash

The order issuing the bonds shall provide that a property owner may secure release of the entire amount of his taxable property as assessed on the rolls from the tax levied for the dissolution bonds by the payment in cash of the full amount of tax. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.807. Computing Amount of Advance Cash Payment

(a) In order to compute the full amount of an advance cash payment, the interest rate on the bonds shall be applied on an annual basis to each unpaid installment of taxes for the number of years the installment of taxes must run before being due. The total of the items computed shall be deducted from the face amount of the unpaid installment of taxes.

(b) In order to compute the full amount of an advance cash payment, the interest rate on the bonds shall be applied on an annual basis to each unpaid past-due installment of taxes for the number of years the installment has been past due, and 10 percent of the face amount of each installment that is past due shall be added as a penalty. The total of the items computed shall be added to the unpaid installments.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.808. Surrender of Bonds in Payment of Taxes

The order issuing the bonds shall provide that any of the bonds with all unmatured interest and all appurtenant coupons may be surrendered at any time in payment of all unpaid installments of the taxes. The amount of taxes found to be due by the method provided in Section 58.809 of this code may be discharged by the surrender of the proper amount of dissolution bonds, together with all unpaid appurtenant interest coupons at the face value of the bonds and coupons.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.809. Computing Amount of Payment Made by Surrendering Bonds

(a) In order to compute payment by surrendering bonds, the interest rate on the bonds shall be applied on an annual basis to each unpaid installment of taxes for the number of years the installment must run before being due. The total of the items computed shall be deducted from the face amount of the unpaid installments of taxes.

(b) In order to compute payment by surrendering bonds, the interest rate on the bonds shall be applied to each unpaid installment of taxes for the number of years the installment has been past due and 10 percent of the face amount of each installment of taxes that is past due shall be added as penalty. The total of the items computed shall be added to the face amount of each unpaid installment of taxes. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.810. Use by Trustee of Advance Payments of Tax

The order issuing the bonds shall provide that the bonds shall be called and redeemed by the trustee in the inverse order of their maturity and in the inverse order of their serial numbers. They shall be paid out of any funds received in advance payment of taxes that are not required for meeting any past-due and unpaid principal and interest or the next maturing installment of principal and interest. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.811. Approval and Registration of Dissolution Bonds

After the dissolution bonds are issued by the board and before they are put in circulation, the bonds, at the option of the board, shall either be submitted to and approved by the attorney general and registered by the comptroller as provided in Sections 58.446-58.448 of this code or be validated by suit as provided in Sections 58.453-58.461 of this code. The provisions of these sections of this

code which are not inconsistent with the provisions of this subchapter are applicable to the dissolution bonds provided for in this subchapter.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.812. Preparing Tax Roll

Before the issuance and delivery of the bonds, the board shall prepare a tax roll in duplicate showing the full and true valuation of all property subject to taxation, the name of the owner of the property, if known; and if the name of the owner is not known, the tax roll shall state that the owner of the property is not known.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.813. Filing Tentative Tax Roll

After the tax roll is prepared, it shall be filed in the district office, if any, and if there is not, in the office of the county clerk of the county or counties in which the district is located. The tax roll shall be subject to public inspection.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.814. Notice of Meeting as Board of Equalization

(a) After the tax roll has been filed for at least five days, the board shall publish a notice once a week for two consecutive weeks in a newspaper with general circulation in the county or counties in which any part of the district is located. The first publication shall be at least 14 days before the meeting of the board of equalization.

(b) The notice shall call attention to the filing of the tax roll and the name and place or places where the tax roll is filed and available for inspection, and shall notify all interested persons of the time and place of the meeting of the board for the purpose of acting as a board of equalization to examine, correct, equalize, appraise, and approve the valuations of the taxable property of the district and improvements on taxable property as set forth in the tax roll. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.815. Meeting as Board of Equalization

At the time and place stated in the notice, the board shall meet and examine the tax roll. The board shall equalize as nearly as possible the value of all property for taxation and fix the value of all property for taxation.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.816. Authority and Procedure as Board of Equalization

(a) Any interested person may appear at the meeting and offer evidence for or against any matter being considered by the board of equalization. The board may send for persons and papers, and may administer oaths to persons who testify before the board, and may ascertain the full true value of all property subject to taxation.

(b) The board may lower or raise the valuation of all property listed on the tax roll and place property on the roll which did not appear on it. The board shall correct any errors of assessment and equalize the value of property appearing on the roll.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.817. Approving Tax Roll

After the board of equalization finally fixes the valuation of all taxable property in the district and the tax roll of the district is finally prepared, the board shall meet and consider the tax roll, make all necessary corrections in the tax roll, and endorse its approval on the roll.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.818. Approved Tax Roll not Subject to Revision

The action of the board in finally approving the tax roll is final and is not subject to revision by the board or any other tribunal.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.819. Filing Approved Tax Roll

After the final approval of the tax roll by the board, the board shall file the tax roll with the assessor and collector of the county or counties in which the district is located.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.820. Collection of Taxes

The assessor and collector shall collect the taxes shown on the roll on the land located in the county for which he is assessor and collector at the time and in the manner specified by the board in its various orders issuing the dissolution bonds and levying the taxes. The assessor and collector is entitled to one percent of the amount collected for his services in collecting the taxes.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.821. Appointment of Trustee

(a) Before the issuance and delivery of dissolution bonds, the board shall appoint a trustee of the funds

to be collected from the taxes. The trustee shall be an individual or a bank or trust company in the county or one of the counties in which the district is located.

(b) The board may determine the powers, rights, duties, liabilities, and other matters relating to the trusteeship and the appointment of successor trustees which the board considers proper to effectuate the purpose of the trusteeship.

(c) The board may determine the bond to be given by the trustee and the amount to be paid to the trustee from the funds collected from the taxes. [Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.822. Authority of the Trustee

The trustee shall receive from the assessor and collector all proceeds from the assessments less the assessor and collector's charges and shall be the paying agent of the district for the bonds. The bonds shall be payable at the place of business of the trustee. The trustee shall be authorized by the order providing for the issuance of the bonds to institute suits in the name of the district for the use and benefit of the holders of the bonds and to apply all sums of money recovered in the suits to the payment of the bonds.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.823. Tax Lien

After filing the tax roll in the office of the assessor and collector, the taxes, penalties, interest, and attorney's fees shall become a specific charge on and be secured by a lien superior to all other liens, except tax liens, on the land listed on the tax roll regardless of whether the ownership of the land is correctly stated on the tax roll.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.824. Foreclosure of Lien

(a) The lien shall be foreclosed for the full amount due and order of sale issued against the property or as much of it as may be found in a suit brought for the recovery of the taxes.

(b) The lien may be foreclosed in a suit or suits brought in the name of the district by the board, or by the trustee or his successor as provided by the board.

(c) The procedure for the suit shall be the procedure for ordinary civil foreclosure suits.

(d) The provisions of Chapter 506, Acts of the 45th Legislature, Regular Session, 1937, as amended,¹ shall not be applicable to the suits.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 7345b.

§ 58.825. Default in Payment of Tax Installment

(a) Default in the payment of an installment of taxes levied for the payment of dissolution bonds for 60 days after the installment becomes due and payable as provided by the board shall, at the option of the board or the trustee, immediately mature the remaining installments and cause the entire amount of the taxes to immediately become due and payable.

(b) The trustee shall bring suit for the collection of the entire amount of the taxes and for the foreclosure of the lien securing the payment of the taxes.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.826. Penalty and Attorney's Fee

(a) A penalty of 10 percent of the unpaid amount of taxes shall accrue immediately on default of payment of taxes after the 60 days.

(b) An attorney's fee of 10 percent of the unpaid amount of the taxes is due and payable immediately on institution of suit for collection and foreclosure.

(c) The penalty and attorney's fee shall be recovered in the suit and shall constitute an addition to the taxes and shall be secured by the tax lien.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.827. Discharge of Lien

(a) On the final payment of the taxes, either the assessor and collector or the trustee shall issue a certificate certifying that the taxes have been fully satisfied and the lien is released.

(b) The execution and acknowledgment of the certificate and the recording of the certificate in the deed records of the county in which the property is located shall be full and conclusive evidence of the discharge of the taxes and liens.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.828. District Considered Dissolved

(a) On the issuance and sale or delivery of the dissolution bonds and the appointment and qualification of the trustee, the secretary shall deposit all available existing records of the district in the office of the county clerk of the county or one of the counties in which the district is located.

(b) The district immediately is considered dissolved for all purposes, except that the taxes levied against the taxable property may be enforced in the name of the district on behalf of the bondholders by the trustee or his successors. The surviving board may meet from time to time until the dissolution bonds are paid and discharged and may delegate its powers and give instructions to the trustee or his successors as the board sees fit and circumstances warrant. After the payment of all dissolution

bonds, interest, and costs of collection the board shall be dissolved.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.829. Dissolution of District in Counties of Less Than 11,000 Population

Subject to the provisions of Sections 50.251-50.256 of this code, a district located entirely in a county having a population of less than 11,000, according to the last preceding federal census, may be abolished by a majority vote of those entitled to vote and voting at an election held for the purpose of determining whether or not the district should be dissolved.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.830. Petition for Dissolution of District

A petition for the dissolution of the district shall be filed with the board and shall state the name of the district and the purpose for which the election is requested. The petition may refer to the order establishing the district for boundaries, limits, and area of the district.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.831. Signatures on Petition

A petition for dissolution of the district may be signed and filed in two or more copies. The petition shall be signed by a majority in number of the property owners with land in the district and the property owners of a majority in value of the land in the district, as shown by the tax rolls of the district, or 50 landowners if the number of landowners in the district is more than 50.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.832. Procedure for Holding Election

(a) An election to determine whether or not the district shall be dissolved shall be held in accordance with the provisions of Subchapter E of this chapter.

(b) The ballots for the election shall be printed to provide for voting for or against the proposition: "The dissolution of district."

(c) The returns of the election shall be canvassed and the result declared by the board. The board shall enter an order in its minutes declaring the result of the election, which order shall be made and entered in accordance with Section 58.034 of this code. The order shall be filed in the office of the county clerk and recorded in the deed records of the county as provided in Section 58.034 of this code.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.833. Election in District Including City, Town, or Municipal Corporation

In an election to dissolve a district in which a city, town, or municipal corporation is located, the city, town, or municipal corporation shall be a separate voting precinct, and the ballots cast in the city, town, or municipal corporation shall be counted and canvassed to show the result of the election there. If the city, town, or municipal corporation votes against the dissolution of the district and the balance of the district votes for the dissolution of the district, the district shall be dissolved.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.834. Subsequent Election

If the proposition to dissolve the district fails to carry at the election held for that purpose, no other election for the same purpose shall be held within one year after the date of the election.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.835. District Dissolved

If a majority of those voting at the election vote in favor of dissolving the district, the district shall be dissolved and shall have no further authority after the election, except that any debts incurred shall be paid and the organization shall be maintained until all the debts are paid.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

§ 58.836. Taxes to Pay Indebtedness after Dissolution

If a district has outstanding bonds or other indebtedness maturing beyond the current year in which the dissolution occurs, the commissioners court of the county in which the district is located shall levy and have collected, as county taxes are assessed and collected, sufficient taxes on all taxable property in the district to pay the principal of and interest on the bonds and other indebtedness when due.

[Added by Acts 1977, 65th Leg., p. 1537, ch. 627, § 1, eff. Aug. 29, 1977.]

[Chapter 59 reserved for expansion]

CHAPTER 60. NAVIGATION DISTRICTS—GENERAL PROVISIONS

SUBCHAPTER C. ADDITIONAL POWERS AND DUTIES OF CERTAIN DISTRICTS

§ 60.038. Sale or Lease of Land

(a) A district may sell or lease all or any part of land owned by it, whether the land is acquired by gift or purchase, in settlement of any litigation, controversy, or claim in behalf of the district, or in

any other manner, except that lands or flats heretofore purchased from the State of Texas under Article 8225, Revised Civil Statutes of Texas, 1925,¹ or granted by the State of Texas in any general or special act, may be sold only to the State of Texas or exchanged with the State of Texas for other lands or exchanged for adjacent littoral land as authorized by Section 61.117 of this code.

(b) Land which is sold or leased shall be declared surplus land and shall not be needed for use by the district in connection with the development of a navigation project.

(c) Sale or lease of land shall be made as provided by Sections 60.039–60.042 of this code.

[Amended by Acts 1975, 64th Leg., p. 801, ch. 310, § 1, eff. May 27, 1975.]

¹ Repealed; see, now, §§ 61.115 to 61.117.

Sections 4 and 5 of the 1975 amendatory act provided:

"Sec. 4. Venue for any action arising under this Act brought by or against the State of Texas, or involving the state's claim to title to land conveyed or sought to be conveyed under this Act, shall lie in a district court of Travis County, Texas."

"Sec. 5. Any and all laws or parts of laws in conflict with the provisions of this Act are repealed to the extent of such conflict."

CHAPTER 61. ARTICLE III, SECTION 52, NAVIGATION DISTRICTS

SUBCHAPTER D. POWERS AND DUTIES

§ 61.116. Lease of State Owned Lands and Flats

(a) Any district organized under this chapter or any special law or any general law under which navigation districts may be created may apply for a lease from the State of Texas of the surface estate of any lands and flats belonging to the state which are covered or partly covered by the water of any of the bays or other arms of the sea; however, any navigation district created after the effective date of this Act may not lease the surface estate of any such lands or flats which are located within 10 miles of the boundary of any navigation district in existence on the effective date of this Act, without first receiving the written approval of the district now in existence. The words "navigation district," "district," or "districts" as used in Sections 61.116, 61.117, and 60.038 of the Texas Water Code shall apply to any incorporated city in this state which owns and operates wharves, docks, and other marine port facilities.

(b) The state, through the School Land Board, may lease these state owned lands or flats to eligible navigation districts only for purposes reasonably related to the promotion of navigation. The term "navigation" as used herein refers to marine commerce and immediately related activities, including but not limited to port development; channel construction and maintenance; commercial and sport fishing; recreational boating; industrial site locations; transportation, shipping, and storage facilities; pollution abatement facilities; and all other

activities necessary or appropriate to the promotion of marine commerce; but specifically does not refer to residential development.

(c) In making application for a lease of state owned lands or flats, the district shall include the following information:

(1) a description of the lands or flats sought to be leased;

(2) a plan showing how it proposes to utilize the land and a timetable indicating approximately when such utilization will take place;

(3) a draft environmental impact statement assessing the effect of the proposed use on the environment, which statement shall generally conform to the requirements of the National Environmental Policy Act,¹ until such time as the legislature shall impose different requirements; however, a draft environmental impact statement shall not be required if the proposed use requires no dredging, filling, or bulkheading. If the proposed use does require dredging, filling, or bulkheading, but² the lease shall be processed as provided in Subsections (d), (e), and (f) of this section without the filing of a draft environmental impact statement if the applicant so requests in writing; but in such a case, the School Land Board shall include in the lease provisions requiring (i) that the draft environmental impact statement required by federal law be filed with the School Land Board before the district makes any use of such lands or flats which requires dredging, filling, or bulkheading; (ii) that approval of such use be obtained from the School Land Board after copies of the summary of the draft environmental impact statement and a description of the proposed use are circulated for comment and a hearing held as provided in Subsections (d) and (e) of this section and the School Land Board shall be authorized to give its approval to make such amendments to the lease as may then be deemed necessary by it as a result of information developed in the draft environmental impact statement; and (iii) that the lease shall cease to be effective at a time specifically stated in the lease unless prior to that time accord concerning environmental issues has been reached between the district and the School Land Board;

(4) proof satisfactory to the board establishing the public convenience and necessity for acquisition of lands sought to be leased.

(d) Upon receipt of an application and accompanying information, the School Land Board shall submit copies thereof to the member agencies of the Interagency Council on Natural Resources and the Environment and all other appropriate state agencies for review and comment. In addition, the board shall submit for review and comment the proposed terms

and conditions of the lease. The board shall allow 30 days for such review and comment, and may extend the review period for an additional 30 days upon written request by the executive director of any state agency.

(e) Following the expiration of the period provided for review and comment, or following the expiration of the 30 day extension of such period, if applicable, the School Land Board shall cause a hearing to be held in the county in which the land proposed to be leased is located. Notice of the hearing shall be given by publication for at least three days, not less than two weeks nor more than four weeks prior to the hearing, in the daily paper having the greatest circulation in the county. Members of the board or their designated representatives shall conduct the hearing, at which any party may offer testimony in support of or in opposition to the application, and the board shall consider the record of the hearing in making a decision on the application.

(f) After submission of all evidence, the School Land Board shall authorize the issuance or denial of the proposed lease and shall determine the reasonable cost to the district, term of years, special limitations, if any, and other conditions necessary to best serve the interest of the general public. In establishing the consideration to be paid to the state for the lease, due weight shall be given to the depth of the water over the submerged land, its proximity to development activities, and its proposed use. Final action shall be taken by the board no more than 60 days following the public hearing.

(g) The funds derived from the lease shall be paid to the General Land Office for transfer to the proper funds of the state.

(h) Districts may sublease lands leased from the state under the provisions of this section to third parties for activities reasonably related to navigation, but such sublease shall be subject to the approval of the School Land Board according to the procedures, requirements, and criteria set forth in Subsections (c) and (d) of Section 61.116 of this code; provided, however, that no approval by the School Land Board shall be required if the sublease is for a purpose contemplated by the district and approved by the board in the district's original lease. It is further provided that no environmental impact statement shall ever be necessary for any sublease which requires no dredging, filling, or bulkheading, and which would not have a substantial impact upon the environment, or which requires only insubstantial dredging, filling, or bulkheading, as determined by the board; nor shall a district in obtaining approval for a sublease under any circumstances be required to reveal the name of the tenant to whom the sublease is to be made.

(i) If lands or flats leased from the state under the provisions of this section are utilized by the district or its sublessee for any purpose or use not approved by the School Land Board, the district shall be given notice and an opportunity to change and correct the use. If the use is not changed and corrected within a reasonable time after receipt of such notice, the lease may be terminated by the School Land Board and the lands or flats shall revert to the State of Texas.

[Amended by Acts 1975, 64th Leg., p. 801, ch. 310, § 2, eff. May 27, 1975.]

¹ 42 U.S.C.A. § 4321 et seq.

² So in enrolled bill.

Sections 4 and 5 of the 1975 amendatory act provided:

"Sec. 4. Venue for any action arising under this Act brought by or against the State of Texas, or involving the state's claim to title to land conveyed or sought to be conveyed under this Act, shall lie in a district court of Travis County, Texas."

"Sec. 5. Any and all laws or parts of laws in conflict with the provisions of this Act are repealed to the extent of such conflict."

§ 61.117. Limitations on Sales and Use of State Lands and Flats

(a) The State of Texas shall retain its rights in all mines and minerals, including oil, gas, and geothermal resources, in and under the land, together with the right to enter the land for the purpose of development when it leases land under Section 61.116 of this code.

(b) All leases of land under Section 61.116 are subject to oil, gas, or mineral leases in existence at the time of the lease to the district.

(c) Any land which has been franchised or leased or is being used by any navigation district or by the United States for the purpose of navigation, industry, or other purpose incident to the operation of a port shall not be entered or possessed by the State of Texas or by anyone claiming under the State of Texas for the purpose of exploring for oil, gas, or other minerals except by directional drilling. No easement, lease, or permit may be granted on land which has been leased to a navigation district which will interfere with the proposed use of the land by the navigation district, and the prior approval of the navigation district shall be obtained for such purpose.

(d) No surface drilling location may be nearer than 660 feet and special permission from the Commissioner of the General Land Office is necessary to make any surface location nearer than 2,160 feet, measured at right angles from the nearest bulkhead line designated by a navigation district or the United States as the bulkhead line or from the nearest dredged bottom edge of any channel, slip, or turning basin which has been dredged, or which has been authorized by the United States as a federal project for future construction, whichever is nearer.

(e) In the event land is leased to a navigation district for construction of a navigation project, the School Land Board may in the lease designate the

district to be the agent of the State of Texas with authority to grant to the United States of America such easements for dredging and disposal of dredged material as may be required for federal participation in the project. In designating the district to be the agent of the State of Texas for the purpose of granting spoil easements, the board may include a requirement that the district obtain the approval of the board before granting any such easement. Such approval may be given in the form of accepting a master plan for spoil disposal.

(f) Districts which, prior to the enactment of this provision, have obtained patents to state owned lands or flats under Article 8225, Revised Civil Statutes of Texas, 1925,¹ or under any general or special act, and which still claim title to any such lands or flats, may not hereafter dispose of any such lands or flats which were conveyed to them by the State of Texas and may not lease such lands or flats for a use for which districts are not authorized to lease their other lands; however, in the event a district possesses lands it finds to be in excess of its needs, it may sell such surplus lands or flats back to the State of Texas for the same consideration as originally paid to the state or exchange them for other lands with the State of Texas. It is further provided that the limitation on resale of lands or flats acquired from the State of Texas shall not prevent a district from exchanging such lands or flats for land, or rights in land, of an adjacent littoral owner for the purpose of adjusting or straightening the boundary between such lands. All such exchanges made after December 31, 1973, shall be subject to the approval of the School Land Board.

(g) Any district which, prior to the effective date of this Act has maintained, and which at the effective date of this Act is maintaining, any channel, dredged material disposal site, or other navigational aid or improvement on state owned lands to which the district holds no patent or lease from the state shall notify the General Land Office of the boundaries of such submerged land used by furnishing a map or other drawing acceptable to the General Land Office.

[Amended by Acts 1975, 64th Leg., p. 801, ch. 310, § 3, eff. May 27, 1975.]

¹ Repealed.

Sections 4 and 5 of the 1975 amendatory act provided:

"Sec. 4. Venue for any action arising under this Act brought by or against the State of Texas, or involving the state's claim to title to land conveyed or sought to be conveyed under this Act, shall lie in a district court of Travis County, Texas."

"Sec. 5. Any and all laws or parts of laws in conflict with the provisions of this Act are repealed to the extent of such conflict."

SUBCHAPTER E. PORT FACILITIES

§ 61.169. Contracts

The provisions governing the award of contracts by districts shall apply in all cases consistent with the provisions of this subchapter except that in case of emergency contracts may be let by the commis-

sion for not more than \$5,000 without advertisement for bids. In case of urgent necessity or present calamity, advertisement for bids may be waived. [Amended by Acts 1977, 65th Leg., p. 804, ch. 299, § 1, eff. Aug. 29, 1977.]

**CHAPTER 62. ARTICLE XVI, SECTION 59,
NAVIGATION DISTRICTS**

SUBCHAPTER D. POWERS AND DUTIES

§ 62.110. Notice of Bids

Notice that a contract is to be awarded shall be given by publishing notice once a week for two consecutive weeks in one or more newspapers with general circulation in the state and by posting notice for at least 14 days in five public places in the county of jurisdiction, one of which shall be the courthouse door and at least two of which shall be inside the district.

[Amended by Acts 1977, 65th Leg., p. 805, ch. 299, § 2, eff. Aug. 29, 1977.]

SUBCHAPTER E. GENERAL FISCAL PROVISIONS

§ 62.153. Duties of District Treasurer

The district treasurer shall:

(1) open an account for all funds received by him for the district and all district funds which he pays out;

(2) pay out money on vouchers signed by the chairman of the commission, any two members of the commission, or the commissioners court, or any two of any number of persons delegated by the commission with authority to sign vouchers, provided that the commission may, in such delegation, limit the authority of such persons and may require that each furnish a fidelity bond in such amount as the commission shall specify and subject to commission approval;

(3) carefully preserve all orders for the payment of money; and

(4) render a correct account to the commissioners court of all matters relating to the financial condition of the district as often as required by the commissioners court.

[Amended by Acts 1975, 64th Leg., p. 1915, ch. 618, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 amendatory act provided:
"Any and all laws or parts of laws in conflict with the provisions of this Act are repealed to the extent of such conflict."

CHAPTER 63. SELF-LIQUIDATING NAVIGATION DISTRICTS

SUBCHAPTER I. ANNEXATION [NEW]

Section

- 63.371. Annexation Authority.
- 63.372. Petition.
- 63.373. Scheduling Petition for Hearing; Notice.
- 63.374. Hearing.
- 63.375. Election Order.
- 63.376. Notice of Election.
- 63.377. Ballots.
- 63.378. Election Officials.
- 63.379. Canvass of Vote; Entry of Order.

SUBCHAPTER C. ADMINISTRATIVE PROVISIONS

§ 63.089. Election of Commissioners

(a) An election shall be held in the district on the first Tuesday after the first Monday in November of each even numbered year to elect the three commissioners. However, the commissioners may, by adopting an order duly entered on the minutes, determine to hold the election on the first Tuesday after the first Monday in October of each even numbered year to elect the commissioners authorized by law.

(b) Section 9b, Texas Election Code (Article 2.01b, Vernon's Texas Election Code), requiring that certain elections be held on specified uniform dates, does not apply to the election provided for in this section.

[Amended by Acts 1977, 65th Leg., p. 1978, ch. 791, § 1, eff. Aug. 29, 1977.]

§ 63.090. Placing Names of Candidates on Ballot

A candidate for commissioner must file an application with the secretary not later than 5 p. m. of the 31st day before the day of the election to have his name printed on the ballot. Also, a candidate's name may be placed on the ballot by petition of 20 or more qualified electors of the district filed with the secretary by the deadline stated in the preceding sentence.

[Amended by Acts 1977, 65th Leg., p. 1978, ch. 791, § 2, eff. Aug. 29, 1977.]

§ 63.093. Notice of Election

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

(b) The notice shall be published once a week for four consecutive weeks in a newspaper published in the district or, if a newspaper is not published in the district, in a newspaper located nearest to the boundaries of the district. The first publication shall be made not less than 32 days nor more than 46 days before the day of the election.

[Amended by Acts 1977, 65th Leg., p. 1978, ch. 791, § 3, eff. Aug. 29, 1977.]

§ 63.098. Commissioner's Compensation

(a) Each commissioner shall receive a fee of not more than \$50 a day for each day of service necessary to the discharge of his duties, unless otherwise provided in accordance with Subsection (b) of this section.

(b) The commission may provide by an order entered in its minutes that compensation shall not be paid for the commissioners' services for a period of more than two years from the date of the order. [Amended by Acts 1977, 65th Leg., p. 159, ch. 79, § 1, eff. April 25, 1977.]

SUBCHAPTER D. POWERS AND DUTIES

§ 63.168. Bids for Contract

(a) Before the commission enters into a contract requiring the expenditure of \$5,000 or more, it shall submit the proposed contract for competitive bids.

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

[Amended by Acts 1977, 65th Leg., p. 805, ch. 299, § 3, eff. Aug. 29, 1977.]

SUBCHAPTER I. ANNEXATION

§ 63.371. Annexation Authority

A district created under this chapter or converted from a district created under Article III, Section 52 of the Texas Constitution, into a conservation and reclamation district under Article XVI, Section 59 of the Texas Constitution, may extend its boundaries and annex adjacent territory.

[Added by Acts 1977, 65th Leg., p. 1978, ch. 791, § 4, eff. Aug. 29, 1977.]

§ 63.372. Petition

Before territory is annexed to the district, a petition signed by 50 or a majority of the electors residing in the adjacent territory proposed to be annexed shall be presented to the commission requesting an election in the adjacent territory to determine whether or not the territory will be annexed and whether or not it will assume its pro rata part of the outstanding bonded debt of the district. [Added by Acts 1977, 65th Leg., p. 1978, ch. 791, § 4, eff. Aug. 29, 1977.]

§ 63.373. Scheduling Petition for Hearing; Notice

(a) After a petition is presented under Section 63.372 of this code, the commission shall set the petition for a hearing to be held within 10 days from the date of presentation of the petition.

(b) Notice of the hearing shall be posted at three public places in the territory proposed to be annexed for at least five days before the hearing on the petition. The notice shall include the time and place

of the hearing and the boundaries of the territory proposed to be annexed.

[Added by Acts 1977, 65th Leg., p. 1978, ch. 791, § 4, eff. Aug. 29, 1977.]

§ 63.374. Hearing

The commission shall hold the hearing on the subject of annexation of adjacent territory by the district, and any person who has taxable property in the territory proposed to be annexed may appear in person or by counsel and offer testimony or argument for or against the inclusion of all or any part of the land proposed to be annexed.

[Added by Acts 1977, 65th Leg., p. 1978, ch. 791, § 4, eff. Aug. 29, 1977.]

§ 63.375. Election Order

If after the hearing the commission finds that inclusion of the territory proposed to be annexed would be a direct benefit to all the land in that territory, the commission shall order an election to be held in the territory proposed to be annexed.

[Added by Acts 1977, 65th Leg., p. 1978, ch. 791, § 4, eff. Aug. 29, 1977.]

§ 63.376. Notice of Election

(a) The election shall be held not less than 20 nor more than 30 days from the day of the election order and after notice is given.

(b) Notice of the election shall be published once a week for 20 days immediately preceding the election in some newspaper published in the territory proposed to be annexed. If no newspaper is published in the territory, notice shall be posted in three public places inside the territory for at least 20 days immediately preceding the election.

(c) The notice:

(1) shall give the time and place or places for holding the election;

(2) shall give the boundaries of the territory proposed to be annexed; and

(3) may contain the substance of the order of the commission ordering the election.

(d) The secretary of the commission shall have the notice published or posted.

[Added by Acts 1977, 65th Leg., p. 1978, ch. 791, § 4, eff. Aug. 29, 1977.]

§ 63.377. Ballots

The ballots for the election shall be printed to allow for voting for or against: "Annexation to the navigation district" and "Assumption of a pro rata part of the bonded debt of the navigation district."

[Added by Acts 1977, 65th Leg., p. 1978, ch. 791, § 4, eff. Aug. 29, 1977.]

§ 63.378. Election Officials

The commission shall appoint one judge and two clerks for each election box or place to hold the election. The judge and clerks shall be electors in the territory proposed to be annexed and shall reside near the place for holding the election.

[Added by Acts 1977, 65th Leg., p. 1978, ch. 791, § 4, eff. Aug. 29, 1977.]

§ 63.379. Canvass of Vote; Entry of Order

(a) The election judges shall certify the election returns to the commission, and the commission shall canvass the returns.

(b) If a majority of the electors voting at the election favor annexation and assumption of the pro rata part of the bonded debt of the district, the commission shall enter an order in its minutes annexing the territory, and from and after the entry of the order, the annexed territory shall be a part of the district with all the rights, benefits, and burdens of property originally situated in the district.

(c) If a majority of the electors voting at the election favor annexation and the proposition to assume the bonded debt fails to carry, the commission shall enter an order in its minutes annexing the territory to the district, and from and after the entry of the order, the annexed territory shall be a part of the district with the exception of the assumption of the outstanding bonded indebtedness. The annexed territory shall be subject to a tax for maintenance and operation and shall be liable for all other bonded indebtedness and other indebtedness thereafter legally imposed by the district.

(d) After an order of annexation has been entered in the minutes of the commission, a certified copy of the order shall be prepared by the secretary of the commission and shall include the boundaries of the territory annexed. The secretary shall record the order or have it recorded in the real estate records of the county or counties in which the territory is located.

[Added by Acts 1977, 65th Leg., p. 1978, ch. 791, § 4, eff. Aug. 29, 1977.]

NUMERICAL TABLE OF SPECIAL LAWS PERTAINING TO WATER

The tabulation below lists the special laws from the 64th Legislature pertaining to water arranged numerically in Vernon's Texas Civil Statutes classification order or, where not so classified, in order of legislative enactment by subject matter.

Civ.St.Art.	Laws Citation	Subject Matter
7621d—2	1969, ch. 409 1971, ch. 202 1973, ch. 258 1973, ch. 466 1975, ch. 443	Gulf Coast Waste Disposal Authority
7621c	1965, ch. 409 1969, ch. 376 1971, ch. 387 1971, ch. 388 1973, ch. 266, § 22 1973, ch. 296 1977, ch. 735, § 2.034	Water Well Drillers Act
3161b	1947, ch. 437 1961, ch. 482 1975, ch. 453	Drainage districts—Commissioners — Powers, compensation, etc., counties of 150,000 to 350,000
8194 note	1961, ch. 520 1975, ch. 663	Nueces County Drainage and Conservation District No. 2, validation
8198 note	1953, ch. 195 1957, ch. 291 1965, ch. 524 1963, ch. 197 1967, ch. 25 1975, ch. 279 1977, ch. 701	Calhoun County Navigation District Port of Port Arthur Navigation District of Jefferson County
8235a	1945, ch. 90 1947, ch. 242 1955, ch. 211 1957, ch. 71 1977, ch. 299, § 4	Navigation districts — District containing city of 375,000 or more
8248 to 8257	1920, 4th C.S., p. 3 1923, p. 42 1975, ch. 297	—Pilots
Districts Created and/or Validated Pursuant to Const. Art. 16, § 59		
8280—101	1929, 2nd C.S., ch. 13 1931, 1st C.S., ch. 5 1935, ch. 19 1935, 1st C.S., ch. 368, § 14 1953, ch. 194, §§ 1, 2 1973, ch. 240	Brazos River Authority — Creation; powers, etc.
8280—101 note	1934, 4th C.S., ch. 3 1935, 1st C.S., ch. 368 1953, ch. 194, §§ 3 to 5 1975, ch. 152	—Donation of taxes; bonds, etc.
8280—106	1933, 1st C.S., ch. 75 1935, 1st C.S., ch. 410 1969, ch. 432 1975, ch. 433	Guadalupe-Blanco River Authority
8280—107	1934, 4th C.S., ch. 7 1935, 1st C.S., ch. 405 1937, ch. 350 1939, Spec.L., p. 1048 1941, ch. 398 1949, ch. 61 1951, ch. 90	Lower Colorado River Authority

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8280—115	----- 1935, 1st C.S., ch. 427 1937, 2nd C.S., ch. 20 1939, Spec.L., p. 1074 1943, ch. 390 1945, ch. 305 1971, ch. 695 1975, ch. 699	----- Nueces River Authority
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8280—141	----- 1951, ch. 62 1969, ch. 122 1975, ch. 90	----- North Texas Municipal Water District
8280—145	----- 1951, ch. 373 1954, 1st C.S., ch. 24 1971, ch. 737 1975, ch. 639 1977, ch. 91	----- San Patricio Municipal Water District
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8280—147	----- 1953, ch. 78 1959, ch. 375 1959, 2nd C.S., ch. 28 1975, ch. 193	----- —Creation, powers, etc.
8280—160	----- 1954, 1st C.S., ch. 35 1957, ch. 73 1961, ch. 174 1965, ch. 555 1973, ch. 172 1975, ch. 75	----- Green Belt Municipal and Industrial Water Authority
8280—163	----- 1955, ch. 123 1965, ch. 15 1969, ch. 593 1977, ch. 720	----- Benbrook Sewer and Water Authority
8280—176	----- 1955, ch. 376 1962, 3rd C.S., ch. 77 1977, ch. 532	----- Runnels County Water Authority
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8280—213	1957, 1st C.S., ch. 26 1961, ch. 64 1971, ch. 208 1975, ch. 464	Hondos Creek Watershed Improvement District
8280—228	1959, ch. 279 1961, ch. 504 1967, ch. 570 1969, ch. 715 1969, ch. 856 1975, ch. 217 1977, ch. 529	Red River Authority of Texas
8280—256	1961, ch. 364 1975, ch. 463	Escondido Watershed District
8280—257	1961, ch. 405 1965, ch. 542 1975, ch. 210	Upper Leon Pines Municipal Water District
8280—292	1963, ch. 307 1977, ch. 212	Orange County Drainage District of Orange County
8280—293	1963, ch. 312 1965, ch. 599 1969, ch. 136 1975, ch. 655	Lake Cities Municipal Utility Authority
8280—280	1963, ch. 101 1973, ch. 164 1977, ch. 786	Clear Lake City Water Authority
8280—477	1971, ch. 135 1977, ch. 117	Irving Flood Control District
8280—487	1971, ch. 347 1977, ch. 44	Cibolo Creek Municipal Authority
8280—537	1971, ch. 647 1975, ch. 461	Northwest Harris County Public Utility District —No. 3
—	1973, ch. 438 1975, ch. 115	Palo Duro River Authority
8280—448	1969, ch. 481 1977, ch. 698	Kerrville South Utility District [repealed]
—	1973, ch. 602 1977, ch. 691	Anna—Van Alstyne Water District
—	1975, ch. 36	Matador Water District
—	1975, ch. 201	Farmers Branch-Carrollton Flood Control District
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—	1977, ch. 208	Llano Estacado Water District
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—	1977, ch. 337	West Jefferson County Municipal Water District
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*

TEXAS BUSINESS CORPORATION ACT

PART ONE

Art. 1.02. Definitions

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

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

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

[Amended by Acts 1975, 64th Leg., p. 305, ch. 134, § 1, eff. Sept. 1, 1975.]

PART TWO

Art. 2.01. Purposes

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

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

[See *Compact Edition, Volume 2 for text of B(1) and (2)*]

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

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

(b) The business of engaging in the petroleum oil producing business in this State and the business of engaging directly in the oil pipe line business in this State: provided, however, that a corporation engaged in

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

[See *Compact Edition, Volume 1 for text of (4)*]
[Amended by Acts 1977, 65th Leg., p. 2690, ch. 871, art. II, § 3, eff. Sept. 1, 1977.]

Art. 2.19. Certificates Representing Shares

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

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

tained in the articles of incorporation, or (2) shall conspicuously state on the face or back of the certificate that (a) such a statement is set forth in the articles of incorporation on file in the office of the Secretary of State and (b) the corporation will furnish a copy of such statement to the record holder of the certificate without charge on request to the corporation at its principal place of business or registered office.

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

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

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

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

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

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

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

C. Any restriction on the transfer or registration of transfer of a security of a corporation, if reasonable and noted conspicuously on the security may be enforced against the holder of the restricted security or any successor or transferee of the holder including an executor, administrator, trustee, guardian, or other fiduciary entrusted with like responsibility for

the person or estate of the holder. Unless noted conspicuously on the security, a restriction, even though otherwise enforceable, is ineffective except against a person with actual knowledge of the restriction.

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

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

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

- (a) the name of the corporation;
- (b) that the copy of the bylaw or agreement is a true and correct copy of the same; and
- (c) that such filing has been duly authorized by the board of directors or, in the case of a close corporation managed by its shareholders pursuant to Article 2.30-1, by its shareholders.

(2) Such statement shall be executed in duplicate by the corporation by its president or a vice-president and verified by the officer signing such statement, and shall be delivered to the Secretary of State with copies of such bylaw or agreement restricting the transfer of shares or other securities attached thereto. If the Secretary of State finds that such statement conforms to law and all franchise taxes and fees have been paid as prescribed by law, he shall:

- (a) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;
- (b) file one of such duplicate originals in his office; and
- (c) return the other duplicate original to the corporation or its representative.

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

F. A corporation that is a party to an agreement restricting the transfer of its shares or other securities may make such agreement part of its articles of incorporation without restating the provisions of such agreement therein by complying with the provisions of Part Four of this Act for amendment of the articles of incorporation. If such agreement

shall alter any provision of the original or amended articles of incorporation, the articles of amendment shall identify by reference or description the altered provision. If such agreement is to be an addition to the original or amended articles of incorporation, the articles of amendment shall state that fact. The articles of amendment shall have attached thereto a copy of the agreement restricting the transfer of shares or other securities, and shall state that the attached copy of such agreement is a true and correct copy of the same and that its inclusion as part of the articles of incorporation has been duly authorized in the manner required by this Act to amend the articles of incorporation.

[Amended by Acts 1975, 64th Leg., p. 306, ch. 134, §§ 4 and 5, Sept. 1, 1975.]

Art. 2.30-1. The Close Corporation: Definition; Formation; Election to Become; Termination of the Election; Management by Shareholders

A. As used in this Act, a "close corporation" means a domestic corporation which (i) is organized under or is subject to this Act and (ii) has elected to be a close corporation by including in its articles of incorporation (whether original or amended or restated), in addition to the provisions required by Article 3.02 of this Act, the following:

- (1) a statement that it is a close corporation;
- (2) a statement that no shares of any class and no securities evidencing the right to acquire shares of the close corporation shall be issued by means of any public offering, solicitation, or advertisement;

(3) a statement that all of the issued shares of each class and all of the issued securities evidencing the right to acquire shares of the close corporation shall be subject to one or more of the restrictions on transfer permitted by Articles 2.22 or 2.30-2 of this Act, and if such restrictions on transfer are being imposed on the articles of incorporation or in an agreement permitted by this Act to be set forth in full in or made a part of the articles of incorporation, the statement shall be followed either by (i) the provisions of the articles of incorporation or amendment thereto that impose such restrictions, (ii) the agreement if it is being set forth in full in the articles of incorporation, or (iii) a reference to such agreement if it is being made a part of the articles of incorporation; and

(4) a statement that all of the issued shares of all classes, excluding treasury shares, and all of the issued securities evidencing the right to acquire shares of the close corporation shall be held of record by no more than a specified number of persons, not exceeding thirty-five (35) in the aggregate. To determine the num-

ber of holders of record for purposes of this definition, shares and securities evidencing rights to acquire shares which are held (1) by husband and wife as (a) community property, (b) joint tenants (with or without right of survivorship), or (c) tenants by the entirety, or (2) by an estate of a decedent or an incompetent, or (3) by an express trust, partnership, association, or corporation created or organized and existing other than for the primary purpose of holding shares or securities evidencing rights to acquire shares in a close corporation, shall be treated as held by one person. Nothing in this definition shall be deemed to affect the right of any corporation which has not elected to be a close corporation as provided in this Article, or its shareholders, directors, or officers to exercise any power or right, granted or permitted by any provision of this Act. To the extent not inconsistent with any provision of this Act dealing specifically with a close corporation, all other provisions of this Act shall apply to a close corporation.

B. The articles of incorporation also may set forth the qualifications of shareholders and/or security-holders, either by specifying classes of persons who shall be entitled to be holders of record of any class of shares or securities, or by specifying classes of persons who shall not be entitled to be holders of record of any class of shares or securities, or both.

C. Nothing contained in this Article shall be deemed to prohibit or preclude the inclusion of any other matters required or permitted to be set forth in articles of incorporation by this Act, to the extent they are not inconsistent with the matters actually set forth in articles of incorporation of a close corporation pursuant to Sections A and B of this Article.

D. To form a close corporation, all of the initial subscribers to the corporation's shares and securities evidencing the right to acquire its shares shall serve as incorporators and the articles of incorporation, in addition to the matters required or permitted to be set forth therein by this Act, also shall include a statement that the incorporators include all such subscribers. The filing of the articles of incorporation by the Secretary of State shall constitute acceptance by the close corporation of the subscriptions of all such subscribers.

E. If an existing corporation desires to become a close corporation, it shall adopt articles of amendment in the manner provided by this Act which state that it has elected to become a close corporation and which make such other amendments to its articles of incorporation as may be required in order that the articles of incorporation, as so amended, shall set forth the matters required of a close corporation by this Act. The articles of amendment may include any other matter permitted to be set forth in the

articles of incorporation of a close corporation by this Act and, to the extent not inconsistent with its status as a close corporation, any other matter that may be set forth in articles of incorporation. The election to become a close corporation and any amendments in connection therewith shall be approved by the affirmative vote of the holders of all of the outstanding shares of each class, whether or not entitled to vote thereon by the articles of incorporation.

F. If a close corporation desires to terminate its status as a close corporation, it shall adopt articles of amendment in the manner provided by this Act which state that it has elected to terminate its status as a close corporation and which delete the provisions required or permitted to be set forth in the articles of incorporation of a close corporation under this Act that are not permitted for corporations generally. Such election to terminate its status as a close corporation and amendments required in connection therewith shall be approved by the affirmative vote of the holders of at least two-thirds of the outstanding shares of each class, whether or not entitled to vote thereon by the articles of incorporation, unless a greater or lesser vote is required or permitted by the articles of incorporation for such termination. Any provision of the articles of incorporation requiring a greater vote for such termination shall not be amended, repealed, or modified by any vote less than that required to terminate the corporation's status as a close corporation. Any provision restricting the transfer of the shares or other securities evidencing the right to acquire shares contained in or made part of the articles of incorporation pursuant to Article 2.30-2 of this Act, shall remain in effect to the extent not prohibited by other provisions of this Act whether or not thereafter contained in or made a part of the articles of incorporation or bylaws unless, in connection with the adoption of articles of amendment to terminate the corporation's status as a close corporation, a resolution is adopted or an agreement is entered into terminating or amending such restrictions on transfer by the number or percentage of shareholders and/or security-holders (whether or not entitled to vote in the case of a resolution) required by the articles of incorporation, bylaws or agreement for termination or amendment of such restrictions on transfer.

G. If the articles of incorporation of a close corporation expressly so state and if each certificate representing its issued and outstanding shares so conspicuously states, the business and affairs of such close corporation shall be managed by the shareholders of the close corporation rather than by a board of directors, and the following provisions shall apply:

(1) Whenever the context requires, the shareholders of such close corporation shall be

deemed directors of such corporation for purposes of applying any of the provisions of this Act.

(2) The shareholders of such close corporation shall be subject to the liabilities imposed by this Act or by law for any action taken or neglected to be taken by directors of a corporation.

(3) Any action required or permitted by this Act to be taken by the board of directors of a corporation shall or may be taken by action of the shareholders of such close corporation at a meeting thereof or in the manner permitted by this Act without a meeting. Any such action taken shall be on the basis of the vote, cast in person or by proxy, by the holders of shares having a majority of the total voting power of all outstanding shares entitled to vote with respect to such action, unless the articles of incorporation either in general or on specified matters provide (a) for a greater vote or (b) for a vote on the basis of one or some other specified number of votes per such shareholder. In addition, any action consented to by all the shareholders shall be binding upon the corporation. Such consent may be evidenced (a) by the full knowledge of such action by all the shareholders and their failure to object thereto in a timely manner or (b) a consent in writing to such action in accordance with Article 9.10 of this Act or any other writing executed by or on behalf of all the shareholders reasonably evidencing such consent or (c) by any other means reasonably evidencing such consent.

H. A close corporation that is managed by its shareholders in accordance with this Act may elect to have its business and affairs managed by a board of directors by amending its articles of incorporation in the manner provided in this Act. At the meeting of shareholders to approve such amendment, there shall be elected such number of directors specified in the articles of amendment or provided for in the bylaws. The name and post office address of each person who is to serve as a director on the amendment becoming effective shall be set forth in the articles of amendment.

I. If any event occurs as a result of which one or more of the provisions or conditions included in a close corporation's articles of incorporation pursuant to Section A of this Article to qualify it as a close corporation has been breached:

(1) The corporation's status as a close corporation shall terminate unless:

(a) within thirty (30) days after the occurrence of the event, or within thirty (30) days after the event has been discovered, whichever is later, the corporation (i) files with the Secretary of State a certificate, executed by the corporation by its president

or a vice-president and verified by the officer signing such statement, setting forth (A) the name of such corporation, and (B) a statement that a specified provision or condition included in its articles of incorporation pursuant to Section A of this Article to qualify it as a close corporation has been breached, and (ii) delivers to each shareholder of record, either personally or by mail (if mailed, in accordance with the requirements of the second sentence of Article 2.25), a copy of such certificate; and

(b) the corporation, within sixty (60) days after the filing of such certificate, takes such steps as are necessary to correct the situation which threatens its status as a close corporation, including, without limitation, the refusal to register the transfer of any shares which have been wrongfully transferred, or commencement in a court of competent jurisdiction of a proceeding to prevent the corporation from losing its status as a close corporation or to restore its status as such, as permitted by Article 2.30-3 of this Act.

(2) When the situation which threatens the status of the corporation as a close corporation has been remedied, and if the corporation has not amended its articles of incorporation in accordance with Section F of this Article, the corporation shall file with the Secretary of State a certificate, executed by the corporation's president or a vice-president and verified by the officer signing such statement, setting forth (a) the name of such corporation, (b) a reference to the statement previously filed with the Secretary of State by such corporation pursuant to paragraph (a) of Subsection (1) of this Section, and (c) a statement that no breach of any of the provisions or conditions included in its articles of incorporation pursuant to Section A of this Article exists.

(3) If within the sixty (60) day period provided in Subsection (1)(b) of this Section, the situation which threatened the status of such corporation as a close corporation is not remedied, the corporation's status as a close corporation shall thereafter be terminated, unless its status as a close corporation has been stayed by a court of competent jurisdiction pending final adjudication in a proceeding under Article 2.30-3 or in any other proceeding that will result in the corporation being unable to maintain or being restored to its status as a close corporation. If pursuant to Section G of this Article the business and affairs of such corporation are being managed by its shareholders rather than by a board of directors, the president shall call a

meeting of the shareholders entitled to vote thereon to elect a board of directors; and if he fails to call such a meeting within thirty (30) days from the date when the corporation's status as a close corporation so terminated, any shareholder, whether or not entitled to vote, may call such meeting with the same rights and powers as are provided in this Act with respect to the call of an annual meeting of shareholders by a shareholder. At such meeting there shall be elected such number of directors as have been specified in the articles of incorporation or the bylaws of such corporation or, if no such number is specified, one (1) director shall be elected. During the period until such director(s) is elected, the person or persons to whom management of the corporation has been delegated by the shareholders shall act as a board of directors and the business and affairs of the corporation shall be conducted in the manner provided for corporations generally under this Act.

J. A corporation which met the definition of a close corporation immediately prior to the effective date of the 1975 amendment to this Article 2.30-1 shall retain its status as a close corporation for a period of one year after such effective date, provided it continues during such one-year period to meet all the requirements of a close corporation set forth in Section A of this Article, as amended, other than the inclusion of the required statements in its articles of incorporation. After such one-year period, a corporation no longer shall have the status of a close corporation unless during such year it shall have amended its articles of incorporation to set out the matters required to be stated therein by Section A of this Article; provided, however, that nothing in this Article shall require a close corporation to so amend its articles of incorporation if, before the effective date of the 1975 amendment to this Article, the articles of incorporation of such corporation provided that its business and affairs were to be managed by its shareholders or granted any shareholder or other holders of any specified number or percentage of shares of any class of shares an option to dissolve the close corporation. Should any such corporation subsequently amend its articles of incorporation, the matters required to be stated by Section A shall be set forth in the articles of amendment and approved in the manner required by that Section. No agreement among the shareholders of a close corporation as heretofore permitted to be entered into by Article 2.30-2, or any other act performed by or in behalf of such corporation, before the effective date of the 1975 amendment to this Article 2.30-1, shall be invalidated or otherwise affected by such corporation electing to become a close corporation in the manner provided by this Article.

[Amended by Acts 1975, 64th Leg., p. 308, ch. 134, § 6, eff. Sept. 1, 1975.]

Art. 2.30-2. Agreements Among Shareholders of a Close Corporation

A. The shareholders of a close corporation or the subscribers to its shares, if no shares have been issued, may enter into a written agreement executed by all the holders of and subscribers to shares of the corporation to regulate any phase of the business and affairs of the corporation or the relations of the holders of or subscribers to shares of the corporation, including, but not limited to, the following:

(1) Management of the business and affairs of the corporation whether by the board of directors in a manner otherwise than provided in this Act or by one or more of the shareholders or one or more other parties to be selected by the shareholders;

(2) Restrictions on the transfer of shares or other securities more restrictive than otherwise would be permitted to be imposed by Article 2.22, if not manifestly unreasonable;

(3) Exercise or division of voting requirements or power beyond those that would otherwise be permitted by this Act;

(4) Terms and conditions of employment of any shareholder, director, officer, or employee regardless of the length of time of such employment;

(5) Persons who shall or may be directors and officers of the corporation;

(6) Declaration and payment of dividends or division of profits;

(7) Arbitration of issues as to which the shareholders are deadlocked in voting power or as to which the directors or other parties managing the corporation are deadlocked in the event the shareholders are unable to break the deadlock; or

(8) Treatment of the business and affairs of the corporation as if it were a partnership or arrangement of the relations among the shareholders or between the shareholders and the corporation in a manner that would otherwise be appropriate only among partners.

B. Such shareholders' agreement shall either (1) be set forth in or made part of the original or amended articles of incorporation; or (2) be set forth in or made part of the bylaws of the corporation, provided such bylaws and a counterpart of the agreement be placed on file by the corporation at its principal place of business and its registered office and shall be subject to the same right of examination by a shareholder of the corporation, in person, or by agent, attorney, or accountant, as are the books and records of the corporation. If the agreement is set forth in or made part of the original articles of incorporation, all of the parties to the agreement at the time of incorporation who shall

have subscribed to shares of the corporation shall serve as incorporators of the close corporation. If set forth in or made part of an amendment to the articles of incorporation, the provisions of this Act for amendment of the articles of incorporation shall be complied with. In addition, such amendment shall have been adopted by an affirmative vote of all of the subscribers to shares if no shares have been issued, or of the holders of all outstanding shares, whether or not entitled to vote by the articles of incorporation. If set forth in or made part of the bylaws of the corporation either when originally adopted or later amended, such provision of the bylaws shall have been adopted, amended, or ratified by an affirmative vote of all the subscribers to shares, if no shares have been issued, or of the holders of all outstanding shares, whether or not entitled to vote by the articles of incorporation. Once such agreement has been set forth in or made part of the articles of incorporation or bylaws as provided herein, it may not be amended or removed therefrom, unless otherwise provided by the articles of incorporation or the bylaws, as the case may be, except by the affirmative vote or consent of all of the subscribers to shares, if no shares have been issued, or of the holders of all outstanding shares, whether or not entitled to vote by the articles of incorporation. If these provisions are not complied with, such agreement, even though otherwise enforceable among the parties thereto, shall not be enforceable by any party thereto who is knowingly responsible for such noncompliance nor against any transferee of shares except one who has actual knowledge of the existence of the agreement or who has acquired his shares by gift, bequest, or inheritance from a party to the agreement.

C. Each certificate representing shares issued by a close corporation whose shareholders have entered into an agreement permitted by this Article shall (1) set forth conspicuously a full or summary statement of such agreement on the face of the certificate; or (2) set forth such statement on the back of the certificate and conspicuously refer to the same on the face of the certificate; or (3) if the agreement has been set forth in or made part of the articles of incorporation, conspicuously state on the face or back of the certificate that such shares are subject to an agreement among all the shareholders of the close corporation and that the corporation will furnish to the record holder of the certificate without charge upon written request to the corporation at its principal place of business or registered office a copy of such agreement and that such agreement either is set forth in the articles of incorporation or it is made a part thereof and is on file in the office of the Secretary of State; or (4) if the agreement has been set forth in or made part of the bylaws and a counterpart of the agreement placed on file by the corporation at its principal place of business and its

registered office, conspicuously state on the face or back of the certificate that such shares are subject to an agreement among all the shareholders of the close corporation and that the corporation will furnish to the record holder of the certificate without charge upon written request to the corporation at its principal place of business or registered office a copy of such bylaw or agreement. An agreement permitted by this Article, which is noted conspicuously on the certificates representing shares of a close corporation in the manner prescribed in the preceding paragraph, shall be binding on and enforceable against a holder of such a certificate or any successor or transferee of such holder, including an executor, administrator, trustee, guardian, or other fiduciary entrusted with like responsibility for the person or estate of such holder. Unless noted conspicuously on the certificates representing shares of the close corporation in the manner prescribed in the preceding paragraph, an agreement permitted by this Article, even though otherwise enforceable, shall be ineffective except against a person with actual knowledge of such agreement.

D. If an agreement authorized by this Article contains any provisions which would not be valid under other provisions of the Act, such provisions shall be valid only so long as the corporation maintains its status as a close corporation under this Act. No other provision of the agreement shall be affected unless the parties thereto otherwise provide.

E. In the event a close corporation shall have a board of directors, the effect of an agreement authorized by this Article shall be to relieve the director or directors of, and to impose upon the shareholders who are parties to or are bound by the agreement and who voted for or assented to the transaction in question, the liabilities imposed by this Act or by law for action taken or neglected to be taken by directors to the extent that and so long as the discretion or powers of the directors in their management of corporate affairs is controlled by any such provision.

F. The provisions of this Article shall not be construed to prohibit any other agreements among two or more shareholders or security-holders permitted by other provisions of this Act.

[Amended by Acts 1975, 64th Leg., p. 312, ch. 134, § 7, eff. Sept. 1, 1975.]

Art. 2.30-3. Proceedings to Prevent Loss of Close Corporation Status or to Enforce Agreements Among Shareholders of a Close Corporation

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

C. Any court of competent jurisdiction in which a proceeding provided for in Section A of this Article may be brought may enjoin or set aside any

transfer or threatened transfer of shares or any securities of a close corporation which will adversely affect its status as a close corporation, or which is contrary to restrictions on the transfer of such shares permitted by Article 2.22 or 2.30-2 of this Act, and may enjoin any public offering, solicitation, or advertisement of shares or securities evidencing the right to acquire shares of the close corporation.

D. Nothing contained in this Article shall be construed to prevent or impair the ability of the close corporation or its shareholders or security-holders from properly terminating its status as a close corporation and from terminating or amending any restrictions on the transfer of shares or securities evidencing the right to acquire shares of the corporation in accordance with Article 2.30-1 of this Act, or shall impair the power of any court of competent jurisdiction in any proceeding properly brought before it to enforce any restriction on the transfer of shares or other securities permitted by Article 2.22 or 2.30-2 of this Act or any agreement among any number of holders of the shares or securities of a corporation or any number of the holders of such shares or securities and the corporation not provided for in Article 2.30-2 of this Act and to grant whatever remedies may be properly available in such proceedings.

[Amended by Acts 1975, 64th Leg., p. 314, ch. 134, §§ 8, 9, eff. Sept. 1, 1975.]

Art. 2.36. Executive and Other Committees

A. If the articles of incorporation or the bylaws so provide, the board of directors, by resolution adopted by a majority of the full board of directors, may designate from among its members an executive committee and one or more other committees, each of which, to the extent provided in such resolution or in the articles of incorporation or in the bylaws of the corporation, shall have and may exercise all of the authority of the board of directors, except that no such committee shall have the authority of the board of directors in reference to amending the articles of incorporation, approving a plan of merger or consolidation, recommending to the shareholders the sale, lease, or exchange of all or substantially all of the property and assets of the corporation otherwise than in the usual and regular course of its business, recommending to the shareholders a voluntary dissolution of the corporation or a revocation thereof, amending, altering, or repealing the bylaws of the corporation or adopting new bylaws for the corporation, filling vacancies in the board of directors or any such committee, electing or removing officers or members of any such committee, fixing the compensation of any member of such committee, or altering or repealing any resolution of the board of directors which by its terms provides that it shall not be so amendable or repealable; and, unless such resolution, the articles of incorporation,

or the bylaws of the corporation expressly so provide, no such committee shall have the power or authority to declare a dividend or to authorize the issuance of shares of the corporation. The designation of such committee and the delegation thereto of authority shall not operate to relieve the board of directors, or any member thereof, of any responsibility imposed by law.

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

Art. 2.43. Removal of Officers

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

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

PART THREE

Art. 3.01. Incorporators

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

[Amended by Acts 1975, 64th Leg., p. 315, ch. 134, § 11, eff. Sept. 1, 1975.]

Art. 3.02. Articles of Incorporation

A. The articles of incorporation shall set forth:

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

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

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

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

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

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

(9) If a corporation elects to become a close corporation as defined and governed by this Act any provision required or permitted by this Act to be stated in articles of incorporation of a close corporation, or setting out in full or making a part of the articles of incorporation an agreement among subscribers permitted by Article 2.30-2, but any such provision shall be preceded by a statement that the provision shall be subject to the corporation remaining a close corporation as defined by this Act;

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

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

(12) The number of directors constituting the initial board of directors and the names and addresses of the person or persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify, or, in the case of a close corporation whose business and affairs are to be managed by its shareholders, the names and addresses of the person or persons who have subscribed for shares to be issued by the close corporation and who will perform the functions of the initial board of directors provided for by this Act;

(13) The name and address of each incorporator.

[See *Compact Edition, Volume 2 for text of B*]
[Amended by Acts 1975, 64th Leg., p. 315, ch. 134, § 12, eff. Sept. 1, 1975.]

PART FOUR

Art. 4.01. Right to Amend Articles of Incorporation

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

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

- (1) To change its corporate name.
- (2) To change its period of duration.
- (3) To change, enlarge, or diminish its corporate purposes.
- (4) To increase or decrease the aggregate number of shares of any class which the corporation has authority to issue.
- (5) To increase or decrease the par value of the authorized shares of any class having a par value, whether issued or unissued.
- (6) To exchange, classify, or reclassify all or any part of its shares, whether issued or unissued or to cancel all or any part of its outstanding shares.
- (7) To change the designation of all or any part of its shares, whether issued or unissued, and to change the preferences, limitations, and relative rights in respect of all or any part of its shares, whether issued or unissued.
- (8) To change shares having a par value, whether issued or unissued, into the same or a different number of shares without par value, and to change shares without par value, whether issued or unissued, into the same or a different number of shares having a par value.
- (9) To change the shares of any class, whether issued or unissued, and whether with or without par value, into a different number of shares of the same class or into the same or a different number of shares, either with or without par value, of other classes.
- (10) To create new classes of shares having rights and preferences either prior and superior or subordinate and inferior to the shares of any class then authorized, whether issued or unissued.

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

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

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

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

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

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

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

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

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

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

[Amended by Acts 1975, 64th Leg., p. 316, ch. 134, §§ 14, 22, eff. Sept. 1, 1975.]

Art. 4.03. Class Voting on Amendments

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

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

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

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

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

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

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

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

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

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

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

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

(11) Include in or delete from the articles of incorporation any provisions required or permitted by Sections A and B of Article 2.30-1 of this Act to be included in original articles of incorporation of a close corporation.

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

[Amended by Acts 1975, 64th Leg., p. 318, ch. 134, § 15, eff. Sept. 1, 1975.]

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

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

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

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

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

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

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

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

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

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

[Amended by Acts 1975, 64th Leg., p. 319, ch. 134, § 17, eff. Sept. 1, 1975.]

PART SIX

Art. 6.01. Voluntary Dissolution by Incorporators or Directors

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

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

(a) The name of the corporation.

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

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

(d) That the corporation has not commenced business.

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

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

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

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

(a) Endorse on each of such duplicate originals the word "Filed," and the month, day, and year of the filing thereof.

(b) File one of such duplicate originals in his office.

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

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

[Amended by Acts 1975, 64th Leg., p. 319, ch. 134, § 18, eff. Sept. 1, 1975.]

PART EIGHT

Art. 8.02. Powers of Foreign Corporation

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

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

Art. 8.05. Application for Certificate of Authority

A. In order to procure a certificate of authority to transact business in this State, a foreign corpora-

tion shall make application therefor to the Secretary of State, which application shall set forth:

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

(2) If the name of the corporation does not contain the word "corporation," "company," "incorporated," or "limited," and does not contain an abbreviation of one (1) of such words, then the name of the corporation with the word or abbreviation which it elects to add thereto for use in this State.

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

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

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

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

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

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

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

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

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

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

[Amended by Acts 1975, 64th Leg., p. 320, ch. 134, § 20, eff. Sept. 1, 1975.]

PART TEN

Art. 10.01. Filing and Filing Fees

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

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

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

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

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

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

(6) Filing a copy of an amendment or supplement to the articles of incorporation of a foreign corporation holding a certificate of authority to transact business in this State, One Hundred Dollars (\$100.00).

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

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

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

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

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

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

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

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

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

(16) Filing statement of cancellation of reacquired shares, Ten Dollars (\$10.00).

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

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

(19) Filing application for withdrawal and issuing certificate therefor, Ten Dollars (\$10.00).

(20) Filing certificate from home state that foreign corporation is no longer in existence in said state, Ten Dollars (\$10.00).

(21) Maintaining a record of service of any process, notice or demand upon the Secretary of State as agent for foreign and domestic corporations and for any foreign association, joint stock company, partnership, or nonresident natural person, Ten Dollars (\$10.00).

(22) Filing a bylaw or agreement restricting transfer of shares or securities other than as an amendment to the articles of incorporation, Ten Dollars (\$10.00).

(23) Filing any instrument pursuant to this Act not expressly provided for above, Ten Dollars (\$10.00).

B. Except as otherwise expressly provided in this Act, any instrument to be filed pursuant to this Act shall be executed in duplicate by its president or a vice-president and by its secretary or an assistant secretary, and verified by one of the officers signing such instrument, and shall be delivered to the Secretary of State with copies attached thereto of any document incorporated by reference in or otherwise made in part of such instrument, or to be filed by means of such instrument. If the Secretary of State finds that such instrument conforms to law, he shall, when all franchise taxes and fees have been paid as prescribed by law:

(a) endorse on each of such duplicate originals the word "Filed", and the month, day, and year of the filing thereof;

(b) file one of such duplicate originals in his office;

(c) issue any certificate required by this Act relating to the subject matter of the filed instrument; and

(d) Return the other duplicate original, affixed to any certificate required to be issued by the Secretary of State, to the corporation or its representative.

[Amended by Acts 1975, 64th Leg., p. 321, ch. 134, § 21, eff. Sept. 1, 1975.]

TITLE 32

CORPORATIONS

CHAPTER ONE. TEXAS MISCELLANEOUS CORPORATION LAWS ACT

PART TWO

Article

1302-2.10. Corporations Discounting with Federal Intermediate
Credit Bank; Interest Rate [NEW].

PART TWO

Art. 1302-2.02. Notice by Firm

A. Whenever any banking, mercantile or other business firm desires to become incorporated without a change of firm name, such firm shall, in addition to the notice of dissolution required at Common Law, give notice of such intention to become incorporated for at least four (4) consecutive weeks in some newspaper published in the county in which such firm has its principal business office, if there be a newspaper in such county; and, if not, then in some newspaper published in some adjoining county; provided, however, that such notice shall only be published one (1) day in each week during the said four (4) weeks. Until such notice has been so published for the full period above-named, no change shall take place in the liability of such firm or the members thereof to those dealing with the firm or its members. It shall be a defense that a claimant had actual notice or knowledge of such incorporation.

[Amended by Acts 1977, 65th Leg., p. 201, ch. 100, § 1, eff. May 4, 1977.]

Art. 1302-2.06. Consideration for Indebtedness; Guaranties

A. No corporation, domestic or foreign, doing business in this state shall create any indebtedness whatever except for money paid, labor done, which is reasonably worth at least the sum at which it was taken by the corporation, or property actually received, reasonably worth at least the sum at which it was taken by the corporation, subject to the provisions of Sections B and C of this Article. In the absence of fraud in the transaction, the judgment of the Board of Directors or the shareholders, as the case may be, as to the value of the consideration received for any such indebtedness shall be conclusive.

B. Notwithstanding Section A of this Article, any corporation, domestic or foreign, doing business in this state shall have the power and authority to make a guaranty if the guaranty reasonably may be expected to benefit, directly or indirectly, the guarantor corporation. For purposes of this section and Section C of this Article, "guaranty" means a guaranty, mortgage, pledge, security agreement, or other agreement making the guarantor corporation or its assets responsible respecting the contracts, securities, or other obligations of any person (including, but not limited to, any domestic or foreign corporation, partnership, association, joint venture, or trust, but excluding any officer or director of such guarantor corporation). The decision of the Board of Directors that the guaranty may reasonably be expected to benefit, directly or indirectly, the guarantor corporation shall be binding upon the guarantor corporation, and no guaranty made by a corporation in accordance with the provisions of this Section B shall be invalid or unenforceable as against such corporation, unless such guaranty is sought to be enforced by a person who participated in a fraud on the guarantor corporation resulting in the making of the guaranty or by a person who had notice of such fraud before he acquired his rights under the guaranty. Nothing herein contained shall prevent a suit (1) prior to the making of a guaranty by a corporation, by a shareholder in a representative suit against the guarantor corporation, to enjoin the making of such guaranty on the ground that such guaranty could not reasonably be expected to benefit, directly or indirectly, the guarantor corporation, or (2) after the making of a guaranty by a corporation, by the guarantor corporation, whether acting directly or through a receiver, trustee, or other legal representative or through a shareholder in a representative suit, against the directors who voted for or assented to the making of such guaranty for damages or other appropriate relief on the ground that such guaranty could not reasonably have been expected to benefit, directly or indirectly, the guarantor corporation, but such directors shall be entitled to assert any defenses which they may have under law.

C. In addition to the power and authority granted in Section B of this Article, any domestic or foreign corporation doing business in the state has the power and authority to make a guaranty re-

specting any subsidiary, parent, or affiliated corporation if the action is approved by the Board of Directors of the guarantor corporation. For the purposes of this section only:

(1) "subsidiary corporation" means a corporation, 100 percent of whose outstanding shares are owned at the time of the action:

- (a) by the guarantor corporation itself;
- (b) by one or more of the guarantor corporation's subsidiary corporations; or
- (c) by the guarantor corporation and one or more of its subsidiary corporations;

(2) "parent corporation" means a corporation that at the time of the action owns 100 percent of the outstanding shares of the guarantor corporation:

- (a) by itself;
- (b) through one or more of its subsidiary corporations; or
- (c) with one or more of its subsidiary corporations; and

(3) "affiliated corporation" means a corporation, 100 percent of whose outstanding shares are owned at the time of the action:

- (a) by the parent corporation of the guarantor corporation;
- (b) by one or more of the parent corporation's subsidiary corporations; or
- (c) by the parent corporation and one or more of its subsidiary corporations.

D. Nothing in Section B or C of this Article is intended or shall be construed to limit or deny to any corporation, domestic or foreign, the right or power to do or perform any act which it is or may be empowered or authorized to do or perform under any other laws of the State of Texas now in force or hereafter enacted. Provided, however, Sections B and C of this Article shall not apply to nor enlarge the powers of any corporation, domestic or foreign, that does business pursuant to any provision of the Insurance Code of Texas, whether licensed in Texas or not, nor shall those sections allow or permit any corporation, not licensed under the Insurance Code of Texas, to engage in any character, type, class, or kind of fidelity, surety, or guaranty business or transaction subject to regulation under the Insurance Code.

[Amended by Acts 1977, 65th Leg., p. 1162, ch. 442, § 1, eff. Aug. 29, 1977.]

Art. 1302-2.10. Corporations Discounting with Federal Intermediate Credit Bank; Interest Rate

An agricultural credit corporation organized or operating under the laws of this state and discounting loans with the Federal Intermediate Credit Bank

of Houston, in making loans to its borrowers or discounting notes of the borrowers of an agricultural credit corporation, may charge the borrower interest at a rate not to exceed three percent per annum plus the rate of discount established and promulgated by the Federal Intermediate Credit Banks.

[Added by Acts 1977, 65th Leg., p. 2068, ch. 820, § 1, eff. Aug. 29, 1977.]

PART FOUR

Art. 1302-4.01. Conditions of Purchase of Lands

A. No private corporation (except a corporation that is organized under the Texas Non-Profit Corporation Act and that is exempt from Federal income tax under the provisions of Section 501(c)(3), Internal Revenue Code of 1954,¹ as now or hereafter amended, or under its successor statute) shall be permitted to purchase any lands under any provision of this Part, unless the lands so purchased are necessary to enable such corporation to do business in this State, or except where such land is purchased in due course of business to secure the payment of debt. [Amended by Acts 1977, 65th Leg., p. 838, ch. 313, § 2, eff. Aug. 29, 1977.]

¹ 26 U.S.C.A. § 501(c)(3).

Art. 1302-4.02. Sale of Surplus Lands

A. All private corporations (except corporations that are organized under the Texas Non-Profit Corporation Act and that are exempt from Federal income tax under the provisions of Section 501(c)(3), Internal Revenue Code of 1954,¹ as now or hereafter amended, or under its successor statute) who are authorized by the laws of Texas to do business in this State and whose main purpose is not the acquisition or ownership of lands, which have or may acquire by lease, purchase, or otherwise, more land than is necessary to enable them to carry on their business, shall within fifteen (15) years from the date said land may be acquired, in good faith, sell and convey in fee simple all lands so acquired which are not necessary for the transaction of the business. Notwithstanding any other provisions of this Part, it shall be lawful for such surplus lands to be conveyed and acquired by another corporation which may have among its purposes the acquisition, development and sale of such surplus lands, provided, however, that any such acquiring corporation shall in good faith sell and convey any such land on or before the expiration of the aforesaid fifteen-year period just as the conveying corporation would have had to do if it had not conveyed such land to such acquiring corporation, and if such acquiring corporation does not so convey such land on or before such time, it shall thereafter hold the same subject to the same forfeiture and escheat provisions provided for in this Part as though such lands were still held by the conveying corporation.

[Amended by Acts 1977, 65th Leg., p. 838, ch. 313, § 3, eff. Aug. 29, 1977.]

¹ 26 U.S.C.A. § 501(c)(3).

CHAPTER NINE. NON-PROFIT, COOPERATIVE, RELIGIOUS AND CHARITABLE

1. TEXAS NON-PROFIT CORPORATION ACT

Article

1396-2.23A. Financial Records and Annual Reports.

1. TEXAS NON-PROFIT CORPORATION ACT

Art. 1396-2.02. General Powers

A. Subject to the provisions of Sections B and C of this Article, each corporation shall have power:

[See Compact Edition, Volume 2 for text of A(1) to (3)]

(4) To purchase, receive, lease, or otherwise acquire, own, hold, improve, use, or otherwise deal in and with, real or personal property, or any interest therein, wherever situated, as the purposes of the corporation shall require, or as shall be donated to it.

[See Compact Edition, Volume 2 for text of A(5) to (7)]

(8) To make contracts and incur liabilities, borrow money at such rates of interest as the corporation may determine, issue its notes, bonds, and other obligations, and secure any of its obligations by mortgage or pledge of all or any of its property, franchises, and income.

(9) To lend money for its corporate purposes, invest and reinvest its funds, and take and hold real and personal property as security for the payment of funds so loaned or invested.

(10) To conduct its affairs, carry on its operations, and have officers and exercise the powers granted by this Act in any state, territory, district, or possession of the United States, or any foreign country.

(11) To elect or appoint officers and agents of the corporation for such period of time as the corporation may determine and define their duties and fix their compensation.

(12) To make and alter by-laws, not inconsistent with its articles of incorporation or with the laws of this State, for the administration and regulation of the affairs of the corporation.

(13) To make donations for the public welfare or for charitable, scientific, or educational purposes and in time of war to make donations in aid of war activities.

(14) To cease its corporate activities and terminate its existence by voluntary dissolution.

(15) Whether included in the foregoing or not, to have and exercise all powers necessary or appropriate to effect any or all of the purposes for which the corporation is organized.

(16) Any religious, charitable, educational, or eleemosynary institution organized under the

laws of this State may acquire, own, hold, mortgage, and dispose of and invest its funds in real and personal property for the use and benefit and under the discretion of, and in trust for any convention, conference or association organized under the laws of this State or another state with which it is affiliated, or which elects its board of directors, or which controls it, in furtherance of the purposes of the member institution.

(17) To pay pensions and establish pension plans and pension trusts for all of, or class, or classes of its officer and employees, or its officers or its employees.

[See Compact Edition, Volume 2 for text of B and C]

[Amended by Acts 1977, 65th Leg., p. 837, ch. 313, § 1, eff. Aug. 29, 1977.]

Art. 1396-2.23A. Financial Records and Annual Reports

A. A corporation shall maintain current true and accurate financial records with full and correct entries made with respect to all financial transactions of the corporation, including all income and expenditures, in accordance with generally accepted accounting practices.

B. Based on these records, the board of directors or trustees shall annually prepare or approve a report of the financial activity of the corporation for the preceding year. The report must conform to accounting standards as promulgated by the American Institute of Certified Public Accountants and must include a statement of support, revenue, and expenses and changes in fund balances, a statement of functional expenses, and balance sheets for all funds.

C. All records, books, and annual reports of the financial activity of the corporation shall be kept at the registered office or principal office of the corporation in this state for at least three years after the closing of each fiscal year and shall be available to the public for inspection and copying there during normal business hours. The corporation may charge for the reasonable expense of preparing a copy of a record or report.

D. A corporation that fails to maintain financial records, prepare an annual report, or make a financial record or annual report available to the public in the manner prescribed by this article is guilty of a Class B misdemeanor.

E. This article does not apply to:

(1) a corporation that solicits funds only from its members;

(2) a corporation which does not intend to solicit and receive and does not actually raise or receive contributions from sources other than its

own membership in excess of \$10,000 during a fiscal year;

(3) a proprietary school that has received a certificate of approval from the State Commissioner of Education, a public institution of higher education and foundations chartered for the benefit of such institutions or any component part thereof, a private institution of higher education with a certificate of authority to grant a degree issued by the Coordinating Board, Texas College and University System, or an elementary or secondary school;

(4) religious institutions which shall be limited to churches, ecclesiastical or denominational organizations, or other established physical places for worship at which religious services are the primary activity and such activities are regularly conducted;

(5) a trade association or professional society whose income is principally derived from membership dues and assessments, sales, or services;

(6) any insurer licensed and regulated by the State Board of Insurance;

(7) an organization whose charitable activities relate to public concern in the conservation and protection of wildlife, fisheries, and allied natural resources;

(8) an alumni association of a public or private institution of higher education in this state, provided that such association is recognized and acknowledged by the institution as its official alumni association.

[Added by Acts 1977, 65th Leg., p. 1947, ch. 773, § 1, eff. Jan. 1, 1978.]

1A. COOPERATIVES

Art. 1396-50.01. Cooperative Association Act

Short Title

Sec. 1. This Act may be cited as the Cooperative Association Act.

Definitions

Sec. 2. In this Act:

(1) "Association" means a group enterprise legally incorporated under this Act.

(2) "Member" means a member of a nonshare or share association.

(3) "Net savings" means the total income of an association less the costs of operation.

(4) "Savings returns" means the amount returned to patrons in proportion to their patronage or otherwise.

(5) "Cooperative basis" means that the net savings after payment, if any, of investment dividends and after making provisions for sepa-

rate funds required or specifically permitted by statute, articles, or by-laws is allocated or distributed to member patrons, or to all patrons, in proportion to their patronage or retained by the enterprise for the actual or potential expansion of its services, the reduction of its charges to the patrons, or for other purposes not inconsistent with its non-profit character.

(6) "Membership Capital" means those funds of the association derived from the members generally either as a requirement of membership or in lieu of patronage dividends. Deposits and loans from members shall not be construed as "membership capital."

(7) "Invested Capital" means those funds invested in the association by an investor with the expectation of receiving investment dividends.

(8) "Investment Dividends" means the return on invested capital or on membership capital derived from the net savings of the association.

(9) "Patronage Dividends" means a share of net savings distributed among members on a basis of extent of patronage, as provided for in the articles of incorporation.

Applicability of Texas Non-Profit Corporation Act

Sec. 3. An association incorporated under this Act is subject to the provisions of the Texas Non-Profit Corporation Act, as amended (Article 1396-1-01 et seq., Vernon's Texas Civil Statutes), to the extent that the provisions of the Texas Non-Profit Corporation Act do not conflict with the provisions of the Act. An association incorporated under this Act may exercise the same powers and privileges and is subject to the same duties, restrictions, and liabilities as nonprofit corporations except to the extent that these are limited or enlarged by this Act.

Who May Incorporate

Sec. 4. Five or more natural persons or two or more associations may incorporate under this Act; provided, however, an association may not be incorporated or organized to serve or function as a health maintenance organization or furnish medical, or health care nor may an association employ or contract with providers of medical care in any manner which is prohibited by any licensing law of this state under which such persons are licensed.

Purposes

Sec. 5. An association may be incorporated under this Act to engage in acquiring, producing, building, operating, manufacturing, furnishing, exchanging, or distributing any type of property, commodities, goods, or services for the primary and mutual benefit of the members of the association.

Powers

Sec. 6. An association may exercise all the powers granted to a nonprofit corporation under Article 2.02, Texas Non-Profit Corporation Act and may:

(1) own and hold membership in and share capital of other associations or corporations, and own and exercise ownership rights in bonds or other obligations;

(2) make agreements of mutual aid or federation with other associations, other groups organized on a cooperative basis, and other nonprofit groups;

(3) exercise all powers not inconsistent with this Act that are necessary or convenient for the accomplishment of its purposes, and to that end the enumeration of powers in this section is not exclusive; and

(4) not engage, either directly or indirectly, in insurance companies of every type or character as the insurance business is defined and regulated by the Insurance Code, as amended, health maintenance organizations, or prepaid legal service corporations.

Registered Office and Registered Agent

Sec. 7. An association shall maintain a registered office and registered agent in accordance with the provisions of Article 2.05, Texas Non-Profit Corporation Act. An association may change its registered office and registered agent in accordance with the provisions of Article 2.06, Texas Non-Profit Corporation Act. Process may be served on an association in accordance with the provisions of Article 2.07, Texas Non-Profit Corporation Act.

Articles of Incorporation; Contents

Sec. 8. (a) Articles of incorporation shall be signed and acknowledged by each of the incorporators if they are natural persons and by the presidents and secretaries if they are associations.

(b) Subject to the limitations of this Act, the articles must contain:

(1) a statement of the purpose or purposes for which the association is formed;

(2) the name of the association, which must include the word "cooperative" or an abbreviation or derivative of it;

(3) the term of existence of the association, which may be perpetual;

(4) the location and street address of the initial registered office of the association and the initial registered agent at that address;

(5) the names and street addresses of the incorporators of the association;

(6) the names and street addresses of the directors who shall manage the affairs of the

association for the first year, unless sooner changed by the members;

(7) a statement of whether the association is organized with or without shares, and the number of shares or memberships subscribed for;

(8) if organized with shares, a statement of the amount of authorized capital, the number and types of shares and the par value, if any, of the shares, and the rights, preferences, and restrictions of each type of share;

(9) the method by which a surplus is distributed on dissolution of the association, in conformity with the requirements of Section 38 of this Act for division of surplus.

(c) The articles may contain other provisions for the conduct of the association's affairs not inconsistent with this Act or any other law.

Filing, Certificate of Incorporation, Organization Meeting

Sec. 9. (a) The articles shall be delivered to the secretary of state in accordance with the provisions of Article 3.03, Texas Non-Profit Corporation Act. If he finds that the articles conform to law, he shall file them on payment by the association of the fee required by Article 9.03, Texas Non-Profit Corporation Act.

(b) After filing and recording the articles, the secretary of state shall issue a certificate of incorporation, in accordance with Article 3.04, Texas Non-Profit Corporation Act, at which point the corporate existence begins.

(c) After the issuance of the certificate of incorporation, an organization meeting shall be held in accordance with Article 3.05, Texas Non-Profit Corporation Act.

Amendments

Sec. 10. (a) An amendment to the articles may be proposed by a two-thirds vote of the board of directors or by petition of the association's members as provided in the by-laws. The secretary shall send notice of a meeting to consider an amendment to each member at the member's last known address, or shall post a written notice of the meeting in a conspicuous place in all principal places of activity of the association. Either type of notice shall be accompanied by the full text of the proposal and by the text of the part of the articles to be amended, at least 30 days before the meeting.

(b) Two-thirds of the members voting may adopt an amendment. When adoption of an amendment is verified by the president and secretary, it shall be filed and recorded with the secretary of state within 30 days after its adoption in accordance with Article 4.04, Texas Non-Profit Corporation Act.

Adoption of By-laws

Sec. 11. By-laws may be adopted, amended, or repealed by a simple majority vote of the members voting, unless the articles or by-laws require a greater majority.

Contents of By-laws

Sec. 12. Subject to the limitations of this Act, the by-laws may provide for:

- (1) the requirements for the admission to membership and disposal of members' interests on cessation of membership;
- (2) the time, place and manner of calling and conducting meetings;
- (3) the number or percentage of the members constituting a quorum;
- (4) the number, qualifications, powers, duties, method of election, and terms of directors and officers, and the division or classification, if any, of directors to provide for rotating or overlapping terms;
- (5) the compensation, if any, of the directors, and the number of directors necessary to constitute a quorum;
- (6) the method of distributing the net savings;
- (7) the bonding of every individual acting as officer or employee of an association handling funds or securities; and
- (8) the various discretionary provisions of this Act as well as other provisions incident to the purposes and activities of the association.

Meetings

Sec. 13. (a) Regular meetings of members shall be held as prescribed in the by-laws, but shall be held at least once a year. Special meetings may be demanded by a majority vote of the directors or by written petition of at least one-tenth of the membership. When a meeting is demanded, it is the duty of the secretary to call the meeting for a date 30 days after the demand.

(b) Regular or special meetings, including meetings by units, may be held inside or outside this state as the articles may prescribe.

Notice of Meetings

Sec. 14. The secretary shall give notice of the time and place of meetings to members in the manner provided for in the by-laws. In the case of a special meeting the notice shall specify the purpose for which the meeting is called.

Meetings by Units of the Membership

Sec. 15. The articles or by-laws may provide for the holding of meetings by units of the membership and may provide for a method of transmitting the votes cast at unit meetings to the central meeting,

or for a method of representation of units by the election of delegates to the central meeting, or for a combination of both methods.

One Member—One Vote

Sec. 16. (a) Each member of an association has one vote, except that if an association includes among its members any number of other associations or groups organized on a cooperative basis, the voting rights of the member associations or groups may be as prescribed in the articles or by-laws.

(b) No voting agreement or other device to evade the one-member-one-vote rule is enforceable.

Proxy

Sec. 17. No member may vote by proxy.

Voting By Mail

Sec. 18. (a) The articles or by-laws may provide for either or both of the following procedures for voting by mail:

- (1) the secretary may send to the members a copy of any proposal to be offered at a meeting with the notice of the meeting, and the mail votes cast by the members shall be counted together with those cast at the meeting if the mail votes are returned to the association within a specified number of days;
- (2) the secretary may send to any member absent from a meeting an exact copy of the proposal acted on at the meeting, and the mail vote of the member on the proposal, if returned within a specified number of days, is counted together with the votes cast at the meeting.

(b) The articles or by-laws may also determine whether and to what extent mail votes are counted in computing a quorum.

Application of Voting Provisions in This Act to Voting by Mail

Sec. 19. If an association has provided for voting by mail, any provision of this Act referring to votes cast by the members applies to votes cast by mail.

Application of Voting Provisions in This Act to Voting by Delegates

Sec. 20. If an association has provided for voting by delegates, any provision of this Act referring to votes cast by the members applies to votes cast by delegates, but this does not permit delegates to vote by mail.

Directors

Sec. 21. (a) An association shall be managed by a board of not less than five directors, who are elected for a term fixed in the by-laws not to exceed three years, by and from the members of the association, and who hold office until their successors are elected or until removed. Vacancies which occur in the board of directors, other than by removal or expiration of term, are filled in the manner the by-laws provide.

(b) The by-laws may provide for a method of apportioning the number of directors among the units into which the association may be divided, and for the election of directors by the respective units to which they are apportioned.

(c) An executive committee of the board of directors may be elected in the manner and with the powers and duties as prescribed by the articles or by-laws.

(d) Meetings of directors and of the executive committee may be held inside or outside this state.

Officers

Sec. 22. The officers of an association are a president, one or more vice-presidents, and a secretary and a treasurer or a secretary-treasurer. Any two or more offices may be held by the same person, except the offices of president and secretary. The officers of an association may be designated by such other titles as may be provided in the articles of incorporation or the by-laws. A committee duly designated may perform the functions of any office, and the functions of any two or more officers may be performed by a single committee, including the functions of both president and secretary. The officers are elected annually by the directors unless the by-laws provide otherwise.

Removal of Directors and Officers

Sec. 23. A director or officer may be removed with cause by a vote of a majority of the members voting at a regular or special meeting. The director or officer involved shall be given an opportunity to be heard at the meeting. A vacancy caused by removal is filled by the vote provided in the by-laws for election of directors.

Referendum

Sec. 24. The articles or by-laws may provide that within a specified period of time any action taken by the directors must be referred to the members for approval or disapproval if demanded by petition of at least 10 percent of all the members or by vote of at least a majority of the directors. Rights of third parties which have vested between the time of the action and the referendum are not impaired by the results of the referendum.

Limitations on the Return on Capital

Sec. 25. (a) Investment dividends will not exceed eight percent on investment capital unless otherwise provided for in the by-laws and the investment dividend will not be cumulative unless otherwise provided for in the by-laws.

(b) Total investment dividends distributed for a fiscal year may not exceed 50 percent of the net savings for the period.

Eligibility and Admission to Membership

Sec. 26. A natural person, association, incorporated or unincorporated group organized on a cooperative basis, or a nonprofit group, may be admitted to membership in an association if it meets the qualifications for eligibility stated in the articles or by-laws.

Subscribers

Sec. 27. A natural person or group eligible for membership and legally obligated to purchase a share or shares of, or membership in, an association shall be deemed a subscriber. The articles or by-laws may determine whether and the conditions under which voting rights or other rights of membership are granted to subscribers.

Share and Membership Certificates: Issuance and Contents

Sec. 28. (a) No certificates for membership capital may be issued until its par value, if any, has been paid in full. Each certificate issued by an association shall bear a full or condensed statement of the requirements of Sections 16, 17, and 29(a) of this Act.

(b) No certificate for invested capital may be issued until its par value, if any, has been paid in full. Each certificate for invested capital issued by an association shall bear a full or condensed statement of restrictions on transferability if specifically provided for in the by-laws of the association.

Transfer of Shares and Membership: Withdrawal

Sec. 29. (a) If a member decides to withdraw from the association, the member shall offer his membership certificates to the directors in writing and the directors may purchase such holdings within a 90-day period following receipt of notice by paying the member the par value. The directors shall then reissue or cancel those shares. A vote of the majority of the members voting at a regular or special meeting may order the directors to exercise this power to purchase.

(b) If an investor owning investor certificates desires to sell, assign, or convey his certificates, he must do so in accordance with the by-laws of the association; otherwise such investment certificates shall be repurchased by the association upon written notice to the directors within a 90-day period following receipt of notice by paying the investor the par value of the certificate, together with any investment dividend accrued.

Share and Membership Certificates: Recall

Sec. 30. (a) The by-laws may give the directors the power to use the reserve funds to recall, at par value, the membership certificates of any member in excess of the amount requisite for membership, and may also provide that if any member has failed to patronize the association during a time specified and

in accordance with the by-laws, the directors may recall the member's membership certificates, thereby terminating his membership in the association. When membership certificates are recalled, they shall be either reissued or cancelled. No recall may be made if the solvency of the association would be jeopardized.

(b) The directors shall have the power to use the reserve funds to recall and repurchase at par value, together with any investment dividends due on the investment certificates of any investor. The by-laws may establish specific procedures, terms and conditions for such recall and repurchase.

Certificates: Attachment

Sec. 31. The holdings of any member of an association, to the extent of the minimum amount necessary for membership, but not to exceed \$50, are exempt from attachment, execution, or garnishment for the debts of the owner. If any holdings in excess of this amount are subjected to attachment, execution, or garnishment, the directors of the association may either admit the purchaser to membership, or may purchase the holdings at par value.

Liability of Members

Sec. 32. Members are not jointly or severally liable for debts of the association, nor is a subscriber liable, except to the extent of the unpaid amount on the membership certificates or on the invested capital certificates subscribed by him. No subscriber may be released from liability by assignment of his interest in the membership capital certificates or the invested capital certificates, but he is jointly and severally liable with the assignee until the membership certificates or investor certificates are fully paid up.

Expulsion

Sec. 33. A member may be expelled by the vote of a majority of the members voting at a regular or special meeting. The member against whom the charges are to be preferred shall be informed of the charges in writing at least 10 days in advance of the meeting, and shall be given an opportunity to be heard in person or by counsel at the meeting. If the association votes to expel a member, the board of directors shall purchase the member's capital holdings at par value if and when such purchases may be made without jeopardizing the solvency of the association.

Allocation and Distribution of Net Savings

Sec. 34. (a) At least once each year the members or the directors, as the articles or by-laws may provide, shall apportion the net savings of the association in the following order:

(1) investment dividends, within the limitations of Section 25 may be paid on invested

capital, or if the by-laws so provide, on the membership certificates, but the investment dividends may be paid only out of the surplus of the aggregate of the assets over the aggregate of the liabilities;

(2) a portion of the remainder, as determined by the articles or by-laws, may be allocated to an educational fund to be used in teaching cooperation, and a portion may also be allocated to funds for the general welfare of the members of the association;

(3) a portion of the remainder may be allocated to retained earnings;

(4) the remainder shall be allocated at the same uniform rate to all patrons of the association in proportion to their individual patronage as follows:

(A) in the case of a member patron, the proportionate amount of savings return distributed to the member may be in the form of cash, property, membership certificates, investment certificates or in any combination of these;

(B) in the case of a subscriber patron, his proportionate amount of savings returns as the articles or by-laws provide, may be distributed to him or credited to his account until the amount of capital subscribed for has been fully paid.

(b) This section does not prevent an association engaged in rendering services from disposing of the net savings from the rendering of services in a manner calculated to lower the fees charged for services or otherwise to further the common benefit of the members.

(c) This section does not prevent an association from adopting a system in which the payment of savings returns which would otherwise be distributed are deferred for a fixed period of time, nor from adopting a system in which the savings returns distributed are partly in cash, partly in shares, with the shares to be retired at a fixed future date, in the order of their serial number or date of issue.

Recordkeeping

Sec. 35. (a) To record its business operation, every association shall keep a set of books according to standard accounting practices.

(b) A written report shall be submitted to the annual meeting of the association which shall include the following:

(1) a balance sheet, and income and expense statement;

(2) the amount and nature of the association's authorized, subscribed, and paid-in capital, the number of its shareholders, and the number of shareholders who were admitted or withdrew

during the year, the par value of its shares, and the rate at which any return on capital has been paid; and

(3) for nonshare associations, the total number of members, the number of members who were admitted or withdrew during the year, and the amount of membership fees received.

(c) The directors shall appoint a review committee, composed of members who are not principal bookkeepers, accountants, or employees of the association.

(d) The committee shall report on the quality of the annual report and the bookkeeping system at the annual meeting.

Annual Report

Sec. 36. (a) Every association having 100 or more members or an annual business amounting to \$20,000 or more shall prepare, within 120 days of the close of its operations each year, a report of its condition, sworn to by the president and secretary, which shall be filed in its registered office. The report shall state:

(1) the name and principal address of the association;

(2) the names, addresses, occupations, and date of expiration of the terms of the officers and directors, and their compensation, if any;

(3) the amount and nature of the association's authorized, subscribed, and paid-in capital, the number of its shareholders and the number of shareholders who were admitted or withdrew during the year, the par value of its shares, and the rate at which any investment dividends have been paid;

(4) for nonshare associations, the total number of members, the number of members who were admitted or withdrew during the year, and the amount of membership fees received; and

(5) the receipts, expenditures, assets, and liabilities of the association.

(b) Every association having 3,000 or more members or an annual business amounting to \$750,000 or more shall file a copy of the report with the secretary of state.

(c) A person who subscribes or verifies a report containing a materially false statement, known to the person to be false, commits a misdemeanor punishable by a fine of not less than \$25 nor more than \$200, or by confinement in the county jail for not less than 30 days nor more than one year, or by both.

Notice of Delinquent Reports

Sec. 37. (a) If an association required by Section 36 of this Act to file a report with the secretary of state fails to do so in the prescribed time, the secretary of state shall notify the association of the

delinquency by registered letter mailed to its principal office within 60 days after the report becomes delinquent. If an association required by Section 36 of this Act to file a report at its registered office but not required to file a copy with the secretary of state fails to do so in the prescribed time, the secretary of state or any member may notify the association of the delinquency by registered letter mailed to its principal office.

(b) If the association fails to file the report within 60 days from the date of notice under Subsection (a) of this section, a member of the association or the attorney general may seek a writ of mandamus against the association and the appropriate officer or officers to compel the filing to be made, and in the court shall require the association or the officers at fault to pay all the expenses of the proceeding including attorney fees.

Dissolution

Sec. 38. (a) An association may, at a regular or special meeting legally called, be directed to dissolve by a vote of two-thirds of the entire membership. If it is directed to dissolve, by a vote of a majority of the members voting, three of their number shall be designated as trustees, who shall liquidate, on behalf of the association and within a time fixed in their designation or within any extension of time, its assets, and shall distribute them in the manner set forth in this section.

(b) A suit for involuntary dissolution of an association organized under this Act may be instituted for the causes and prosecuted in the manner set forth in Articles 7.01 to 7.12, Texas Non-Profit Corporation Act (Articles 1396-7.01 through 1396-7.12, Vernon's Texas Civil Statutes), except that any distribution of assets shall be in the manner set forth in this section.

(c) When an association is dissolved, its assets shall be distributed in the following manner and order:

(1) by paying its debts and expenses;

(2) by returning to the investors the par value of their capital;

(3) by returning to the subscribers to invested capital the amounts paid on their subscriptions;

(4) by returning to patrons the amount of patronage dividends credited to their accounts;

(5) by returning to members their membership capital; and

(6) by distributing any surplus in either or both of the following ways, as the articles may provide: either among those patrons who have been members or subscribers at anytime during the six years preceding dissolution, on the basis of patronage during that period, or as a gift to

any cooperative association or other non-profit enterprise which may be designated in the articles.

Use of Name "Cooperative"

Sec. 39. (a) Only an association organized under this Act, a group organized on a cooperative basis under any other law of this state, or a foreign corporation operating on a cooperative basis and authorized to do business in this state under this or any other law of this state may use the term "cooperative," or any abbreviation or derivation of the term "cooperative," as part of its business name, or represent itself, in advertising or otherwise, as conducting business on a cooperative basis.

(b) A person, firm, or corporation that violates Subsection (a) of this section commits a misdemeanor punishable by a fine of not less than \$25 nor more than \$200, with an additional fine of not more than \$200 for each month during which a violation occurs after the first month, or by confinement in the county jail for not less than 30 days nor more than one year, or by any combination of those punishments.

(c) The attorney general may sue to enjoin a violation of this section.

(d) If a court of competent jurisdiction renders judgment that a person, firm, or corporation which employed the name "cooperative" prior to this Act, is not organized on a cooperative basis, but may nonetheless continue to use the word "cooperative," the business shall always place immediately after its name the words "does not comply with the cooperative association law of Texas" in the same kind of type, and in letters not less than two-thirds as large, as those used in the word "cooperative."

Use of name "cooperative" before September 1, 1978

[Text of section effective until September 1, 1978]

Sec. 39A. (a) A person, firm, or corporation that used the term "cooperative" or any abbreviation or derivation of the term "cooperative" as part of its business name, or that represented itself, in advertising or otherwise, as conducting business on a cooperative basis on September 1, 1975, may use the term, abbreviation, or derivation as part of its business name and may so represent itself until September 1, 1978.

(b) This section does not affect a conviction under Subsection (b) of Section 39 of this Act that became final before the effective date of this section. A person, firm, or corporation may not be convicted under Subsection (b) of Section 39 of this Act for any act authorized by this section if not finally convicted of that act before the effective date of this section.

(c) A court order enjoining an act authorized by Subsection (a) of this section is not effective from the effective date of this section to September 1, 1978. A person, firm, or corporation using a term authorized by Subsection (a) of this section is not required to place the words "does not comply with the cooperative association law of Texas" after that term while this section is in effect.

(d) This section expires September 1, 1978.

Promotion Expenses

Sec. 40. (a) No association may use its funds, directly or indirectly, issue shares, or incur indebtedness for the payment of compensation for the organization of the association, except necessary legal fees, or for the payment of promotion expenses, in excess of five percent of the amount paid for the shares or membership certificates involved in the promotion transaction.

(b) An officer, director, or agent of an association who gives, or any person, firm, corporation or association who receives a promotion commission in violation of this section commits a misdemeanor and may be punished by a fine of not less than \$25, nor more than \$200, or by confinement in the county jail for not less than 30 days nor more than one year, or by both.

False Reports

Sec. 41. A person, firm, corporation, or association that maliciously and knowingly spreads false reports about the management or finances of any association commits a misdemeanor punishable by a fine of not less than \$25 and not more than \$200, or by confinement in the county jail for not less than 30 days nor more than one year, or by both.

Existing Cooperative Groups

Sec. 42. Any group operating on a cooperative basis on the effective date of this Act may elect by a vote of two-thirds of the members voting to secure the benefits of and be bound by this Act. If it elects to secure the benefits of this Act, it shall amend its articles and by-laws to conform with this Act. A certified copy of the amended articles shall be filed and recorded with the secretary of state and a fee of \$5 shall be paid.

Foreign Corporations and Associations

Sec. 43. A foreign corporation or association operating on a cooperative basis and complying with the applicable laws of the state in which it is organized may transact business in this state as a foreign cooperative corporation or association.

Exemption From Taxes

Sec. 44. Each association organized under this Act is exempt from the franchise tax and from license fees imposed by the state or a political subdivision of the state.

Exemption

Sec. 45. This Act does not apply to any corporation or association organized and now existing or in the future organized under the Cooperative Marketing Act, as amended (Articles 5737 through 5764, Revised Civil Statutes of Texas, 1925).

Effect of Invalidity of Part of This Act

Sec. 46. If a court of competent jurisdiction shall adjudge to be invalid or unconstitutional any clause, sentence, subsection or section of this Act, such judgment or decree shall not affect, impair, invalidate, or nullify the remainder of this Act, but the effect thereof shall be confined to the clause, sentence, subsection or section of this Act so adjudged to be invalid or unconstitutional.

[Acts 1975, 64th Leg., p. 814, ch. 318, §§ 1 to 46, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 279, ch. 134, § 1, eff. May 11, 1977.]

CHAPTER TEN. PUBLIC UTILITIES

4. GAS AND LIGHT

1435b. Joint Acquisition, Construction, and Operation of Electric Utility Facilities [NEW].

8. MISCELLANEOUS PROVISIONS

Article

1446c. Public Utility Regulatory Act [NEW].

1446d. Electric Metering in Apartments and Condominiums [NEW].

9. TRADE ZONES

1446.5. Amarillo Trade Zone Corporation [NEW].

1446.6. Galveston Port of Entry Trade Zone [NEW].

1446.7. Houston Port of Entry Foreign Trade Zone [NEW].

1446.8. Joint Airport Boards Foreign Trade Zone [NEW].

1446.9. El Paso Trade Zone Corporation [NEW].

1446.10. San Antonio Foreign Trade Zone [NEW].

2. TELEPHONE AND TELEGRAPH

Arts. 1423 to 1425. Repealed by Acts 1975, 64th Leg., p. 2352, ch. 721, § 90, eff. Sept. 1, 1976

See, now, the Public Utility Regulatory Act, classified as art. 1446c.

4. GAS AND LIGHT

Art. 1435a. Cooperation by Entities in Electric Facilities Construction, Financing, etc.

[See Compact Edition, Volume 2 for text of 1]

Definitions

Sec. 2. As used in this Act:

[See Compact Edition, Volume 2 for text of 2(1) to (3)]

(4) "Electric facilities" means any facilities necessary or incidental to the generation of electric power and energy or the transmission thereof, including electric generating units, electric

generating plants, electric transmission lines, plant sites, rights-of-way, and real and personal property and equipment and rights of every kind in connection therewith.

[See Compact Edition, Volume 2 for text of 3]

Rights and Powers of Participating Entities

Sec. 4. Without limiting the general scope and application of Section 3 of this Act:

[See Compact Edition, Volume 2 for text of 4(1)]

(2) Each participating public entity and each participating private entity shall have the right and power to acquire, for the use and benefit of all participating entities, by purchase or through the exercise of the power of eminent domain, lands, easements, and properties for the purpose of jointly owned electric facilities, and shall have the power to transfer or convey such lands, easements, and properties, or interests therein, or otherwise to cause such lands, easements, and properties, or interests therein, to become vested in other participating entities to the extent and in the manner agreed between the participating entities. In all cases in which a participating entity exercises the right and power of eminent domain conferred hereby, it shall be controlled by the law governing the condemnation of property by incorporated cities and towns in this state, and the right and power of eminent domain hereby conferred shall include the right and power to take the fee title in land so condemned, except that no participating entity has the right or power to take by the exercise of the power of eminent domain any electric facilities, or interest therein, belonging to any other entity, or the power to take land or any interest therein, by exercise of the power of eminent domain, for the purpose of drilling for, mining, or producing from said land, any oil, gas, geothermal, geothermal/geopressured, lignite, coal, sulphur, uranium, plutonium, or other minerals belonging to another, whether the same be in place, or in the process of being mined and produced, or mined or produced. Provided, however, this provision shall not impair the right of any such entity to acquire full title to real property for plant sites, including cooling reservoirs and related surface installations and equipment.

[See Compact Edition, Volume 2 for text of 4(3), (4)]

Joint Powers Agency

Sec. 4a. (a) In order to more readily accomplish the purposes of this Act, two or more public entities by concurrent ordinances may create a joint powers agency to be known as a municipal power agency, without taxing power, as a separate municipal cor-

poration, a political subdivision of the state, and body politic and corporate, to have and exercise all of the powers which are by Chapter 10 of Title 28, Revised Civil Statutes of Texas, 1925, as amended,¹ and this Act, conferred upon a public entity or entities, provided that such agency shall not be authorized to engage in any utility business other than generation, transmission, and sale or exchange of electric energy to the participating public entities and to private entities who are joint owners with the agency of an electric generating facility located within the state. A public entity, at the time of the passage of such concurrent ordinance, must be one which has the authority to and is engaged in the generation of electric energy for sale to the public upon the effective date of this Act, but such entity may thereafter dispose of its electric generating capabilities. Prior to the passage of a concurrent ordinance to create a joint powers agency, the governing body of each public entity shall cause notice of its intention to adopt such ordinance to be published once a week for two consecutive weeks, the date of the first publication to be at least 14 days prior to the date set for the passage of the concurrent ordinance. The notice shall state the date, time, and place such governing body proposes to pass such ordinance, and that upon the effective date of the concurrent ordinances, the public entities so adopting them shall have created a public powers agency. If, prior to the day set for the passage of a concurrent ordinance, 10 percent of the qualified electors of the particular public entity shall present a petition to such governing body requesting a referendum election be called, then such ordinance shall not become effective until the qualified electors of such entity have approved such ordinance. The election shall be called and held in conformity with the Texas Election Code, the provisions of Chapter 1 of Title 22, Revised Civil Statutes of Texas, 1925, as amended,² and this Act. Except as herein provided, a concurrent ordinance shall not be subject to a referendum election.

(b) Public entities which establish a joint powers agency may, by concurrent ordinances, provide for the re-creation of such agency by the addition and deletion, either or both, of a public entity so long as there is no impairment of obligation of any existing obligation of the agency, provided that no agency may be re-created by the addition of a public entity from and after April 1, 1976, unless a majority of the participating qualified electors of the entity seeking to be added to the agency approve the same by a majority vote in an election called for that purpose, and provided further that no agency may be created from and after January 1, 1977, unless a majority of the participating qualified electors of each entity seeking to create such agency approve such creation by a majority vote in an election called

for that purpose. Notice of such election shall be given as provided by Article 704, Revised Civil Statutes of Texas, 1925, as amended.

(c) Concurrent ordinances are ordinances or orders adopted by the governing bodies of more than one public entity which contain identical provisions with respect to the creation or re-creation of a public powers agency.

(d) The public entities which create, or provide for re-creation by addition or deletion of a public entity, a joint powers agency shall by concurrent ordinances (1) define the boundaries of the agency, to include the territory within the limits of such public entities, (2) designate the name of the Municipal Power Agency, (3) designate the number of directors (not less than four) that will constitute the board of directors of the agency and the initial term (so as to initially provide staggered terms) as may be agreed upon by the said public entities as evidenced by such concurrent ordinances, and (4) specify the manner in which such directors shall be appointed, but in any event each public entity shall be entitled to appoint at least one director.

(e) Directors shall serve by places and the concurrent ordinances shall specify the director for which place (and his successors) the governing body of the particular public entity may appoint. A director shall be a qualified elector and reside within the boundary of the agency at the time of execution of his constitutional oath of office. Directors shall serve without compensation, and an employee, officer, or member of the governing body of a public entity may serve as a director of the agency, but shall have no personal interest, other than as may exist as an employee or officer or member of the governing body of a public entity, in any contract executed by the agency.

(f) The agency is empowered to make contracts, leases, and agreements with, and accept grants and loans from, the United States of America, its departments and agencies, the State of Texas, its agencies, counties, municipalities, and political subdivisions, and public or private corporations and persons, and may generally perform all acts necessary for the full exercise of the powers vested in it; to participate through appropriate contracts in power pooling and power exchange arrangements with other entities either through direct or indirect system interconnections and each entity is given full authority to purchase electric energy from the agency or to sell, dispose of, or exchange electric energy to the agency. The agency may sell, lease, convey, or otherwise dispose of any of its rights, interests, or properties which are, in its judgment, not needed for the efficient operation and maintenance of its electric facilities. The responsibility of the management, operation, and control of the properties belonging to the agency shall be vested in the board of directors.

(g) Contracts for the sale or exchange of energy by the agency may be entered whereby the purchaser is obligated to pay for the same irrespective of whether such energy is produced or delivered to the purchaser. The agency is likewise empowered to establish and maintain rates and charges for energy delivered, transmitted, or exchanged, which shall be reasonable and in accordance with prudent utility practices. In the absence of a contract whereby a purchaser of energy waives such right, the rates and charges for power and energy sold or exchanged by the agency shall be based upon periodic "cost of service studies" and be subject to modification. The rates and charges schedule or contract payments shall be developed with regard to the recovery of the cost of producing and transmitting, if such service is performed, such electric power and energy, including the amortization of the capital investment.

(h) The State of Texas reserves its power to regulate and control such rates and charges for electric energy supplied by the electric facilities, but does hereby pledge to and agree with the purchasers and successive holders of the obligations issued hereunder that the state will not limit or alter the powers hereby vested in the agency to establish and collect such rates and charges as will produce revenues sufficient to pay for (1) all necessary operational and maintenance expenses, (2) all interest and principal on obligations issued by the agency, (3) all sinking funds and reserve fund payments, and (4) for any other charges necessary to fulfill the terms of any agreements theretofore made or in any way to impair the rights or remedies of the holders of the obligations, until the obligations, together with the interest thereon, with interest on unpaid installments of interest, and any other obligations of the agency in connection therewith, are fully met and discharged.

(i) To the payment of obligations issued by it, the agency may pledge the revenues of all or part of its electric facilities, including or not including those thereafter acquired, as the agency may determine, but the expense of operation and maintenance, including salaries, labor, materials, and repairs necessary to render efficient service, of the facilities whose revenues are so encumbered and pledged shall be a first lien on and charge against such revenues.

(j) The agency shall have the full power to issue revenue bonds or notes, herein sometimes referred to as obligations, from time to time for the accomplishment of its purposes within the interest rate limitations of Chapter 3, Acts of the 61st Legislature, Regular Session, 1969, as amended (Article 717k-2, Vernon's Texas Civil Statutes).

(k) From the proceeds from the sale of obligations of the agency, the agency may set aside amounts for payments into the interest and sinking fund and reserve funds, and for interest and operating ex-

penses during construction and development, as may be specified in the authorizing proceedings. Bond proceeds may be invested pending their use for the purpose for which issued, in such securities or interest bearing certificates or in time deposits as may be specified in such authorizing proceedings.

(l) Prior to delivery thereof, all obligations authorized to be issued hereunder and the records relating to their issuance shall be submitted to the Attorney General of Texas for examination, and if he finds that they have been issued in accordance with the constitution and this Act, and that they will be binding special obligations of the agency issuing same, he shall approve them, and thereupon they shall be registered by the Comptroller of Public Accounts of the State of Texas, and after such approval and registration and the sale and delivery of the bonds or notes to the purchaser, they shall be incontestable.

(m) Refunding bonds or notes may be issued for the purposes and in the manner now or hereafter provided by general law, including, without limitation, Chapter 503, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 717k, Vernon's Texas Civil Statutes), and Chapter 784, Acts of the 61st Legislature, Regular Session, 1969 (Article 717k-3, Vernon's Texas Civil Statutes), as presently enacted or hereafter amended.

(n) All obligations issued by an agency pursuant to this Act shall be and are hereby declared to be legal and authorized investments for banks, savings banks, trust companies, building and loan associations, savings and loan associations, and insurance companies and shall be eligible to secure the deposit of any and all public funds of the State of Texas and any and all public funds of cities, towns, villages, counties, school districts, or other political corporations or subdivisions of the State of Texas, and such obligations shall be lawful and sufficient security for said deposits to the extent of the principal amount thereof, or their value on the market, whichever is the lesser, when accompanied by all unmatured coupons, if any, appurtenant thereto.

(o) The agency may adopt, and from time to time amend, rules and regulations to govern the operation of the agency, its employees, facilities, and service, but contracts for the construction of improvements which involve the expenditure of more than \$20,000 shall be awarded by the agency only after notice of intent to receive competitive bids has been published once a week for two consecutive weeks in a newspaper of general circulation in the state, the date of the first publication being at least 14 days prior to the date set for the receipt of bids, but contracts awarded by another entity, which is a joint owner of the facilities to be constructed or an agent of any of the joint owners shall be let under its contracting procedures. An entity may negotiate and enter into

contract for the purchase of electric energy from the agency and payments for such energy purchased shall be an operating expense of the electric system of the purchaser.

(p) The agency may elect to utilize the Uniform System of Accounts Prescribed For Utilities and Licenses prescribed by the Federal Power Commission.

(q) The bonds or notes shall be signed by the presiding officer or the assistant presiding officer of the agency, shall be attested by its secretary, and shall bear the seal of the agency. It is provided, however, that such signatures may be printed or lithographed on the bonds and notes if authorized by the agency, and such may be impressed on the bonds or notes or may be printed or lithographed thereon. The agency may adopt or use for any purpose the signature of any person who shall have been an officer, notwithstanding the fact that he may have ceased to be such officer at the time when bonds or notes shall be delivered to a purchaser or purchasers. The bonds or notes shall mature serially or otherwise in not to exceed 50 years, from their respective dates of issuance, may be sold, within interest rate limitations herein provided, at a public or private sale at a price or under terms determined by the agency to be the most advantageous reasonably obtainable, within the discretion of the agency, may be made callable prior to maturity at such times and prices as approved by the agency, and may be in coupon form with or without provisions for registration as to principal or may be registrable as to both principal and interest.

(r) Bonds and notes issued under the provisions of this Act, and coupons, if any, representing interest thereon, when made payable from (i) revenues of the agency, or (ii) anticipated bond proceeds shall when delivered be deemed and construed to be a "security" within the meaning of Chapter 8, Investment Securities, of the Uniform Commercial Code (Chapter 785, Acts of the 60th Legislature, Regular Session, 1967),³ and shall constitute obligations which must be submitted to the attorney general under the provisions of Subsection (J) of this section. Nonnegotiable purchase money notes, payable in installments, issued by the agency for the acquisition of land or fuel resources shall not be a security or obligation within the aforesaid provisions; such notes shall be secured by the properties being acquired, with the right in the agency to substitute collateral, and may be further secured by a pledge and undertaking to thereafter issue bonds or bond anticipation notes for their ultimate payment. Bond anticipation notes may be issued, with the same limitations and conditions prescribed herein for bonds, for any purpose for which the agency may issue bonds or for the purpose of refunding or paying off previously issued bond anticipation notes or

nonnegotiable purchase money notes, and the agency may covenant with the purchaser of bond anticipation notes that the proceeds of one or more particular series of bonds will be used to provide for the ultimate payment or refunding of such notes.

(s) This Act shall be liberally construed to carry out the purpose of its adoption and shall be in full and complete authority for the creation and operation of public powers agencies and the performance of the public duties imposed upon them. Insofar as this Act is inconsistent with any other laws, including Chapter 10 of Title 28, Revised Civil Statutes of Texas, 1925, as amended, or others regulating the affairs of municipal corporations, or with any home-rule charter provisions, then the provisions of this Act shall control.

[See Compact Edition, Volume 2 for text of 5 and 6]

[Amended by Acts 1975, 64th Leg., p. 337, ch. 143, § 1, May 8, 1975; Acts 1977, 65th Leg., p. 174, ch. 85, §§ 1 to 3, eff. April 29, 1977.]

¹ Article 1106 et seq.

² Article 701 et seq.

³ Business and Commerce Code, § 8.101 et seq.

Section 2 of the 1975 amendatory act provided:

"Nothing in this Act shall be construed to violate any provision of the federal or state constitutions, and all acts done under this Act shall be in such manner as will conform thereto, whether expressly provided or not. Where any procedure hereunder may be held by any court to be violative of either of such constitutions, the agency shall have the power by resolution to provide an alternative procedure conformable with such constitutions. If any provision of this Act should be invalid, such fact shall not affect the validity of any other provisions of this Act, and the legislature hereby declares that it would have enacted the valid provisions of this Act notwithstanding the invalidity of any other provision or provisions hereof."

Art. 1435b. Joint Acquisition, Construction, and Operation of Electric Utility Facilities

Sec. 1. Two or more political subdivisions heretofore or hereafter created are authorized to join together to finance, construct, complete, acquire, or operate electric utility facilities so that the same (or an undivided interest therein) will be jointly owned as cotenants or coowners with such ownership shares in such facilities as may be approved by their governing bodies and set forth in an agreement authorized by said governing bodies. Such agreement may provide for any political subdivision to increase its present or future ownership share of the facilities by installment purchase payments and for any other political subdivision party to such agreement to transfer, in consideration of such installment purchase payments, all or any portion of its present or future ownership share of such facilities to the political subdivision, so increasing its present or future ownership share as aforesaid. Payments made to acquire an ownership interest shall not be treated as a maintenance and operating expense but shall be treated as a capital cost in the same manner as if such political subdivision had issued bonds to construct or acquire such ownership interest, unless otherwise set forth in the agreement of the parties. All agreements by and between political subdivisions

establishing an ownership interest in facilities (or undivided interest therein) executed pursuant to this Act shall be submitted to the Attorney General of Texas (in connection with any proceedings to finance said contractual obligation by the issuance of bonds) and when approved as to legality by such officer shall be incontestable.

Sec. 2. In the event the facilities financed, acquired, constructed, or completed constitute a part of a utility system or a combined utility system of a political subdivision, the obligation to make the said contract payments to acquire an ownership interest shall constitute a lien on the revenues of such system or combined system on a parity with outstanding bonds of such system or combined system to the extent permitted in the ordinance, resolution, deed of trust, or indenture authorizing or securing the payment of such outstanding bonds. In instances in which the ordinance, resolution, or deed of trust or trust indenture authorizing or securing such revenue bonds (whether such bonds have been issued prior to the passage of this Act or may be hereafter issued) provides for the subsequent issuance of additional bonds or incurring of such contractual obligation and that the payments to be made for the security or payment thereof are to be on a parity with or of equal dignity to the previously issued revenue bonds (whether an original issue or a refunding issue) or bonds then to be issued, such entity shall have the power to authorize, issue, and sell additional bonds or incur such contractual obligation from time to time and in different series payable from the entire revenues of such system or combined systems on a parity with bonds previously issued or then to be issued and secured by a lien on the revenues of such system or combined systems on a parity with and of equal dignity with the lien securing the bonds previously issued or then to be issued, subject to such conditions as may be contained in the ordinance, resolution, deed of trust, or trust indenture providing for or securing such issue of original bonds or refunding bonds.

The pledge of revenues of a utility system or a combined utility system for the payment of such contract payments to acquire an ownership interest is hereby approved and authorized.

Sec. 3. The powers and authority granted by this Act shall be in addition to and in substitution for any powers and authority granted to political subdivisions under the laws of this state, and the exercise by any political subdivision of the powers and authority granted hereby and the performance or effectuation of any agreements entered into pursuant to the provisions hereof shall be deemed to constitute additional public purposes of such political subdivision (including the power to issue bonds, notes, or other obligations for the accomplishment of such

purposes), notwithstanding the existence of any express or implied limitations of the powers, authority, or purposes under any other general or special laws or charter provisions.

As to municipal corporations, this law shall be given effect as though originally contained in Chapter 10 of Title 28, Revised Civil Statutes of Texas, 1925, as amended, so as to provide full authority for the execution of agreements contemplated by the provisions hereof, and this law shall prevail over any charter provisions or general or special law.

Sec. 4. All agreements heretofore executed by and between political subdivisions whereby the parties will jointly own electric utility facilities or whereby one political subdivision agrees to pay the other as a maintenance and operating expense of all or part of its utility systems for services supplied or to be supplied from facilities owned by the other are hereby validated, ratified, and confirmed provided that such agreements have been heretofore submitted to the Attorney General of Texas in connection with the issuance of bonds and are on file in the office of the comptroller of public accounts and provided further that such agreements are not in litigation upon the effective date of this Act.

Sec. 5. If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act or the application thereof to any person or circumstances shall be held to be invalid or unconstitutional, the remainder of the Act shall nevertheless be valid, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion, or provision.

[Acts 1977, 65th Leg., p. 1287, ch. 506, §§ 1 to 5, eff. Aug. 29, 1977.]

8. MISCELLANEOUS PROVISIONS

Art. 1446c. Public Utility Regulatory Act

ARTICLE I. SHORT TITLE, LEGISLATIVE POLICY, AND DEFINITIONS

Short Title

Sec. 1. This Act may be referred to as the "Public Utility Regulatory Act."

Legislative Policy and Purpose

Sec. 2. This Act is enacted to protect the public interest inherent in the rates and services of public utilities. The legislature finds that public utilities are by definition monopolies in the areas they serve; that therefore the normal forces of competition which operate to regulate prices in a free enterprise society do not operate; and that therefore utility rates, operations and services are regulated by public agencies, with the objective that such regulation

shall operate as a substitute for such competition. The purpose of this Act is to establish a comprehensive regulatory system which is adequate to the task of regulating public utilities as defined by this Act, to assure rates, operations, and services which are just and reasonable to the consumers and to the utilities.

Definitions

Sec. 3. (a) The term "person," when used in this Act, includes natural persons, partnerships of two or more persons having a joint or common interest, and mutual or cooperative associations and corporations, as herein defined.

(b) The term "municipality," when used in this Act, includes cities and incorporated villages or towns existing, created, or organized under the general, home-rule, or special laws of the state.

(c) The term "public utility" or "utility," when used in this Act, includes any person, corporation, river authority, cooperative corporation, or any combination thereof, other than a municipal corporation, or their lessees, trustees, and receivers, now or hereafter owning or operating for compensation in this state equipment or facilities for:

(1) producing, generating, transmitting, distributing, selling, or furnishing electricity ("electric utilities" hereinafter);

(2)(a) the conveyance, transmission, or reception or communications over a telephone system; provided that no person or corporation not otherwise a public utility within the meaning of this Act shall be deemed such solely because of the furnishing or furnishing and maintenance of a private system; and provided further that nothing in this Act shall be construed to apply to telegraph services, services of specialized communications common carriers not providing local exchange telephone service, television stations, or radio stations, or community antenna television services;

(b) providing radio-telephone services that may be authorized under the Domestic Public Land Mobile Radio Service or Rural Radio Service rules of the Federal Communications Commission; provided, however, that radio-telephone service provided by wire-line telephone companies regulated by the Commission are excluded from the definition of radio-telephone utilities;

(3) transmitting or distributing combustible hydrocarbon natural or synthetic natural gas for sale or resale in a manner which is not subject to the jurisdiction of the Federal Power Commission under the Natural Gas Act (15 U.S.C.A., Section 717, et seq.) ("gas utilities" hereinafter) provided that the production and gathering of

natural gas, the sale of natural gas in or within the vicinity of the field where produced, the distribution or sale of liquified petroleum gas, and the transportation, delivery, or sale of natural gas for fuel for irrigation wells or any other direct use in agricultural activities is not included.

(4) the transmitting, storing, distributing, selling, or furnishing of potable water to the public or for resale to the public for any use, or the collection, transportation, treatment, or disposal of sewage, or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a city, town or other political subdivision of this state. The term "public utility" or "utility" includes any municipally owned gas or electric utility, whether owned separately or in conjunction with other municipalities operated by a board of trustees which as of May 1, 1975, was not directly appointed by the governing body of the municipality, and does not include any other municipally owned utility unless otherwise provided in this Act. The term "public utility" or "utility" shall not include any person or corporation not otherwise a public utility that furnishes the services or commodity described in any paragraph of this subsection only to itself, its employees, or tenants as an incident of such employee service or tenancy, when such service or commodity is not resold to or used by others.

(d) The term "rate," when used in this Act, means and includes every compensation, tariff, charge, fare, toll, rental, and classification, or any of them demanded, observed, charged, or collected whether directly or indirectly by any public utility for any service, product, or commodity described in Subdivision (c) of this section, and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

(e) The word "commission," when used in this Act, means the Public Utility Commission of Texas, as hereinafter constituted.

(f) The term "railroad commission," when used in this Act, means the Railroad Commission of Texas.

(g) The term "regulatory authority," when used in this Act, means, in accordance with the context where it is found, either the commission, the railroad commission, or the governing body of any municipality.

(h) "Affected person" means any public utility affected by any action of the regulatory authority, any person or corporation whose utility service or rates are affected by any proceeding before the regulatory authority, or any person or corporation that is a competitor of a public utility with respect

to any service performed by the utility or that desires to enter into competition.

(i) "Affiliated interest" or "affiliate" means:

(1) any person or corporation owning or holding, directly or indirectly, five percent or more of the voting securities of a public utility;

(2) any person or corporation in any chain of successive ownership of five percent or more of the voting securities of a public utility;

(3) any corporation five percent or more of the voting securities of which is owned or controlled, directly or indirectly, by a public utility;

(4) any corporation five percent or more of the voting securities of which is owned or controlled, directly or indirectly, by any person or corporation that owns or controls, directly or indirectly, five percent or more of the voting securities of any public utility or by any person or corporation in any chain of successive ownership of five percent of such securities;

(5) any person who is an officer or director of a public utility or of any corporation in any chain of successive ownership of five percent or more of voting securities of a public utility;

(6) any person or corporation that the commission or railroad commission, after notice and hearing, determines actually exercises any substantial influence or control over the policies and actions of a public utility, or over which a public utility exercises such control, or that is under common control with a public utility, such control being the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of another, whether such power is established through ownership or voting of securities or by any other direct or indirect means; or

(7) any person or corporation that the commission or railroad commission, after notice and hearing determines is actually exercising such substantial influence over the policies and action of the public utility in conjunction with one or more persons or corporations with which they are related by ownership or blood relationship, or by action in concert, that together they are affiliated with such public utility within the meaning of this section, even though no one of them alone is so affiliated.

(j) "Allocations" means, for all utilities, the division of plant, revenues, expenses, taxes, and reserves between municipalities or between municipalities and unincorporated areas, where such items are used for providing public utility service in a municipality, or for a municipality and unincorporated areas.

(k) "Commissioner" means a member of the Public Utility Commission of Texas.

(l) "Cooperative corporation" means any telephone or electric cooperative corporation organized and operating under the Telephone Cooperative Act (Article 1528c, Vernon's Texas Civil Statutes) or the Electric Cooperative Corporation Act (Article 1528b, Vernon's Texas Civil Statutes).

(m) "Corporation" means any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers or privileges of corporations not possessed by individuals or partnerships, but shall not include municipal corporations unless expressly provided otherwise in this Act.

(n) "Facilities" means all the plant and equipment of a public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any public utility.

(o) "Municipally-owned utility" means any utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

(p) "Order" means the whole or a part of the final disposition, whether affirmative, negative, injunctive, or declaratory in form, of the regulatory authority in a matter other than rulemaking, but including issuance of certificates of convenience and necessity and ratesetting.

(q) "Proceeding" means any hearing, investigation, inquiry, or other fact-finding or decision-making procedure under this Act and includes the denial of relief or the dismissal of a complaint.

(r) "Separation" means, for communications utilities only, the division of plant, revenues, expenses, taxes, and reserves, applicable to exchange or local service where such items are used in common for providing public utility service to both local exchange service and other service, such as interstate or intrastate toll service.

(s) "Service" is used in this Act in its broadest and most inclusive sense, and includes any and all acts done, rendered, or performed and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities in the performance of their duties under this Act to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them. Service shall not include the printing, distribution, or sale of advertising in telephone directories.

(t) "Test year" means the most recent 12 months for which operating data for a public utility are available, and shall commence with a calendar quarter.

Applicability of Administrative Procedure and Texas Register Act

Sec. 4. The Administrative Procedure and Texas Register Act¹ applies to all proceedings under this Act except to the extent inconsistent with this Act.

¹ Article 6252-13a.

ARTICLE II. ORGANIZATION OF COMMISSION

Creation of Commission; Appointment and Terms; Chairman

Sec. 5. A commission, to be known as the "Public Utility Commission of Texas" is hereby created. It shall consist of three commissioners, who shall be appointed by the governor, with the advice and consent of two-thirds of the members of the senate present, and who shall have and exercise the jurisdiction and powers herein conferred upon the commission. Immediately after this Act takes effect, the governor shall, with the advice and consent of the senate, appoint one commissioner whose term shall expire two years after appointment; one commissioner whose term shall expire four years after appointment; and one commissioner whose term shall expire six years after appointment. At the expiration of each of the above named terms, there shall be appointed, in the same manner, one commissioner to hold office for a term of six years. Each commissioner shall hold office until his successor is appointed and qualified. At its first meeting following the biennial appointment and qualification of a commissioner, the commission shall elect one of the commissioners chairman.

Application of Sunset Act

Sec. 5a. The Public Utility Commission of Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the commission is abolished, and this Act expires effective September 1, 1983.

¹ Article 5429k.

Qualifications; Oath and Bond; Prohibited Activities

Sec. 6. (a) To be eligible for appointment as a commissioner, a person must be a qualified voter, not less than 30 years of age, a citizen of the United States, and a resident of the State of Texas. No person is eligible for appointment as a commissioner if at any time during the two-year period immediately preceding his appointment he personally served as an officer, director, owner, employee, partner, or legal representative of any public utility or any affiliated interest, or he owned or controlled, directly or indirectly, stocks or bonds of any class with a value of \$10,000, or more in a public utility or any affiliated interest. Each commissioner shall qualify for office by taking the oath prescribed for other state officers and shall execute a bond for \$5,000 payable to the state and conditioned on the faithful performance of his duties.

(b) No commissioner or employee of the commission may do any of the following during his period

of service with the commission and for two years thereafter:

(1) have any pecuniary interest, either as an officer, director, partner, owner, employee, attorney, consultant, or otherwise, in any public utility or affiliated interest, or in any person or corporation or other business entity a significant portion of whose business consists of furnishing goods or services to public utilities or affiliated interests, but not including a nonprofit group or association solely supported by gratuitous contributions of money, property or services;

(2) own or control any securities in a public utility or affiliated interest, either directly or indirectly;

(3) accept any gift, gratuity, or entertainment whatsoever from any public utility or affiliated interest, or from any person, corporation, agent, representative, employee, or other business entity a significant portion of whose business consists of furnishing goods or services to public utilities or affiliated interests, or from any agent, representative, attorney, employee, officer, owner, director, or partner of any such business entity or of any public utility or affiliated interest; provided, however, that the receipt and acceptance of any gifts, gratuities, or entertainment after termination of service with the commission whose cumulative value in any one-year period is less than \$100 shall not constitute a violation of this Act.

(c) The prohibited activities of this section do not include contracts for public utility products and services or equipment for use of public utility products when a member or employee of the commission is acting as a consumer.

(d) No commissioner or employee of the commission may directly or indirectly solicit or request from or suggest or recommend to, any public utility, or to any agent, representative, attorney, employee, officer, owner, director, or partner thereof, the appointment to any position or the employment in any capacity of any person by such public utility or affiliated interest.

(e) No public utility or affiliated interest or any person, corporation, firm, association, or business that furnishes goods or services to any public utility or affiliated interest, nor any agent, representative, attorney, employee, officer, owner, director, or partner of any public utility or affiliated interest, or any person, corporation, firm, association, or business furnishing goods or services to any public utility or affiliated interest may give, or offer to give, any gift, gratuity, employment, or entertainment whatsoever to any member or employee of the commission except as allowed by Subdivision (3) of Subsection (b) of this section, nor may any such public utility or affiliated interest or any such person,

corporation, firm, association, or business aid, abet, or participate with any member, employee, or former employee of the commission in any activity or conduct that would constitute a violation of this subsection or Subdivision (3) of Subsection (b) of this section.

(f) It shall not be a violation of this section if a member of the commission or a person employed by the commission, upon becoming the owner of any stocks or bonds or other pecuniary interest in a public utility or affiliated interest under the jurisdiction of the commission otherwise than voluntarily, informs the commission and the attorney general of such ownership and divests himself of the ownership or interest within a reasonable time. In this section, a "pecuniary interest" includes income, compensation and payment of any kind, in addition to ownership interests. It is not a violation of this section if such a pecuniary interest is held indirectly by ownership of an interest in a retirement system, institution, or fund which in the normal course of business invests in diverse securities independently of the control of the commissioner or employee.

(g) Unless specifically authorized by this Act for disposition of ex parte matters, no member or employee of the commission assigned to render a decision or to make findings of fact and conclusions of law in a proceeding may communicate, directly or indirectly, in connection with any issue of fact or law with any party or his representative, except on notice and opportunity for all parties to participate.

(h) No member of the commission may seek nomination or election to any other civil office of the State of Texas or of the United States while he is a commissioner. If any member of the commission files for nomination for or election to any civil office of the State of Texas or of the United States, his office as commissioner immediately becomes vacant, and the governor shall appoint a successor.

Vacancies

Sec. 7. Whenever a vacancy in the office of commissioner occurs, it shall be filled in the manner provided herein with respect to the original appointment, except that the governor may make interim appointments to continue until the vacancy can be filled in the manner provided. Any person appointed with the advice and consent of the senate to fill a vacancy shall hold office during the unexpired portion of the term.

Employees

Sec. 8. (a) The commission shall employ such officers, hearing examiners, investigators, lawyers, engineers, economists, consultants, statisticians, accountants, inspectors, clerical staff, and other employees as it deems necessary to carry out the provisions of this Act. All employees receive such compensation as is fixed by the legislature. Pending

legislative determination, commission employees shall be paid the same salary as employees of the Railroad Commission holding comparable positions.

(b) The commission shall employ:

(1) a director of public utilities who has wide experience in utility regulation and rate determination;

(2) a chief engineer who is a registered engineer and an expert in public utility engineering and rate matters;

(3) a chief accountant who is a certified public accountant, experienced in public utility accounting;

(4) a director of research who is experienced in the conduct of analyses of industry, economics, energy, fuel, and other related matters that the commission may want to undertake; and

(5) a general counsel.

(c) The general counsel and his staff are responsible for the gathering of information relating to all matters within the authority of the commission.

The duties of the general counsel include:

(1) accumulation of evidence and other information from public utilities and from the accounting and technical and other staffs of the commission and from other sources for the purposes specified herein;

(2) preparation and presentation of such evidence before the commission or its appointed examiner in proceedings;

(3) conduct of investigations of public utilities under the jurisdiction of the commission;

(4) preparation of proposed changes in the rules of the commission;

(5) preparation of recommendations that the commission undertake investigation of any matter within its authority;

(6) preparation of recommendations and a report of such staff for inclusion in the annual report of the commission;

(7) protection and representation of the public interest before the commission; and

(8) such other activities as are reasonably necessary to enable him to perform his duties.

Salary

Sec. 9. The annual salary of the commissioners shall be determined by the legislature. Pending legislative determination, the commissioners shall be paid the same salary as members of the Railroad Commission.

Office; Meetings

Sec. 10. The principal office of the commission shall be located in the City of Austin, Texas, and

shall be open daily during the usual business hours, Saturdays, Sundays, and legal holidays excepted. The commission shall hold meetings at its office and at such other convenient places in the state as shall be expedient and necessary for the proper performance of its duties.

Seal

Sec. 11. The commission shall have a seal bearing the following inscription: "Public Utility Commission of Texas." The seal shall be affixed to all records and authentications of copies of records and to such other instruments as the commission shall direct. All courts of this state shall take judicial notice of said seal.

Quorum

Sec. 12. A majority of the commissioners shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power of the commission. No vacancy or disqualification shall prevent the remaining commissioner or commissioners from exercising all the powers of the commission.

Orders; Transcript and Exhibits; Public Records

Sec. 13. All orders of the commission shall be in writing and shall contain detailed findings of the facts upon which they are passed. The commission shall retain a copy of the transcript and the exhibits in any matter in which the commission issues an order. All files pertaining to matters which were at any time pending before the commission and to records, reports, and inspections required by Article V hereof shall be public records, subject to the terms of the Texas Open Records Act, Chapter 424, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-17a, Vernon's Texas Civil Statutes).

Annual Report

Sec. 14. (a) The commission shall publish an annual report to the governor, summarizing its proceedings, listing its receipts and the sources of its receipts, listing its expenditures and the nature of such expenditures, and setting forth such other information concerning the operations of the commission and the public utility industry as it considers of general interest.

(b) In the annual report issued in the year preceding the convening of each regular session of the legislature, the commission shall make such suggestions regarding modification and improvement of the commission's statutory authority and for the improvement of utility regulation in general as it may deem appropriate for protecting and furthering the interest of the public.

Attorney General to Represent Commission

Sec. 15. The Attorney General of the State of Texas shall represent the commission in all matters

before the state courts, and any court of the United States, and before any federal public utility regulatory commission.

ARTICLE III. JURISDICTION

General Power; Rules; Hearings

Sec. 16. The commission has the general power to regulate and supervise the business of every public utility within its jurisdiction and to do all things, whether specifically designated in this Act or implied herein, necessary and convenient to the exercise of this power and jurisdiction. The commission shall make and enforce rules reasonably required in the exercise of its powers and jurisdiction, including rules governing practice and procedure before the commission. The commission may call and hold hearings, administer oaths, receive evidence at hearings, issue subpoenas to compel the attendance of witnesses and the production of papers and documents, and make findings of fact and decisions with respect to administering the provisions of this Act or the rules, orders, or other actions of the commission.

Jurisdiction of Municipality; Surrender; Original and Appellate
Jurisdiction of Commission

Sec. 17. (a) Subject to the limitations imposed in this Act, and for the purpose of regulating rates and services so that such rates may be fair, just, and reasonable, and the services adequate and efficient, the governing body of each municipality shall have exclusive original jurisdiction over all electric, water, and sewer utility rates, operations, and services provided by an electric, water, and sewer utility within its city or town limits.

(b) At any time after two years have passed from the date this Act becomes effective, a municipality may elect to have the commission exercise exclusive original jurisdiction over electric, water, or sewer utility rates, operations, and services within the incorporated limits of the municipality. The governing body of a municipality may by ordinance elect to surrender its original jurisdiction to the commission, or the governing body may submit the question of the surrender to the qualified voters at a municipal election. Upon receipt of a petition signed by the lesser of 20,000 or ten percent of the number of qualified voters voting in the last preceding general election in that municipality, the governing body shall submit the question of the surrender of the municipality's original jurisdiction to the commission at a municipal election.

(c) A municipality that surrenders its jurisdiction to the commission may at any time, by vote of the electorate, reinstate the jurisdiction of the governing body; provided, however, that any municipality which reinstates its jurisdiction shall be unable to surrender that jurisdiction for five years after the date of the election at which the municipality elect-

ed to reinstate its jurisdiction. No municipality may, by vote of the electorate, reinstate the jurisdiction of the governing body during the pendency of any case before the commission involving the municipality.

(d) The commission shall have exclusive appellate jurisdiction to review orders or ordinances of such municipalities as provided in this Act.

(e) The commission shall have exclusive original jurisdiction over electric, water, and sewer utility rates, operations, and services not within the incorporated limits of a municipality exercising exclusive original jurisdiction over those rates, operations, and services as provided in this Act.

Telecommunications Utilities

Sec. 18. Subject to the limitations imposed in this Act, and for the purpose of regulating rates, operations, and services so that such rates may be just, fair, and reasonable, and the services adequate and efficient, the commission shall have exclusive original jurisdiction over the business and property of all telecommunications utilities in this state.

Gas Utilities

Sec. 19. (a) Subject to the limitations imposed in this Act, and for the purpose of regulating rates and services so that such rates may be fair, just, and reasonable, and the services adequate and efficient, the governing body of each municipality shall have exclusive original jurisdiction over all gas utility rates, operations, and services provided by any gas utility within its city or town limits.

(b) The railroad commission shall have exclusive appellate jurisdiction to review all orders or ordinances of municipalities as provided in this Act. The railroad commission shall have exclusive original jurisdiction over the rates and services of gas utilities distributing natural gas or synthetic natural gas in areas outside the limits of municipalities, and it shall also have exclusive original jurisdiction over the rates and services of pipelines transmitting, transporting, delivering, or selling natural gas or synthetic natural gas to gas utilities engaged in distributing such gas to the public.

(c) The provisions of this Act shall be deemed to be in addition to all existing laws relating to the jurisdiction, power, or authority of the railroad commission over gas utilities and, except as specifically in conflict with this Act, such laws shall not be deemed to be limited hereby. Provisions of this Act applicable to gas utilities within the jurisdiction of the railroad commission shall apply to all such gas utilities, including those that are within the jurisdiction, power, or authority of the railroad commission by virtue of laws other than this Act.

Municipally Owned Utilities

Sec. 20. Nothing in this article shall be construed to confer on the commission or railroad commission power or jurisdiction to regulate or supervise the rates or service of any utility owned and operated by any municipality within its boundaries either directly or through a municipally owned corporation, or to affect or limit the power, jurisdiction, or duties of the municipalities that have elected to regulate and supervise public utilities within their boundaries, except as provided in this Act.

ARTICLE IV. MUNICIPALITIES

Franchises

Sec. 21. Nothing in this Act shall be construed as in any way limiting the rights and powers of a municipality to grant or refuse franchises to use the streets and alleys within its limits and to make the statutory charges for the use thereof, but no provision of any franchise agreement shall limit or interfere with any power conferred on the commission or railroad commission by this Act. If a municipality performs regulatory functions under this Act, it may make such other charges as may be provided in the applicable franchise agreement, together with any other charges permitted by this Act.

Local Utility Service; Exempt and Nonexempt Areas

Sec. 22. Notwithstanding any other provision of this section, municipalities shall continue to regulate each kind of local utility service inside their boundaries until the commission has assumed jurisdiction over the respective utility pursuant to this Act. If a municipality does not surrender its jurisdiction, local utility service within the boundaries of the municipality shall be exempt from regulation by the commission under the provisions of this Act to the extent that this Act applies to local service, and the municipality shall have, regarding service within its boundaries, the right to exercise the same regulatory powers under the same standards and rules as the commission, or other standards and rules not inconsistent therewith. Notwithstanding any such election, the commission may consider a public utility's revenues and return on investment in exempt areas in fixing rates and charges in nonexempt areas, and may also exercise the powers conferred necessary to give effect to orders under this Act, for the benefit of nonexempt areas. Likewise, in fixing rates and charges in the exempt area, the governing body may consider a public utility's revenues and return on investment in nonexempt areas. Utilities serving exempt areas shall be subject to the reporting requirements of this Act. Such reports shall be filed with the governing body of the municipality as well as with the commission. Nothing in this section shall limit the duty and power of the commission to regulate service and rates of municipally regulated utilities for service provided to other areas in Texas.

Rate Determination

Sec. 23. Any municipality regulating its public utilities pursuant to this Act shall require from those utilities all necessary data to make a reasonable determination of rate base, expenses, investment, and rate of return within the municipal boundaries. The standards for such determination shall be based on the procedures and requirements of this Act and said municipality shall retain any and all personnel necessary to make the determination of reasonable rates required under this Act.

Authority of Governing Body; Cost Reimbursement

Sec. 24. The governing body of any municipality shall have the right to select and engage rate consultants, accountants, auditors, attorneys, engineers, or any combination thereof, to conduct investigations, present evidence, advise and represent the governing body, and assist with litigation on public utility ratemaking proceedings; and the public utility engaged in such proceedings shall be required to reimburse the governing body for the reasonable costs of such services.

Assistance by Commission or Railroad Commission

Sec. 25. The commission or the railroad commission may advise and assist municipalities upon request in connection with questions and proceedings arising under this Act. Such assistance may include aid to municipalities in connection with matters pending before the commission, the railroad commission, or the courts, or before the governing body of any municipality, including making members of the staff available as witnesses and otherwise providing evidence to them.

Appeal

Sec. 26. (a) Any party to a rate proceeding before the governing body of a municipality may appeal the decision of the governing body to the commission or railroad commission.

(b) Citizens of a municipality may appeal the decision of the governing body in any rate proceeding to the commission or railroad commission through the filing of a petition for review signed by the lesser of 20,000 or 10 percent of the number of qualified voters of such municipality.

(c) Ratepayers of a municipally owned gas or electric utility outside the municipal limits may appeal any action of the governing body affecting the rates of the municipally owned gas or electric utility through filing with the commission or railroad commission, as appropriate, petition for review signed by the lesser of 10,000 or 5 percent of the ratepayers served by such utility outside the municipal limits. For purposes of this subsection each person receiving a separate bill shall be considered as a ratepayer. But no person shall be considered as being more than one ratepayer notwithstanding the number of

bills received. Such petition for review shall be considered properly signed if signed by any person, or spouse of any such person, in whose name residential utility service is carried.

(d) The appeal process shall be instituted within 30 days of the final decision by the governing body with the filing of a petition for review with the commission or railroad commission and copies served on all parties to the original rate proceeding.

(e) The commission or railroad commission shall hear such appeal de novo and by its final order shall fix such rates as the municipality should have fixed in the ordinance from which the appeal was taken.

ARTICLE V. RECORDS, REPORTS, INSPECTIONS, RATES AND SERVICES

Records of Public Utility; Rates, Methods and Accounts

Sec. 27. (a) Every public utility shall keep and render to the regulatory authority in the manner and form prescribed by the commission or railroad commission uniform accounts of all business transacted. The commission or railroad commission may also prescribe forms of books, accounts, records, and memoranda to be kept by such public utilities, including the books, accounts, records, and memoranda of the rendition of and capacity for service as well as the receipts and expenditures of moneys, and any other forms, records, and memoranda which in the judgment of the commission or railroad commission may be necessary to carry out any of the provisions of this Act. In the case of any public utility subject to regulations by a federal regulatory agency, compliance with the system of accounts prescribed for the particular class of utilities by such agency may be deemed a sufficient compliance with the system prescribed by the commission or railroad commission; provided, however, that the commission or railroad commission may prescribe forms of books, accounts, records, and memoranda covering information in addition to that required by the federal agency. The system of accounts and the forms of books, accounts, records, and memoranda prescribed by the commission or railroad commission for a public utility or class of utilities shall not conflict nor be inconsistent with the systems and forms established by a federal agency for that public utility or class of utilities.

(b) The commission or railroad commission shall fix proper and adequate rates and methods of depreciation, amortization, or depletion of the several classes of property of each public utility, and shall require every public utility to carry a proper and adequate depreciation account in accordance with such rates and methods and with such other rules and regulations as the commission or railroad commission prescribes. Such rates, methods, and accounts shall be utilized uniformly and consistently throughout the ratesetting and appeal proceedings.

(c) Every public utility shall keep separate accounts to show all profits or losses resulting from the sale or lease of appliances, fixtures, equipment, or other merchandise. No such profit or loss shall be taken into consideration by the regulatory authority in arriving at any rate to be charged for service by any such public utility, to the extent that such merchandise is not integral to the provision of utility service.

(d) Every public utility is required to keep and render its books, accounts, records, and memoranda accurately and faithfully in the manner and form prescribed by the commission or railroad commission, and to comply with all directions of the regulatory authority relating to such books, accounts, records, and memoranda. The regulatory authority may require the examination and audit of all accounts.

(e) In determining the allocation of tax savings derived from application of such methods as liberalized depreciation and amortization and the investment tax credit, the regulatory authority shall equitably balance the interests of present and future customers and shall apportion such benefits between consumers and the public utilities accordingly. Where any portion of the investment tax credit has been retained by a public utility, that same amount shall be deducted from the original cost of the facilities or other addition to the rate base to which the credit applied, to the extent allowed by the Internal Revenue Code.

(f) For the purposes of this section, "public utility" includes "municipally owned utility."

Powers of Commission and Railroad Commission

Sec. 28. (a) The commission and the railroad commission shall have the power to:

(1) require that public utilities report to it such information relating to themselves and affiliated interests both within and without the State of Texas as it may consider useful in the administration of this Act;

(2) establish forms for all reports;

(3) determine the time for reports and the frequency with which any reports are to be made;

(4) require that any reports be made under oath;

(5) require that a copy of any contract or arrangement between any public utility and any affiliated interest be filed with it. It may require any such contract or arrangement not in writing to be reduced to writing and filed with it;

(6) require that a copy of any report filed with any federal agency or any governmental agency or body of any other state be filed with it; and

(7) require that a copy of annual reports showing all payments of compensation (other than salary or wages subject to the withholding of federal income tax) to residents of Texas, or with respect to legal, administrative, or legislative matters in Texas, or for representation before the Texas Legislature or any governmental agency or body.

(b) On the request of the governing body of any municipality, the commission or railroad commission may provide sufficient staff members to advise and consult with such municipality on any pending matter.

Inspections; Examination Under Oath; Compelling Production of Records; Inquiry into Management and Affairs

Sec. 29. (a) Any regulatory authority, and when authorized by the regulatory authority, its counsel, agents, and employees, shall have the right, at reasonable times and for reasonable purposes, to inspect and obtain copies of the papers, books, accounts, documents, and other business records, and to inspect the plant, equipment, and other property of any public utility within its jurisdiction. The regulatory authority may examine under oath, or it may authorize the person conducting such investigation to examine under oath, any officer, agent, or employee of any public utility in connection with such investigation. The regulatory authority may require, by order or subpoena served on any public utility, the production within this state at the time and place it may designate, of any books, accounts, papers, or records kept by that public utility outside the state, or verified copies in lieu thereof if the commission or railroad commission so orders. Any public utility failing or refusing to comply with any such order or subpoena is in violation of this Act.

(b)(1) A member, agent, or employee of the regulatory authority may enter the premises occupied by a public utility to make inspections, examinations, and tests and to exercise any authority provided by this Act.

(2) A member, agent, or employee of the regulatory authority may act under this section only during reasonable hours and after giving reasonable notice to the utility.

(3) The public utility is entitled to be represented when inspections, examinations, and tests are made on its premises. Reasonable time for the utility to secure a representative shall be allowed before commencing an inspection, examination, or test.

(c) The regulatory authority may inquire into the management and affairs of all public utilities, and shall keep itself informed as to the manner and method in which the same are conducted.

Reporting of Advertising or Public Relations Expenses

Sec. 30. The regulatory authority may require an annual reporting from each utility company of all its expenditures for business gifts and entertainment, and institutional, consumption-inducing and other advertising or public relations expenses. The regulatory authority shall not allow as costs or expenses for rate-making purposes any of these expenditures which the regulatory authority determines not to be in the public interest. The cost of legislative-advocacy expenses shall not in any case be allowed as costs or expenses for rate-making purposes. Reasonable charitable or civic contributions may be allowed not to exceed the amount approved by the regulatory authority.

Unlawful Rates, Rules and Regulations

Sec. 31. It shall be unlawful for any utility to charge, collect, or receive any rate for public utility service or to impose any rule or regulation other than as herein provided.

Filing Schedule of Rates, Rules and Regulations

Sec. 32. Every public utility shall file with each regulatory authority schedules showing all rates which are subject to the original or appellate jurisdiction of the regulatory authority and which are in force at the time for any public utility service, product, or commodity offered by the utility. Every public utility shall file with, and as a part of such schedules, all rules and regulations relating to or affecting the rates, public utility service, product, or commodity furnished by such utility.

Office of Public Utility; Records; Removal From State

Sec. 33. Every public utility shall have an office in a county of this state in which its property or some part thereof is located in which it shall keep all books, accounts, records, and memoranda required by the commission or railroad commission to be kept in the state. No books, accounts, records, or memoranda required by the regulatory authority to be kept in the state shall be removed from the state, except on conditions prescribed by the commission or railroad commission.

Communications by Public Utilities With Regulatory Authority; Regulations and Records

Sec. 34. (a) The regulatory authority shall prescribe regulations governing communications by public utilities, their affiliates and their representatives, with the regulatory authority or any member or employee of the regulatory authority.

(b) Such records shall contain the name of the person contacting the regulatory authority or member or employee of the regulatory authority, the name of the business entities represented, a brief description of the subject matter of the communication, and the action, if any, requested by the public utility, affiliate, or representative. These records shall be available to the public on a monthly basis.

Standards of Service

Sec. 35. (a) Every public utility shall furnish such service, instrumentalities, and facilities as shall be safe, adequate, efficient, and reasonable.

(b) The regulatory authority after reasonable notice and hearing had on its own motion or on complaint, may ascertain and fix just and reasonable standards, classifications, regulations, or practices to be observed and followed by any or all public utilities with respect to the service to be furnished; ascertain and fix adequate and reasonable standards for the measurement of the quantity, quality, pressure, initial voltage, or other condition pertaining to the supply of the service; prescribe reasonable regulations for the examination and testing of the service and for the measurement thereof; and establish or approve reasonable rules, regulations, specifications, and standards to secure the accuracy of all meters, instruments and equipment used for the measurement of any service of any public utility. Any standards, classifications, regulations, or practices now or hereafter observed or followed by any public utility may be filed by it with the regulatory authority, and the same shall continue in force until amended by the public utility or until changed by the regulatory authority as herein provided.

Examination and Test of Equipment

Sec. 36. (a) The regulatory authority may examine and test any meter, instrument, or equipment used for the measurement of any service of any public utility and may enter any premises occupied by any public utility for the purpose of making such examinations and tests and exercising any power provided for in this Act and may set up and use on such premises any apparatus and appliances necessary therefor. The public utility shall have the right to be represented at the making of the examinations, tests, and inspections. The public utility and its officers and employees shall facilitate the examinations, tests, and inspections by giving every reasonable aid to the regulatory authority and any person or persons designated by the regulatory authority for the duties aforesaid.

(b) Any consumer or user may have any meter or measuring device tested by the utility once without charge, after a reasonable period to be fixed by the regulatory authority by rule, and at shorter intervals on payment of reasonable fees fixed by the regulatory authority. The regulatory authority shall declare and establish reasonable fees to be paid for other examining and testing such meters and other measuring devices on the request of the consumer. If the test is requested to be made within the period of presumed accuracy as fixed by the regulatory authority since the last such test of the same meter or other measuring device, the fee to be paid by the consumer or user at the time of his request shall be

refunded to the consumer or user if the meter or measuring device is found unreasonably defective or incorrect to the substantial disadvantage of the consumer or user. If the consumer's request is made at a time beyond the period of presumed accuracy fixed by the regulatory authority since the last such test of the same meter or measuring device, the utility shall make the test without charge to the consumer or user.

ARTICLE VI. PROCEEDINGS BEFORE THE REGULATORY AUTHORITY

Power to Insure Compliance; Rate Regulation

Sec. 37. Subject to the provisions of this Act, the commission or railroad commission is hereby vested with all authority and power of the State of Texas to insure compliance with the obligations of public utilities in this Act. For this purpose the regulatory authority is empowered to fix and regulate rates of public utilities, including rules and regulations for determining the classification of customers and services and for determining the applicability of rates. No rule or order of the regulatory authority shall be in conflict with the rulings of any federal regulatory body.

Just and Reasonable Rates

Sec. 38. It shall be the duty of the regulatory authority to insure that every rate made, demanded, or received by any public utility, or by any two or more public utilities jointly, shall be just and reasonable. Rates shall not be unreasonably preferential, prejudicial, or discriminatory, but shall be sufficient, equitable, and consistent in application to each class of consumers. For ratemaking purposes, the commission or railroad commission may treat two or more municipalities served by a public utility as a single class wherever the commission or railroad commission deems such treatment to be appropriate.

Fixing Overall Revenues

Sec. 39. In fixing the rates of a public utility the regulatory authority shall fix its overall revenues at a level which will permit such utility to recover its operating expenses together with a reasonable return on its invested capital.

Fair Return; Burden of Proof

Sec. 40. (a) The regulatory authority shall not prescribe any rate which will yield more than a fair return upon the adjusted value of the invested capital used and useful in rendering service to the public.

(b) In any proceeding involving any proposed change of rates, the burden of proof to show that the proposed change, if proposed by the utility, or that the existing rate, if it is proposed to reduce the rate, is just and reasonable shall be on the public utility.

Components of Adjusted Value of Invested Capital and Net Income

Sec. 41. The components of adjusted value of invested capital and net income shall be determined according to the following rules:

(a) Adjusted Value of Invested Capital. Utility rates shall be based upon the adjusted value of property used by and useful to the public utility in providing service including where necessary to the financial integrity of the utility construction work in progress at cost as recorded on the books of the utility. The adjusted value of such property shall be a reasonable balance between original cost less depreciation and current cost less an adjustment for both present age and condition. The regulatory authority shall have the discretion to determine a reasonable balance that reflects not less than 60% nor more than 75% original cost, that is, the actual money cost, or the actual money value of any consideration paid other than money, of the property at the time it shall have been dedicated to public use, whether by the utility which is the present owner or by a predecessor, less depreciation, and not less than 25% nor more than 40% current cost less an adjustment for both present age and condition. The regulatory authority may consider inflation, deflation, quality of service being provided, the growth rate of the service area, and the need for the public utility to attract new capital in determining a reasonable balance.

(b) Separations and Allocations. Costs of facilities, revenues, expenses, taxes, and reserves shall be separated or allocated as prescribed by the regulatory authority.

(c) Net Income. By "net income" is meant the total revenues of the public utility less all reasonable and necessary expenses as determined by the regulatory authority. The regulatory authority shall determine expenses and revenues in a manner consistent with the following:

(1) Transactions with Affiliated Interests. Payment to affiliated interests for costs of any services, or any property, right or thing, or for interest expense shall not be allowed either as capital cost or as expense except to the extent that the regulatory authority shall find such payment to be reasonable. Any such finding of reasonableness shall include specific statements setting forth the cost to the affiliate of each item or class of items in question and a finding that the price to the utility is no higher than prices charged by the supplying affiliate to its other affiliates or divisions for the same item or items, or to unaffiliated persons or corporations.

(2) **Income Taxes.** If the public utility is a member of an affiliated group that is eligible to file a consolidated income tax return, and if it is advantageous to the public utility to do so, income taxes shall be computed as though a consolidated return had been so filed and the utility had realized its fair share of the savings resulting from the consolidated return, unless it is shown to the satisfaction of the regulatory authority that it was reasonable to choose not to consolidate returns. The amounts of income taxes saved by a consolidated group of which a public utility is a member by reason of the elimination in the consolidated return of the intercompany profit on purchases by the public utility from an affiliate shall be applied to reduce the cost of the property or services so purchased. The investment tax credit allowed against federal income taxes, to the extent retained by the utility, shall be applied as a reduction in the rate based contribution of the assets to which such credit applies, to the extent and at such rate as allowed by the Internal Revenue Code.

(3) **Expenses Disallowed.** The regulatory authority may promulgate reasonable rules and regulations with respect to the allowance or disallowance of certain expenses for ratemaking purposes.

Unreasonable or Violative Existing Rates; Investigating Costs of Obtaining Service from Another Source

Sec. 42. Whenever the regulatory authority, after reasonable notice and hearing, on its own motion or on complaint by any affected person, finds that the existing rates of any public utility for any service are unreasonable or in any way in violation of any provision of law, the regulatory authority shall determine the just and reasonable rates, including maximum or minimum rates, to be thereafter observed and in force, and shall fix the same by order to be served on the public utility; and such rates shall constitute the legal rates of the public utility until changed as provided in this Act. Whenever a public utility does not itself produce or generate that which it distributes, transmits, or furnishes to the public for compensation, but obtains the same from another source, the regulatory authority shall have the power and authority to investigate the cost of such production or generation in any investigation of the reasonableness of the rates of such public utility.

Statement of Intent to Change Rates; Major Changes; Hearing; Suspension of Rate Schedule; Determination of Rate Level

Sec. 43. (a) No utility may make changes in its rates except by filing a statement of intent with the regulatory authority having original jurisdiction at least 35 days prior to the effective date of the

proposed change. The statement of intent shall include proposed revisions of tariffs and schedules and a statement specifying in detail each proposed change, the effect the proposed change is expected to have on the revenues of the company, the classes and numbers of utility consumers affected, and such other information as may be required by the regulatory authority's rules and regulations. A copy of the statement of intent shall be mailed or delivered to the appropriate officer of each affected municipality, and notice shall be given by publication in conspicuous form and place of a notice to the public of such proposed change once in each week for four successive weeks in a newspaper having general circulation in each county containing territory affected by the proposed change, and to such other affected persons as may be required by the regulatory authority's rules and regulations.

(b) The regulatory authority, for good cause shown, may, except in the case of major changes, allow changes in rate to take effect prior to the end of such 35 day period under such conditions as it may prescribe, subject to suspension as provided herein. All such changes shall be indicated immediately upon its schedules by such utility. "Major changes" shall mean an increase in rates which would increase the aggregate revenues of the applicant more than the greater of \$100,000 or two and one-half percent, but shall not include changes in rates allowed to go into effect by the regulatory authority or made by the utility pursuant to an order of the regulatory authority after hearings held upon notice to the public.

(c) Whenever there is filed with the Regulatory Authority any schedule modifying or resulting in a change in any rates then in force, the Regulatory Authority shall on complaint by any affected person or may on its own motion, at any time within 30 days from the date when such change would or has become effective, and, if it so orders, without answer or other formal pleading by the utility, but on reasonable notice, including notice to the governing bodies of all affected municipalities and counties, enter on a hearing to determine the propriety of such change. The Regulatory Authority shall hold such a hearing in every case in which the change constitutes a major change in rates, provided that an informal proceeding may satisfy this requirement if no complaint has been received before the expiration of 45 days after notice of the change shall have been filed.

(d) Pending the hearing and decision, the Regulatory Authority, after delivery to the affected utility of a statement in writing of its reasons therefor, may suspend the operation of the schedule for a period not to exceed 120 days beyond the date on which the schedule of rates would otherwise go into effect. If the Regulatory Authority finds that a

longer time will be required for a final determination, the Regulatory Authority may further extend the period for an additional 30 days. If the Regulatory Authority does not make a final determination concerning any schedule of rates within a period of 150 days after the time when the schedule of rates would otherwise go into effect, the schedule shall be deemed to have been approved by the Regulatory Authority. This approval is subject to the authority of the Regulatory Authority thereafter to continue a hearing in progress. The Regulatory Authority may in its discretion fix temporary rates for any period of suspension under this section. During the suspension by the Regulatory Authority as above provided, the rates in force when the suspended schedule was filed shall continue in force unless the Regulatory Authority shall establish a temporary rate. The Regulatory Authority shall give preference to the hearing and decision of questions arising under this section over all other questions pending before it and decide the same as speedily as possible.

(e) If the regulatory authority fails to make its final determination of rates within 90 days from the date that the proposed change otherwise would have gone into effect, the utility concerned may put a changed rate, not to exceed the proposed rate, into effect upon the filing with the regulatory authority of a bond payable to the regulatory authority in an amount and with sureties approved by the regulatory authority conditioned upon refund and in a form approved by the regulatory authority. The utility concerned shall refund or credit against future bills all sums collected during the period of suspension in excess of the rate finally ordered plus interest at the current rate as finally determined by the regulatory authority.

(f) If, after hearing, the Regulatory Authority finds the rates to be unreasonable or in any way in violation of any provision of law, the Regulatory Authority shall determine the level of rates to be charged or applied by the utility for the service in question and shall fix the same by order to be served upon the utility; these rates are thereafter to be observed until changed, as provided by this Act.

Rates for Areas Not Within Municipality

Sec. 44. Public utility rates for areas not within any municipality shall not exceed without commission or railroad commission approval 115 percent of the average of all rates for similar services of all municipalities served by the same utility within the same county.

Unreasonable Preference or Prejudice as to Rates or Services

Sec. 45. No public utility may, as to rates or services, make or grant any unreasonable preference or advantage to any corporation or person within any classification, or subject any corporation or person within any classification to any unreasonable

prejudice or disadvantage. No public utility may establish and maintain any unreasonable differences as to rates of service either as between localities or as between classes of service.

Equality of Rates and Services

Sec. 46. No public utility may, directly or indirectly, by any device whatsoever or in any manner, charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered by the utility than that prescribed in the schedule of rates of the public utility applicable thereto when filed in the manner provided in this Act, nor may any person knowingly receive or accept any service from a public utility for a compensation greater or less than that prescribed in the schedules, provided that all rates being charged and collected by a public utility upon the effective date of this Act may be continued until schedules are filed. Nothing in this Act shall prevent a cooperative corporation from returning to its members the whole, or any part of, the net earnings resulting from its operations in proportion to their purchases from or through the corporation.

Discrimination; Restriction on Competition

Sec. 47. No public utility may discriminate against any person or corporation that sells or leases equipment or performs services in competition with the public utility, nor may any public utility engage in any other practice that tends to restrict or impair such competition.

Payments in Lieu of Taxes

Sec. 48. No payments made in lieu of taxes by a public utility to the municipality by which it is owned may be considered an expense of operation for the purpose of determining, fixing, or regulating the rates to be charged for the provision of utility service to a school district or hospital district. No rates received by a public utility from a school district or hospital district may be used to make or to cover the cost of making payments in lieu of taxes to the municipality by which the public utility is owned.

ARTICLE VII. CERTIFICATES OF CONVENIENCE AND NECESSITY

Definitions

Sec. 49. For the purposes of this article only: (a) "Retail public utility" means any person, corporation, municipality, political subdivision or agency, or cooperative corporation, now or hereafter operating, maintaining, or controlling in Texas facilities for providing retail utility service.

(b) "Public utility" does not include any person, corporation, municipality, political subdivision or agency; or cooperative corporation under the jurisdiction of the Railroad Commission.

Certificate Required

Sec. 50. Beginning one year after the effective date of this Act, unless otherwise specified:

(1) No public utility may in any way render service directly or indirectly to the public under any franchise or permit without first having obtained from the commission a certificate that the present or future public convenience and necessity require or will require such installation, operation, or extension.

(2) Except as otherwise provided in this article no retail public utility may furnish, make available, render, or extend retail public utility service to any area to which retail utility service is being lawfully furnished by another retail public utility on or after the effective date of this Act, without first having obtained a certificate of public convenience and necessity that includes the area in which the consuming facility is located.

Exceptions for Extension of Service

Sec. 51. (a) A public utility is not required to secure a certificate of public convenience and necessity for:

(1) an extension into territory contiguous to that already served by it and not receiving similar service from another public utility and not within the area of public convenience and necessity of another utility of the same kind;

(2) an extension within or to territory already served by it or to be served by it under a certificate of public convenience and necessity; or

(3) operation, extension, or service in progress on the effective date of this Act.

(b) Any extensions allowed by Subsection (a) of this section shall be limited to devices for interconnection of existing facilities or devices used solely for transmitting public utility services from existing facilities to customers of retail utility service.

Application; Maps; Evidence of Consent

Sec. 52. (a) A public utility shall submit to the commission an application to obtain a certificate of public convenience and necessity or an amendment thereof.

(b) On or before 90 days after the effective date of this Act, or at a later date on request in writing by a public utility when good cause is shown, or at such later dates as the commission may order, each public utility shall file with the commission a map or maps showing all its facilities and illustrating separately facilities for generation, transmission, and distribution of its services.

(c) Each applicant for a certificate shall file with the commission such evidence as is required by the

commission to show that the applicant has received the required consent, franchise, or permit of the proper municipality or other public authority.

Prior Construction or Operation

Sec. 53. On application made to the commission within six months after the effective date of this Act, the commission shall issue a certificate of public convenience and necessity for the construction or operation then being conducted to any public utility actually providing service to any geographical area on the effective date of this Act, or to any person or corporation actively engaged on the effective date of this Act in the construction, installation, extension, or improvement of, or addition to, any facility or system used or to be used in providing public utility service.

Notice and Hearing; Issuance or Refusal; Factors Considered

Sec. 54. (a) When an application for a certificate of public convenience and necessity is filed, the commission shall give notice of such application to interested parties and, if requested, shall fix a time and place for a hearing and give notice of the hearing. Any person interested in the application may intervene at the hearing.

(b) Except for certificates for prior operations granted under Section 53, the commission may grant applications and issue certificates only if the commission finds that the certificate is necessary for the service, accommodation, convenience, or safety of the public. The commission may issue the certificate as prayed for, or refuse to issue it, or issue it for the construction of a portion only of the contemplated system or facility or extension thereof, or for the partial exercise only of the right or privilege.

(c) Certificates of convenience and necessity shall be granted on a nondiscriminatory basis after consideration by the commission of the adequacy of existing service, the need for additional service, the effect of the granting of a certificate on the recipient of the certificate and on any public utility of the same kind already serving the proximate area, and on such factors as community values, recreational and park areas, historical and aesthetic values, environmental integrity, and the probable improvement of service or lowering of cost to consumers in such area resulting from the granting of such certificate.

Area Included Within City, Town or Village

Sec. 55. (a) If an area has been or shall be included within the boundaries of a city, town, or village as the result of annexation, incorporation, or otherwise, all public utilities certified or entitled to certification under this Act to provide service or operate facilities in such area prior to the inclusion shall have the right to continue and extend service in its area of public convenience and necessity within the annexed or incorporated area, pursuant to the rights granted by its certificate and this Act.

(b) Notwithstanding any other provision of law, a public utility shall have the right to continue and extend service within its area of public convenience and necessity and to utilize the roads, streets, highways, alleys, and public property for the purpose of furnishing such retail utility service, subject to the authority of the governing body of a municipality to require any public utility, at its own expense, to relocate its facilities to permit the widening or straightening of streets by giving to the public utility 30 days' notice and specifying the new location for the facilities along the right-of-way of the street or streets.

(c) This section may not be construed as limiting the power of cities, towns, and villages to incorporate or extend their boundaries by annexation, nor may this section be construed as prohibiting any city or town from levying taxes and other special charges for the use of the streets as are authorized by Article 11.03, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended.

Contracts Valid and Enforceable

Sec. 56. Contracts between retail public utilities designating areas to be served and customers to be served by those utilities, when approved by the commission, shall be valid and enforceable and shall be incorporated into the appropriate areas of public convenience and necessity.

Preliminary Order for Certificate

Sec. 57. If a public utility desires to exercise a right or privilege under a franchise or permit which it contemplates securing but which has not as yet been granted to it, such public utility may apply to the commission for an order preliminary to the issuance of the certificate. The commission may thereupon make an order declaring that it will, on application, under such rules as it prescribes, issue the desired certificate on such terms and conditions as it designates, after the public utility has obtained the contemplated franchise or permit. On presentation to the commission of evidence satisfactory to it that the franchise or permit has been secured by the public utility, the commission shall issue the certificate.

Continuous and Adequate Service; Discontinuance, Reduction or Impairment of Service

Sec. 58. (a) The holder of any certificate of public convenience and necessity shall serve every consumer within its certified area and shall render continuous and adequate service within the area or areas.

(b) Unless the commission issues a certificate that neither the present or future convenience and necessity will be adversely affected, the holder of a certificate shall not discontinue, reduce, or impair service to a certified service area or part thereof except for:

(1) nonpayment of charges;

(2) nonuse; or

(3) other similar reasons in the usual course of business.

(c) Any discontinuance, reduction, or impairment of service, whether with or without approval of the commission, shall be in conformity with and subject to such conditions, restrictions, and limitations as the commission shall prescribe.

Sale, Assignment or Lease of Certificate

Sec. 59. If the commission determines that a purchaser, assignee, or lessee is capable of rendering adequate service, a public utility may sell, assign, or lease a certificate of public convenience and necessity or any rights obtained under the certificate. The sale, assignment, or lease shall be on the conditions prescribed by the commission.

Interference with Other Public Utility

Sec. 60. If a public utility in constructing or extending its lines, plant, or system interferes or attempts to interfere with the operation of a line, plant, or system of any other public utility, the commission may issue an order prohibiting the construction or extension or prescribing terms and conditions for locating the lines, plants, or systems affected.

Improvements in Service; Interconnecting Service; Extended Area Toll-free Telephone Service

Sec. 61. After notice and hearing, the commission may:

(1) order a public utility to provide specified improvements in its service in a defined area, if service in such area is inadequate or is substantially inferior to service in a comparable area and it is reasonable to require the company to provide such improved service;

(2) order two or more public utilities to establish specified facilities for the interconnecting service; and

(3) order a telephone company or telephone companies to provide extended area toll-free service within a specified metropolitan area where there is a sufficient community of interest within the area and such service can reasonably be provided.

Revocation or Amendment of Certificate

Sec. 62. (a) The commission at any time after notice and hearing may revoke or amend any certificate of convenience and necessity if it finds that the certificate holder has never provided or is no longer providing service in the area, or part of the area, covered by the certificate.

(b) When the certificate of any public utility is revoked or amended, the commission may require

one or more public utilities to provide service in the area in question.

ARTICLE VIII. SALE OF PROPERTY AND MERGERS

Report of Sale, Merger, etc.; Investigation; Disallowance of Transaction

Sec. 63. No public utility may sell, acquire, lease, or rent any plant as an operating unit or system in this state for a total consideration in excess of \$100,000 or merge or consolidate with another public utility operating in this state unless the public utility reports such transaction to the commission or railroad commission within a reasonable time. On the filing of a report with the commission or railroad commission, the commission or railroad commission shall investigate the same with or without public hearing, to determine whether the action is consistent with the public interest. In reaching its determination, the commission or railroad commission shall take into consideration the reasonable value of the property, facilities, or securities to be acquired, disposed of, merged or consolidated. If the commission or railroad commission finds that such transactions are not in the public interest, the commission or railroad commission shall take the effect of the transaction into consideration in the rate-making proceedings and disallow the effect of such transaction if it will unreasonably affect rates or service. The provisions of this section shall not be construed as being applicable to the purchase of units of property for replacement or to the addition to the facilities of the public utility by construction.

Purchase of Voting Stock in Another Public Utility; Report

Sec. 64. No public utility may purchase voting stock in another public utility doing business in Texas, unless the utility reports such purchase to the commission or railroad commission.

Loans to Stockholders; Report

Sec. 65. No public utility may loan money, stocks, bonds, notes, or other evidences of indebtedness to any corporation or person owning or holding directly or indirectly any stock of the public utility unless the public utility reports the transaction to the commission or railroad commission within a reasonable time.

Gas Reserve Rights: Approval of Sale, Conveyance, etc.

Sec. 66. No gas utility may sell, convey, bank, or assign rights to gas reserves to a utility or, where not in conflict with federal law, to an interstate pipeline without prior approval of the railroad commission.

ARTICLE IX. RELATIONS WITH AFFILIATED INTERESTS

Jurisdiction Over Affiliated Interests

Sec. 67. The commission or railroad commission shall have jurisdiction over affiliated interests having transactions with public utilities under the jurisdiction of the commission or railroad commission to the extent of access to all accounts and records of such affiliated interests relating to such transactions, including but in no way limited to accounts and records of joint or general expenses, any portion of which may be applicable to such transactions.

Disclosure of Substantial Interest in Voting Securities

Sec. 68. The commission or railroad commission may require the disclosure of the identity and respective interests of every owner of any substantial interest in the voting securities of any public utility or its affiliated interest. One percent or more is a substantial interest within the meaning of this section.

ARTICLE X. JUDICIAL REVIEW

Right to Judicial Review; Evidence

Sec. 69. Any party to a proceeding before the commission is entitled to judicial review under the substantial evidence rule. The issue of confiscation shall be determined by a preponderance of the evidence.

Costs and Attorneys' Fees

Sec. 70. Any party represented by counsel who alleges that existing rates are excessive or that those prescribed by the commission are excessive, and who is a prevailing party in proceedings for review of a commission order or decision, may in the same action recover against the regulation fund reasonable fees for attorneys and expert witnesses and other costs for its efforts before the commission and the court, the amount of such attorneys' fees to be fixed by the court. On a finding by the court that an action under this article was groundless and brought in bad faith and for the purpose of harassment, the court may award to the defendant public utility the reasonable attorneys' fees.

ARTICLE XI. VIOLATIONS AND ENFORCEMENT

Action to Enjoin or Require Compliance

Sec. 71. Whenever it appears to the commission or railroad commission that any public utility or any other person or corporation is engaged in, or is about to engage in, any act in violation of this Act or of any order, rule, or regulation of the commission or railroad commission entered or adopted under the provisions of this Act, or that any public utility or any other person or corporation is failing to comply with the provisions of this Act or with any such rule,

regulation, or order, the attorney general on request of the commission or railroad commission, in addition to any other remedies provided herein, shall bring an action in a court of competent jurisdiction in the name of and on behalf of the commission or railroad commission against such public utility or other person or corporation to enjoin the commencement or continuation of any such act, or to require compliance with such Act, rule, regulation, or order.

Penalty Against Public Utility or Affiliated Interest

Sec. 72. (a) Any public utility or affiliated interest that knowingly violates a provision of this Act, fails to perform a duty imposed on it, or fails, neglects, or refuses to obey an order, rule, regulation, direction, or requirement of the commission or railroad commission or decree or judgment of a court, shall be subject to a civil penalty of not less than \$1,000 nor more than \$5,000 for each offense.

(b) A public utility or affiliated interest commits a separate offense each day it continues to violate the provisions of Subsection (a) of this section.

(c) The attorney general shall institute suit on his own initiative or at the request of, in the name of, and on behalf of the commission, or railroad commission, in a court of competent jurisdiction to recover the penalty under this section.

Penalty for Violating Section 6 of This Act

Sec. 73. (a) Any member of the commission, or any officer or director of a public utility or affiliated interest, shall be subject to a civil penalty of \$1,000 for each and every knowing violation of Section 6 of this Act, such penalty to be recovered in a suit filed in a court of competent jurisdiction by the attorney general on his own initiative or at the request of, in the name of, and on behalf of, the commission.

(b) Any person, other than an officer or director of a public utility or affiliated interest or a member of the commission, shall be subject to a civil penalty of \$500 for each and every knowing violation of Section 6 of this Act, such penalty to be recovered in a suit filed in a court of competent jurisdiction by the attorney general on his own initiative or at the request of, in the name of, and on behalf of the commission.

(c) Any member, officer, or employee of the commission found in any action by a preponderance of the evidence to have violated any provision of Section 6 of this Act shall be removed from his office or employment.

Personal Penalty

Sec. 74. (a) Any person or persons who willfully and knowingly violate the provisions of this Act shall be guilty of a third degree felony.

(b) All penalties accruing under this Act shall be cumulative and a suit for the recovery of any penalty shall not be a bar to or affect the recovery of any other penalty, or be a bar to any criminal prosecution against any public utility or any officer, director, agent, or employee thereof or any other corporation or person.

Contempt Proceedings

Sec. 75. If any person fails to comply with any lawful order of the commission or railroad commission or with any subpoena or subpoena duces tecum or if any witness refuses to testify about any matter on which he may be lawfully interrogated, the commission or railroad commission may apply to any court of competent jurisdiction to compel obedience by proceedings for contempt.

Disposition of Fines and Penalties

Sec. 76. Fines and penalties collected under this Act in other than criminal proceedings shall be paid to the commission or railroad commission and paid by the commission or railroad commission to the state treasury to be placed in the general revenue fund.

Venue

Sec. 77. Suits for injunction or penalties under the provisions of this Act may be brought in Travis County, in any county where such violation is alleged to have occurred, or in the county or residence of any defendant.

ARTICLE XII. COMMISSION FINANCING

Assessments Upon Public Utilities

Sec. 78. An assessment is hereby imposed upon each public utility within the commission's jurisdiction serving the ultimate consumer equal to one-sixth of one percent of its gross receipts from rates charged the ultimate consumers in Texas for the purpose of defraying the costs and expenses incurred in the administration of this Act. Thereafter the commission shall, subject to the approval of the Legislature, adjust this assessment to provide a level of income sufficient to fund commission operation.

Payment Dates; Delinquency

Sec. 79. All assessments shall be due on August 31 of each year. Any public utility may instead make quarterly payments due on August 31, November 30, February 28, and May 31 of each year. There shall be assessed as a penalty an additional fee of 10 percent of the amount due for any late payment. Fees delinquent for more than 30 days shall draw interest at the rate of six percent per annum on the assessment and penalty due.

Payment into General Revenue Fund

Sec. 80. All fees, penalties, and interest paid to the commission under the provisions of this article shall be paid into the general revenue fund.

Approval of Budget

Sec. 81. The budget of the commission shall be subject to legislative approval as part of the appropriations act.

Accounting Records; Audit

Sec. 82. The commission shall keep such accounting records as required by the state auditor and shall be subject to periodic audit.

ARTICLE XIII. MISCELLANEOUS PROVISIONS

Complaint by Any Affected Person

Sec. 83. Any affected person may complain to the regulatory authority in writing setting forth any act or thing done or omitted to be done by any public utility in violation or claimed violation of any law which the regulatory authority has jurisdiction to administer, or of any order, ordinance, rule, or regulation of the regulatory authority.

Record of Proceedings; Right to Hearing

Sec. 84. A record shall be kept of all proceedings had before the regulatory authority, and all the parties shall be entitled to be heard in person or by attorney.

Judicial Stay or Suspension of Order, Ruling or Decision.

Sec. 85. During the pendency of an appeal, the district court, the court of civil appeals, or the supreme court, as the case may be, may stay or suspend, in whole or in part, the operation of the regulatory authority order, ruling, or decision and such courts in granting or refusing a stay or suspension shall act in accordance with the practice of courts exercising equity jurisdiction.

Amendment

Sec. 86. [Amends art. 6252-9b, § 2(5)(A)].

Assumption of Jurisdiction

Sec. 87. (a) The regulatory authority shall assume jurisdiction and all powers and duties of regulation under this Act on January 1, 1976, except as provided in Subsection (b) of this section.

(b) The regulatory authority shall assume jurisdiction over rates and service of public utilities on September 1, 1976.

Effective Date

Sec. 88. This Act shall become effective on September 1, 1975, and the commission shall thereupon begin organization and the gathering of information as provided in this Act.

Liberal Construction

Sec. 89. This Act shall be construed liberally to promote the effectiveness and efficiency of regulation of public utilities to the extent that such construction preserves the validity of this Act and its

provisions. The provisions of this Act shall be construed to apply so as not to conflict with any authority of the United States.

Repealer; Prior Rules and Regulations to Remain in Effect

Sec. 90. (a) Articles 1119, 1121, 1122, 1124, 1125, 1126, 1127, 1128, 1129, 1130, 1131, 1132, 1268, 1423, 1424, and 1425, Revised Civil Statutes of Texas, 1925, as amended; Section 8a, Chapter 283, Acts of the 40th Legislature, Regular Session, 1927 (Article 1011i, Vernon's Texas Civil Statutes) and all other laws and parts of laws in conflict with this Act are repealed effective September 1, 1976.

(b) All rules and regulations promulgated by regulatory authorities in the exercise of their jurisdiction over public utilities, as defined in this Act, shall remain in effect until such time as the commission or railroad commission promulgates provisions applicable to the exercise of the commission's or railroad commission's jurisdiction over public utilities.

Severability

Sec. 91. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1975, 64th Leg., p. 2327, ch. 721, §§ 1 to 91, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.061, eff. Aug. 29, 1977.]

Art. 1446d. Electric Metering in Apartments and Condominiums

Sec. 1. In this Act:

(1) "Apartment house" means a building or buildings containing more than five dwelling units all of which are rented primarily for non-transient use, with rental paid at intervals of one week or longer. Apartment house shall include residential condominiums, whether rented or owner occupied.

(2) "Dwelling unit" means a room or rooms suitable for occupancy as a residence containing kitchen and bathroom facilities.

Sec. 2. After January 1, 1978, no incorporated city or town, including a home-rule city or other political subdivision of the state, may issue a permit, certificate, or other authorization for the construction or occupancy of a new apartment house or conversion to a condominium unless the construction plan provides for individual metering by the utility company or submetering by the owner of each dwelling unit for the measurement of the quantity of electricity, if any, consumed by the occupants within that dwelling unit.

Sec. 3. Notwithstanding any law to the contrary, the Public Utility Commission of Texas shall promulgate rules, regulations, and standards under which any owner, operator, or manager of an apartment house which is not individually metered for electricity for each dwelling unit may install submetering equipment for each individual dwelling unit for the purpose of fairly allocating the cost of each individual dwelling unit's electrical consumption. In addition to other appropriate safeguards for the tenant, such rules and regulations shall require (a) that an apartment house owner shall not impose on the tenant any extra charges, over and above the cost per kilowatt hour which is charged by the utility company to the owner, and (b) that the apartment house owner shall maintain adequate records regarding submetering and shall make such records available for inspection by the tenant during reasonable business hours. Any rule, regulation, or standard promulgated by the commission pursuant to this section shall be deemed to have been entered or adopted under the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes), and for purposes of enforcement, both utility companies and the owners, operators, or managers of apartment houses included in this Act are subject to enforcement pursuant to Sections 71, 72, 73, 74, 75, 76, and 77 of the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes). All submetering equipment shall be subject to the same rules, regulations, and standards established by the commission for accuracy, testing, and record keeping of meters installed by electric utilities and shall be subject to the meter testing requirements of Section 36 of the Public Utility Regulatory Act (Article 1446c, Vernon's Texas Civil Statutes).

Sec. 4. If, during the 90-day period preceding the installation of individual meters or submeters, an owner, operator, or manager of an apartment house has increased rental rates and such increase is attributable to increased costs of utilities, then such owner, operator, or manager shall immediately reduce the rental rate by the amount of such increase and shall refund all of such increase that has previously been collected within said 90-day period.
[Acts 1977, 65th Leg., p. 942, ch. 353, §§ 1 to 4, eff. Aug. 29, 1977.]

9. TRADE ZONES

Art. 1446.5. Amarillo Trade Zone Corporation

The Amarillo Trade Zone, Inc., organized and incorporated under the laws of the State of Texas, with offices at or near Amarillo, Potter, and Randall counties, is authorized to apply for and accept a grant to establish, operate, and maintain a foreign-trade zone at Amarillo, Potter, and Randall counties, and other subzones, subject to the requirements of

federal law and regulations of the Foreign-Trade Zones Board.

[Acts 1975, 64th Leg., p. 1929, ch. 628, § 1, eff. Sept. 1, 1975.]

Art. 1446.6. Galveston Port of Entry Trade Zone

The city of Galveston, Galveston County, Texas, a municipal corporation organized and incorporated under the laws of the State of Texas, or its board of trustees of the Galveston Wharves, is hereby authorized to apply for and accept a grant or permit to establish, operate, and maintain a United States foreign trade zone as defined in the Foreign Trade Zones Act (19 U.S.C.A. Section 81a (1965)), at the Galveston port of entry, and any subzones thereof, and upon approval of such application and issuance of such grant or permit, to do all things necessary or appropriate to the establishment, operation, and maintenance of such foreign trade zone and any subzones thereof, subject to complying with the requirements of federal law and the regulations of the U. S. Foreign Trade Zones Board, Washington, D.C.
[Acts 1977, 65th Leg., p. 150, ch. 74, § 1, eff. April 25, 1977.]

Art. 1446.7. Houston Port of Entry Foreign Trade Zone

The Houston Foreign-Trade Zone, Incorporated, a private corporation incorporated under the laws of this state, the city of Houston, and the Port of Houston Authority of Harris County, Texas, are each authorized to apply for and accept a grant or permit to establish, operate, and maintain a foreign-trade zone at the Houston port of entry and any subzones of it, and to do anything necessary to establish, operate, and maintain the foreign-trade zone, if the application is approved, subject to federal law and the regulations of the Foreign-Trade Zones Board.

[Acts 1977, 65th Leg., p. 226, ch. 109, § 1, eff. Aug. 29, 1977.]

Art. 1446.8. Joint Airport Boards Foreign Trade Zone

Sec. 1. This Act shall be applicable to joint airport boards (herein called "Authorized Boards") created pursuant to Chapter 114, Acts of the 50th Legislature, Regular Session, 1947 (Article 46d-14, Vernon's Texas Civil Statutes), by two or more cities having a combined population greater than 1,000,000 according to the last preceding federal decennial census.

Sec. 2. Authorized boards are hereby authorized to apply for permits, licenses, and other grants of authority, and to accept the same, to establish, operate, and maintain one or more foreign trade zones within any county or counties in which the airport of the authorized board is situated, as Texas ports of entry under federal law, and to establish, operate,

and maintain other sub-zones within the same counties, subject to all requirements of federal law and to the regulations of the Foreign Trade Zones Board of the United States or successor agency.

Sec. 3. In the operation and maintenance of any foreign trade zone or sub-zone under this Act, the authorized board shall have and possess whatever additional powers and authorizations, additional to its other statutory and locally granted powers, as shall be required or necessary to establish, operate, and maintain such foreign trade zones and sub-zones under and in accordance with federal law, rules, and regulations.

[Acts 1977, 65th Leg., p. 268, ch. 129, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 1446.9. El Paso Trade Zone Corporation

The El Paso Trade Zone, Inc., organized and incorporated under the laws of the State of Texas, with offices at or near El Paso, El Paso County, Texas, is authorized to apply for and accept a grant to establish, operate, and maintain a foreign trade zone adjacent to any port of entry in El Paso County, Texas, and other subzones, subject to the requirements of federal law and regulations of the Foreign Trade Zones Board.

[Acts 1977, 65th Leg., p. 372, ch. 183, § 1, eff. May 20, 1977.]

Art. 1446.10. San Antonio Foreign Trade Zone

Sec. 1. The city of San Antonio or a nonprofit corporation organized under Texas law and designated by the city of San Antonio is authorized to apply for and accept a grant to establish, operate, and maintain a foreign trade zone at or adjacent to the San Antonio International Airport, and other subzones, subject to the requirements of federal law and regulations of the Foreign Trade Zones Board.

Sec. 2. After the nonprofit corporation has accepted a grant to establish, operate, and maintain the foreign trade zone as authorized by this Act, the city may not exercise any further control or supervision over the corporation in regard to the naming of directors and officers of the corporation or to the corporation's internal management or organization. [Acts 1977, 65th Leg., p. 706, ch. 265, §§ 1, 2, eff. Aug. 29, 1977.]

CHAPTER SEVENTEEN. TRUST COMPANIES AND INVESTMENTS

Art. 1513a. Creation of Trust Company; Purposes

[See Compact Edition, Volume 2 for text of 1]

Supervision of Banking Commissioner; Annual Statement; Examination of Trust Companies; Penalties

Sec. 2. (a) Such corporations shall be subject to supervision by the Banking Commissioner of Texas

and shall file with the Banking Commissioner of Texas on or before February 1 of each year a statement of its condition on the previous December 31, in such form as may be required by the Banking Commissioner, showing under oath its assets and liabilities, together with a fee of \$50 for filing; which statement when so filed shall not be open to the public but shall be for the information of the Banking Commissioner and his employees. The Banking Commissioner may, for good cause shown, extend the time for filing such statement for not more than 60 days. The Banking Commissioner, or his authorized assistants or representative, shall not make public the contents of said statement, or any information derived therefrom, except in the course of some judicial proceeding in this state.

(b) The Banking Commissioner of Texas shall have authority to examine or cause to be examined each such corporation annually or more often if he deems it necessary. Such corporation shall pay the actual traveling expenses, hotel bills, and all other actual expenses incident to such examination and a fee not exceeding \$50 per day per person engaged in such examination. If such corporation has not sold in Texas, and does not offer for sale or sell in Texas, any of its securities which have been registered or with respect to which a permit authorizing their sale has been issued under the Securities Act, as presently in force or hereafter amended, the Banking Commissioner of Texas, in lieu of an examination, shall accept the financial statement filed by such corporation pursuant to the first paragraph of this Section. Such fees, together with all other fees, penalties and revenues collected by the Banking Department, shall be retained by the department and shall be expended only for the expenses of the department.

[See Compact Edition, Volume 2 for text of 2(c) to 7]

[Amended Acts 1975, 64th Leg., p. 1368, ch. 523, §§ 1, 2, eff. Sept. 1, 1975.]

CHAPTER EIGHTEEN. MISCELLANEOUS

Art. 1523c. Telephone Cooperative Act

[See Compact Edition, Volume 2 for text of 1 to 3]

Powers of Corporation

Sec. 4. Each corporation shall have power:

- (1) To sue and be sued, complain and defend, in its corporate name;
- (2) To have perpetual succession unless a limited period of duration is stated in its articles of incorporation;
- (3) To adopt a corporate seal which may be altered at pleasure, and to use it, or a facsimile thereof, as required by law;

(4) To furnish, improve and expand telephone service to its members, to governmental agencies and political subdivisions, and to other persons not in excess of ten per centum (10%) of the number of its members, provided, however, that, without regard to said ten per centum (10%) limitation, telephone service may be made available by a corporation through interconnection of facilities to any number of subscribers of other telephone systems, and through pay stations to any number of users; and provided, further, that a corporation which acquires existing telephone facilities may continue service to persons, not in excess of forty per centum (40%) of the number of its members, who are already receiving service from such facilities without requiring such persons to become members but such persons may become members upon such terms as may be prescribed in the by-laws; provided there shall be no duplication of services where reasonably adequate telephone services are available.

(5) To construct, purchase, lease as lessee, or otherwise acquire, and to improve, expand, install, equip, maintain, and operate, and to sell, assign, convey, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, telephone lines, facilities or systems, lands, buildings, structures, plants and equipment, exchanges, and any other real or personal property, tangible or intangible, which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the corporation is organized; provided that no cooperative shall furnish local telephone exchange service within the boundaries of any incorporated or unincorporated city, town or village within this State having a population in excess of one thousand five hundred (1,500) inhabitants according to the last preceding Federal Census, except where the governing body (the City Council of an incorporated area and Commissioners Court in an unincorporated area) after published notice and public hearing determines the population of such incorporated or unincorporated city, town or village has decreased below one thousand five hundred (1,500) inhabitants since taking and publishing the last preceding Federal Census, which order shall be entered of record in the official minutes of said governing body and shall be accepted as a true and correct determination of such population for all purposes hereunder unless contest thereof be filed within sixty (60) days from date of such order, or the official entry thereof, by any company or person at interest or living in the affected area, in a court of competent jurisdiction, in which event the question shall abide the result of such contest; and provided further that the corporation

may continue to furnish telephone exchange service within the boundaries of any incorporated or unincorporated city, town, or village within this State having a population in excess of one thousand five hundred (1,500) inhabitants according to the latest Federal Census, if the area was previously receiving local telephone exchange service from the corporation prior to the time that the area increased in population to more than one thousand five hundred (1,500) inhabitants or the area became annexed to an incorporated city, town, or village having a population in excess of one thousand five hundred (1,500) inhabitants; and provided further that this Subsection shall not be considered as a limitation or expansion of the provisions of Subsection (4) of Section 4.

(6) To connect and interconnect its telephone lines, facilities or systems with other telephone lines, facilities or systems;

(7) To make its facilities available to persons furnishing telephone service within or without this State;

(8) To purchase, lease as lessee, or otherwise acquire, and to use, and exercise and to sell, assign, convey, mortgage, pledge or otherwise dispose of or encumber, franchises, rights, privileges, licenses and easements;

(9) To issue membership certificates as hereinafter provided;

(10) To borrow money and otherwise contract indebtedness, and to issue or guarantee notes, bonds, and other evidences of indebtedness, and to secure the payment thereof by mortgage, pledge, or deed of trust of, or any other encumbrance upon, any or all of its real or personal property, assets, franchises, or revenues;

(11) To construct, maintain and operate telephone lines along, upon, under and across publicly owned lands and public thoroughfares, including all roads, highways, streets, alleys, bridges and causeways, subject, however, to the same restrictions and obligations required of electric transmission cooperatives in House Bill No. 393, Acts of the Fifty-first Legislature, Regular Session.¹

(12) To exercise the power of eminent domain in the manner provided by the laws of this State for the exercise of such power by other corporations constructing or operating telephone lines, facilities or systems.

(13) To conduct its business and exercise its powers within or without this State;

(14) To adopt, amend and repeal by-laws;

(15) To make any and all contracts necessary, convenient or appropriate for the full exercise of the powers herein granted; and

(16) To do and perform any other acts and things, and to have and exercise any other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the corporation is organized.

[See Compact Edition, Volume 2 for text of 5 to 13]

Board of Directors

Sec. 14.

[See Compact Edition, Volume 2 for text of 14(a) and (b)]

(c) Instead of electing all the directors annually, the by-laws may provide that the directors, other than those named in the articles of incorporation to serve until the first annual meeting of the members, shall be elected by the members for a term not to exceed three (3) years. If a term other than one (1) year is provided by the by-laws, then a staggered term will be provided with one-half (1/2) of the directors (or the number nearest thereto) being elected annually when a two (2) year term is provided, and one-third (1/3) of the directors (or the number nearest thereto) being elected annually when a three (3) year term is provided. Thereafter, as directors' terms expire, the members shall elect their successors to serve until the second or third succeeding annual meeting after their election.

[See Compact Edition, Volume 2 for text of 14(d) to 34.]

[Amended by Acts 1975, 64th Leg., p. 343, ch. 145, § 1, eff. May 8, 1975; Acts 1975, 64th Leg., p. 344, ch. 146, § 1, eff. May 8, 1975.]

¹ Article 1436a.

Art. 1528e. Professional Corporations Act

[See Compact Edition, Volume 2 for text of 1 to 7]

Name

Sec. 8. A professional corporation may adopt any name that is not contrary to the law or ethics regulating the practice of the professional service rendered through the professional corporation. A professional corporation may use the initials "P.C." in its corporate name in lieu of the word, or in lieu of the abbreviation of the word, "corporation," "company," or "incorporated."

Board of Directors

Sec. 9. A professional corporation shall be governed by a Board of one or more Directors, which shall have the power to manage the business and affairs of the corporation, and the continuing authority to make management decision on its behalf. No person not duly licensed or otherwise duly authorized to render the professional service of the corporation shall be a member of the Board of Directors. The number of directors shall be fixed by the bylaws of the professional corporation or by the Articles of Incorporation if such articles specifically prescribe the number of directors.

Officers

Sec. 10. The Board of Directors shall elect a President and a Secretary and such other officers as it may deem desirable to have to conduct the affairs of the professional corporation. One person may serve as both President and Secretary. No person not duly licensed or otherwise duly authorized to render the professional service of the professional corporation may hold an office.

[See Compact Edition, Volume 2 for text of 11 to 20]

[Amended by Acts 1975, 64th Leg., p. 243, ch. 92, § 1, eff. April 30, 1975; Acts 1977, 65th Leg., p. 1613, ch. 630, § 1, eff. Aug. 29, 1977.]

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ELECTION CODE

CHAPTER ONE. MISCELLANEOUS PROVISIONS

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Art. 1.01a. Definitions

[See Compact Edition, Volume 2 for text of (a) to (c)]

(d) As used in this Code, the term "ward" in reference to a geographical subdivision of a city or town includes every geographical subdivision, by whatever name it is known, from which any members of the municipal governing body are elected by only the voters residing therein.

[Amended by Acts 1977, 65th Leg., p. 1476, ch. 600, § 1, eff. Aug. 29, 1977.]

Art. 1.01-1. Election Code Revision Commission

Text of article effective until May 29, 1979

Creation; membership; vacancy; quorum

Sec. 1. (a) There is created the Texas Election Code Revision Commission, composed of the following members:

(1) the secretary of state, as an ex officio member, who shall be chairman of the commission;

(2) the chairman of the house committee on elections and the chairman of the subcommittee on elections of the senate committee on state affairs, as ex officio members, who shall be joint vice-chairmen;

(3) one member of the senate, chosen by the lieutenant governor;

(4) one member of the house of representatives, chosen by the speaker;

(5) one member of the legal staff of the attorney general's office, chosen by the attorney general;

(6) the president, or a person designated by the president, of each of the following organizations: the State Bar of Texas, the Association of County and District Clerks of Texas, the Association of Tax Assessor-Collectors of Texas,

and the Association of City Clerks and Secretaries of Texas;

(7) the state chairman, or a person designated by the chairman, of each political party that will be required to make nominations by primary elections in 1978; and

(8) two citizens of the state, chosen by the governor.

(b) Each person who is a member of the commission as originally constituted, except the ex officio members, may continue to serve until the commission is dissolved, regardless of any change in status that removes the member from the office or class of officers he represents. Any vacancy on the committee shall be filled in the same manner as in the original membership, by the person holding the position, at the time the vacancy is to be filled, which entitles him to serve as a member or to designate a member.

(c) A majority of the members of the commission constitutes a quorum. The chairman and vice-chairmen, whether presiding or not, are entitled to vote on any question before the commission.

Preparation of revision

Sec. 2. The commission shall cause to be prepared a proposed draft of a complete revision of the present Texas Election Code, in a format complying with the rules which have been adopted for implementation of the statutory revision program authorized by Chapter 448, Acts of the 58th Legislature, 1963 (Article 5429b-1, Vernon's Texas Civil Statutes). The commission is authorized to incorporate into the draft any changes (including substantive changes) which in its opinion are needed to eliminate conflicts within the code itself or between the code and other statutes of the state, to clarify vague and ambiguous provisions in the code, or to improve the elective processes and procedures which are regulated by the code.

Texas Legislative Council services

Sec. 3. The Texas Legislative Council shall furnish the staff, printing, postage, and other services needed by the commission for the performance of its work.

Organization; meetings and hearings; committee; advisory panels

Sec. 4. (a) As soon as practicable after this Act takes effect and the composition of the commission is completed, the commission shall meet at the call of

the chairman for the purpose of organizing and promulgating the rules of procedure by which it will function. Subsequent meetings shall be called by the chairman after consultation with the vice-chairmen.

(b) The commission may hold meetings and conduct hearings anywhere within the state. It is authorized to create committees and subcommittees and to delegate to them or to individual members the authority to conduct hearings and to make other investigations for the purpose of developing information on topics under consideration by the commission.

(c) The commission is directed to encourage the various organizations represented on the commission, and such other organizations as it sees fit, to form advisory panels of their own members to work with the commission through the organization's representative on the commission or a representative designated by the organization for that purpose.

Proposed draft; dissolution of commission

Sec. 5. (a) The commission is directed to complete its work before the convening of the 66th Legislature and to submit its proposed draft to the 66th Legislature, along with a complete and detailed report of all substantive changes which are embodied in the draft and a table showing the disposition of the existing provisions of the Election Code in the draft.

(b) The commission may continue in existence until the completion of the regular session of the 66th Legislature to assist and advise that body in the consideration of the proposed draft. It is dissolved by operation of law upon expiration of the regular session if it has not been dissolved by the affirmative vote of a majority of its members before that time.

Reimbursement for expenses

Sec. 6. Members of the commission shall be reimbursed for their actual and necessary travel expenses incurred in carrying out the purposes of this Act. Reimbursement to the secretary of state and to the staff member of the attorney general's office shall be paid from the appropriations to those offices. Legislative members shall be reimbursed from the expense fund of the house of the legislature in which they serve. Reimbursement to all other members of the commission shall be paid from the expense fund of the house and the contingent expense fund of the senate equally, not to exceed \$6,000 from each fund.

Expiration of Act

Sec. 7. This Act expires on May 29, 1979. However, its expiration does not affect the payment of claims arising under the Act which are still unpaid at the time it expires.

[Acts 1977, 65th Leg., p. 880, ch. 331, §§ 1 to 7, eff. Aug. 29, 1977.]

Article 1.01-1 was not enacted as part of the Election Code of 1951.

Art. 1.03. Secretary of State as Chief Election Officer

[See Compact Edition, Volume 2 for text of 1]

Subd. 2. At least 35 days before each general election for state and county officers, the Secretary of State shall prescribe forms of all blanks necessary under this code and shall furnish same to each county clerk. The Secretary of State shall at the same time certify to each county clerk a list of all the candidates who have been nominated for state and district offices and all other candidates whose names have been certified to the Secretary of State to be placed on the general election ballot.

Subd. 3. Upon petition of fifteen or more resident citizens of any one county to the Secretary of State, the Secretary of State shall, or may at any time upon his own initiative, appoint inspectors to observe all functions, activities, or procedures conducted pursuant to the election laws of this State. Any such inspectors shall be subject to the direction of and responsible to the Secretary of State and he may terminate any appointment at any time. Any such inspectors may be present at, observe, and take reasonable steps to evidence all activities, functions, and procedures (except for the marking of any ballot by a voter, unless being assisted by an election officer) at any polling place, place of canvass, central counting station, or other place where official election or registration functions take place. The Secretary of State or any member of his staff may, upon the initiative of the Secretary of State alone, whether any violation of election laws is suspected or not, be present at, observe, and take reasonable steps to evidence any activities, functions, and procedures at any polling place, place of canvass, central counting station, or other place where official election or registration functions take place. Any inspectors appointed under this provision shall report to the Secretary of State any violations of law observed and the Secretary of State may refer the violation to the Attorney General or a prosecuting attorney for appropriate action.

[Amended by Acts 1975, 64th Leg., p. 2074, ch. 681, § 1, eff. June 20, 1975; Acts 1977, 65th Leg., p. 882, ch. 332, § 1, eff. Aug. 29, 1977.]

Art. 1.05. Ineligibility

Subd. 1. No person shall be eligible to be a candidate for, or to be elected or appointed to, any public elective office in this state unless he is a citizen of the United States eligible to hold such office under the Constitution and laws of this state, is not mentally incompetent as determined by a court, has not been convicted of a felony for which he has not been pardoned or had his full rights of

citizenship restored by other official action, and will be 18 years of age or older on the commencement of the term to be filled at the election or on the date of his appointment, and unless he will have resided in this state for a period of 12 months next preceding the applicable date specified below, and for any public office which is less than statewide, shall have resided for six months next preceding such date in the district, county, precinct, municipality or other political subdivision for which the office is to be filled:

(1) For a candidate whose name is printed on the ballot for a general (first) primary election, the applicable date is the last day on which any candidate for the office involved could file his application to have his name printed on the ballot for that primary election.

(2) For an independent or nonpartisan candidate in a general or special election, the applicable date is the last day on which the candidate's application for a place on the ballot could be delivered to the appropriate officer for receiving the application.

(3) For a write-in candidate, the applicable date is the day of the election at which the candidate's name is written in.

(4) For a party nominee who is nominated by any method other than by primary election, the applicable date is the day on which the nomination is made.

(5) For an appointee to an office, the applicable date is the day on which the appointment is made.

Subd. 2. The foregoing requirements do not apply to any office for which the Constitution or statutes of the United States or of this state prescribe the exclusive qualifications for the office or prescribe qualifications in conflict herewith, and in such case the provisions of such other laws control.

Subd. 2a. In the circumstances described in this subdivision, the residence requirements stated herein supersede the six-month precinct residence requirement stated in Subdivision 1 of this section. If the date of an order changing the boundaries of county commissioners precincts or justice of the peace precincts is less than seven months before the applicable date stated in Subdivision 1 of this section, a candidate for a precinct office in a precinct whose boundaries are affected by the order (including any newly created precinct) must have been a resident of the county in which the precinct is situated for six months next preceding the applicable date stated in Subdivision 1 and must be a resident of the precinct on that date. When a precinct office of an affected precinct is to be filled by an appointment to take effect on or after the date on which the boundary

changes become effective but less than seven months after the date of the order making the changes, the appointee must have been a resident of the county for six months next preceding the effective date of the appointment and must be a resident of the precinct on that date.

For the purpose of the first paragraph of this subdivision, the date of the order changing the precinct boundaries means the appropriate date defined in this paragraph, as follows:

(1) If the change is made by an order of the commissioners court which is not challenged in a judicial proceeding brought before the applicable date stated in Subdivision 1 of this section, the date of the order means the date on which the commissioners court entered its order setting out the new boundaries.

(2) If the change is made, confirmed, or modified by a judicial decree or if judicial review of an order of the commissioners court is denied before the applicable date stated in Subdivision 1, the date of the order means the date of entry of the decree (including an order denying a motion for new trial, motion for rehearing, or similar motion) finally concluding the legal action establishing or confirming the boundary lines or denying review of the order establishing the lines.

(3) If on the applicable date stated in Subdivision 1 of this section a final decree concluding legal action has not been entered but there is an outstanding judicial decree putting a change in boundaries into effect or refusing to enjoin or to stay enforcement of an order establishing new boundary lines pending final disposition of the action, the date of the order means the date of entry of that decree.

Subd. 3. A home-rule city by charter may prescribe for its elective officers different age and residence requirements from those prescribed in Subdivision 1 of this section, but a charter may not set a minimum age greater than 21 years or a minimum length of residence in the state or city greater than 12 months next preceding the election.

Subd. 4. Except as provided in Section 104 of this code (Article 8.22, Vernon's Texas Election Code), no ineligible candidate shall ever have his name placed upon the ballot at any primary, general or special election. No ineligible candidate shall ever be voted upon nor have votes counted for him at any such primary, general or special election for the purpose of nominating or electing him, but votes cast for an ineligible candidate shall be taken into account in determining whether any other candidate received the necessary vote for nomination or election.

Subd. 5. No person who advocates the overthrow by force or violence or change by unconstitutional means of the present constitutional form of government of the United States or of this state shall be eligible to have his name printed on any official ballot in any general, special or primary election in this state.

[Amended by Acts 1975, 64th Leg., p. 2080, ch. 682, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1373, ch. 545, § 1, eff. Aug. 29, 1977.]

Art. 1.05-1. Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975

Art. 1.08a. Bilingual Election Materials in English and Spanish

Elections and Areas in Which Bilingual Materials are Required

Subd. 1. (a) In every general, special, or primary election, by whatever authority held, which is held within a county in which five percent or more of the inhabitants are persons of Spanish origin or descent, according to the federal census specified in Paragraph (b) of this subdivision, the election materials enumerated in Subdivision 3 of this section shall be printed in both English and Spanish for use at the polling place in each election precinct that is not exempt from this requirement under Subdivision 2. In the elections of a political subdivision that includes territory in more than one county, the bilingual materials must be used in each precinct that includes territory lying within a county to which this subdivision applies unless the precinct is exempt under Subdivision 2.

(b) The census used for determining the percentage of persons of Spanish origin or descent is the last preceding federal decennial census for which the enumeration date was more than two years before January 1 of the calendar year in which the election is held.

Election Precincts Exempt from Requirement

Subd. 2. (a) An election precinct situated in a county to which Subdivision 1 applies is exempt from the requirement for bilingual election materials if official census information or other information shows that persons of Spanish origin or descent comprise less than five percent of the inhabitants of the precinct. The authority holding the election has the burden of establishing entitlement to the exemption. Unless otherwise ordered by a court of competent jurisdiction, the officer or body responsible for obtaining the supplies for the election is relieved of the duty to furnish bilingual materials for those precincts for which there has been filed with the clerk or secretary of the political subdivision responsible for the expenses of the election, at least 30 days before the date of the election, a certificate executed by the presiding officer of the governing body of the political subdivision and approved by the

governing body, identifying the precinct or precincts for which the exemption is claimed, together with an abstract of the official census information or other information relied on to support the exemption and a map or maps showing the precinct boundaries and the boundaries of the census enumeration areas referred to in the abstract. An authenticated copy of the resolution or other document evidencing the governing body's approval must be filed with the certificate.

(b) A new certificate and new supporting information must be filed following each decennial census. The supporting information must be revised following a change in election precinct boundaries, and a revised certificate must be filed if the certificate on file no longer correctly reflects the exempt precincts.

(c) In the case of a primary election held by a political party, the exempt precincts are those reflected in a certificate executed by the county judge or the secretary of state and filed in the office of the county clerk. The secretary of state is authorized to file a certificate for a county whenever the county judge has not filed a certificate by the 60th day before the date of the primary or whenever the certificate on file does not correctly reflect the exempt precincts.

Enumeration of Required Bilingual Materials; Preparation of the Materials

Subd. 3. (a) At each polling place where election materials in English and Spanish are required, the following materials shall be provided in bilingual form:

(1) Instruction cards for the information of voters shall be printed in both English and Spanish, either on separate cards to be posted side by side or on the same card with the Spanish text alongside the English text.

(2) Where voting machines or voting devices are used, a Spanish translation of the instructions for operating the machines or devices shall be posted in the compartment or booth that the voter occupies.

(3) All ballots and ballot labels may be printed with all ballot instructions, office titles, and propositions appearing in both Spanish and English. If the bilingual listing on the face of the ballot is not utilized, then a Spanish translation of the ballot shall be posted in each compartment or booth, and a statement shall be placed on the face of the ballot in Spanish to inform the voter that the Spanish translation is posted in the compartment or booth; and where paper ballots are used and booths are not provided for all voters, copies of the Spanish translation shall also be made available at the table where the voter selects his ballot, and a sign printed in

Spanish shall be displayed at the table, informing the voter that he may take a copy of the Spanish translation for his use in preparing his ballot.

(4) All affidavit forms or other forms that voters are required to sign may have a Spanish translation printed beneath the English text or on the reverse side of the printed matter appearing on the form. If this translation is not utilized, then a Spanish translation of the affidavit shall be made available, and a statement shall be placed on the affidavit in Spanish that a Spanish translation is available upon request.

(b) The secretary of state shall prepare the Spanish translation for all bilingual materials required by Subdivisions 3 and 4 of this section, except ballot forms for local elections. The secretary of state shall prepare the Spanish translation of the ballot propositions for proposed constitutional amendments and other measures submitted by the legislature if the legislature fails to provide a Spanish text. The officer having the duty to make up the ballot for a local election shall prepare the Spanish translation of ballot material if the governing body of the political subdivision fails to provide a Spanish text.

Bilingual Materials for Absentee Voting

Subd. 4. In any countywide election, or in any election held in a political subdivision other than a county, in which bilingual election materials are required at any polling place in the county or other political subdivision, the absentee voting materials shall be printed in both English and Spanish. The forms for applying for an absentee ballot, the ballot envelopes and carrier envelopes, and any other instructions or forms furnished to the voters shall be printed in English with a Spanish translation on the face of the instrument or furnished separately along with the instrument. All ballots and ballot labels used for absentee voting shall be printed in the manner described in Subdivision 3; and whenever the Spanish translation of ballot propositions is printed separately from the ballot, a copy of the translation shall be furnished to each voter who votes by mail. In the conduct of absentee voting by personal appearance, any other materials enumerated in Subdivision 3 which are used in the voting shall be in bilingual form.

Optional Use of Bilingual Materials

Subd. 5. In any election held in a county to which Subdivision 1 of this section does not apply, or at any polling place where bilingual materials are not made mandatory under Subdivision 1, the governing body of the political subdivision responsible for the costs of the election may require the use of bilingual ballots and such other items of election materials enumerated in Subdivisions 3 and 4 as the governing body specifies, for any or all of the polling

places as specified by the governing body; and the election officers of the political subdivision shall furnish bilingual materials in accordance with the resolution, ordinance, or other document by which their use is required. The governing body may provide for use of the bilingual materials on a continuing basis or on an election-by-election basis, as it sees fit.

[Added by Acts 1975, 64th Leg., p. 511, ch. 213, § 1, eff. May 16, 1975.]

Art. 1.08b. Encouragement to Vote of Non-English-Speaking Citizens

[Text as added by Acts 1975, 64th Leg., p. 2078, ch. 681, § 18]

Sec. 8b. It is the intent of the legislature that non-English-speaking citizens, like all other citizens, should be encouraged to vote. Therefore, appropriate efforts should be made to minimize obstacles to voting by citizens who lack sufficient skill in English to vote without assistance.

The presiding judge of a voting precinct in which the election materials provided in Section 8a of this code¹ are required to be used shall make reasonable efforts to appoint election clerks who are fluent in both English and Spanish.

[Added by Acts 1975, 64th Leg., p. 2078, ch. 681, § 18, eff. June 20, 1975.]

¹ Article 1.08a.

For text as added by Acts 1975, 64th Leg., p. 2081, ch. 682, § 2, see art. 1.08b, post

Art. 1.08b. Verification of Petition Signatures

[Text as added by Acts 1975, 64th Leg., p. 2081, ch. 682, § 2]

Whenever an application or petition of a candidate or a political party for a place on a ballot, or any other instrument authorized or required by this code, contains more than 1,000 signatures or names which need verification, the officer with whom the instrument is filed (including officers of political parties as well as public officers) may employ any reasonable statistical sampling method in determining whether the instrument contains the required number of names meeting the prescribed qualifications for signers or for names which may be listed thereon. However, in no event may the sample be less than one percent of the total number of names appearing on the instrument.

[Added by Acts 1975, 64th Leg., p. 2081, ch. 682, § 2, eff. Sept. 1, 1975.]

For text as added by Acts 1975, 64th Leg., p. 2078, ch. 681, § 18, see art. 1.08b, ante

Art. 1.08c. [Blank]

Art. 1.08d. Contracts for election services

Subd. 1. As used in this section "county officer in charge of election duties" means the county elections administrator in a county which has that office and the county clerk in a county which does not have the separate office of county elections administrator; and "contracting officer" means the county officer in charge of election duties.

Subd. 2. (a) The county officer in charge of election duties may contract with the governing body of any city, school district, water district, or other political subdivision situated wholly or partly within the county to conduct or supervise the conduct of any single election or series of elections to be held by the political subdivision and to perform or supervise the performance of any or all of the functions enumerated in Subdivision 3 of this section in connection with the holding of the election or elections.

(b) The county officer in charge of election duties may contract with the county executive committee of any political party holding primary elections in the county to conduct or supervise the conduct of the party's general primary election or runoff primary election, or both, to be held within the county in an election year. The contract must be approved by the secretary of state before any duties may be performed or any payments may be made under the terms of the contract.

(c) When requested to do so by a political subdivision or political party, the county elections administrator shall enter into a contract to furnish the services requested in accordance with a cost schedule mutually agreed upon by the contracting parties. If a mutual agreement cannot be reached, the secretary of state shall prescribe the agreement, to which both parties are bound, or, in his discretion, the secretary of state may instruct the county elections administrator to decline to enter into a contract with the requesting party. The county clerk in counties not having the office of county elections administrator is not required to enter into a contract with a political subdivision or political party requesting services, but he may do so at his discretion.

Subd. 3. A contract with a political subdivision pursuant to Subdivision 2 of this section may include any or all of the following services, and a contract with a political party may include any or all of such services that pertain to a party primary:

(1) Recommendations on the formation of election precincts and the location of polling places and preparation of the appropriate documents for establishing the precincts and polling places.

(2) Preparation of election orders, resolutions, notices, and other pertinent documents for adoption or execution by the appropriate officer or body.

(3) Posting or publication of election notices.

(4) Preparation of lists of persons to recommend for appointment as election judge or clerk and the recruiting and training of the judges and clerks.

(5) Procurement and distribution of election supplies, including the preparation, printing, and distribution of ballots.

(6) Assembly and editing of the lists of registered voters to be used in conducting the election, in conformity with the boundaries of the political subdivision and the election precincts established for the election.

(7) Procurement, preparation, and distribution of election equipment and transportation of equipment to and from the polling places.

(8) The conduct of absentee voting, subject to the provisions of Subdivision 4 of this section.

(9) Arrangements for use of polling places on election day.

(10) In an election using electronic voting equipment, arrangements for use of a central counting station and for the personnel and equipment needed at the counting station and assistance in preparation of programs and test materials for tabulation of the ballots.

(11) Supervision of the handling and disposition of election returns, voted ballots, etc., and tabulation of unofficial returns and assistance in preparing the tabulation for the official canvass.

(12) Information services for voters and election officers.

(13) General overall supervision of the elections and advisory services in connection with decisions to be made and actions to be taken by officers of the political subdivision or political party holding the election.

(14) Preparation of submissions on voting changes to be made to the United States Department of Justice under the federal Voting Rights Act of 1965, as amended.¹

(15) Preparation of data to support exemptions from the requirements for bilingual materials under Section 8a (Article 1.08a) of this code.

Subd. 4. (a) Notwithstanding any other provision of law, the contracting officer or any regular or temporary employee of the contracting officer may be designated as the absentee voting clerk for any political subdivision other than a municipality. The contracting officer may not replace the city secretary or clerk as the absentee voting clerk for a city

election, but a contract may provide that the contracting officer is to supervise the conduct of the absentee voting and/or is to supply personnel to serve as deputy absentee voting clerks for the election.

(b) Notwithstanding any other provision of law, where a contract provides that the contracting officer is to serve as absentee voting clerk or that the contracting officer is to supply personnel to serve as deputy absentee voting clerks, residence within the county of the contracting officer satisfies the residence requirements for the positions filled under the contract.

Subd. 5. Nothing in this section authorizes or permits a change in the officer with whom or the place at which any document or record relating to an election is to be filed, or the place at which any function is to be carried out, or the officers to make the official canvass of the election returns, or the officer to serve as custodian of voted ballots or other election records, except that in elections held by a political subdivision other than a municipality, the contract may provide that the contracting officer will be custodian of the voted ballots as is permitted under Section 111a (Article 8.29a) of this code.

Subd. 6. A contract may provide that the contracting officer will pay the expenses payable to third persons which are incurred for an election or that the authority holding the election will make the payments directly to the claimants. If the contract provides that the authority holding the election is to pay the claimants, the contracting officer becomes the agent of the authority holding the election and he may contract with third persons in the name of the authority with respect to expenses within the scope of his duties. The contracting officer is not liable for the default of the authority holding the election. If the contract provides that the contracting officer is to pay the expenses, the authority holding the election is not liable for defaults of the contracting officer.

Subd. 7. (a) The contracting officer shall file with the county treasurer a copy of each contract for services to be performed under this section and shall file another copy with the county auditor or, in a county not having an auditor, with the county judge as presiding officer of the commissioners court.

(b) Contracts executed pursuant to this section need not be submitted to the commissioners court for approval. All moneys received by the contracting officer under such contracts shall be deposited in the county treasury in a special fund separate from any other funds, and shall be subject to expenditure by the contracting officer to defray the costs of carrying out the contracts without prior budgeting

or appropriation by the commissioners court. However, all claims against the fund shall be audited and approved in the same manner as other claims against the county before they are paid. Salaries of personnel regularly employed by the contracting officer shall be paid from funds regularly budgeted and appropriated for that purpose, but salaries and wages paid to persons especially employed to perform duties under a contract and all other expenses directly attributable to the contract which are charged to the contracting officer shall be paid out of the special fund. From time to time, as surplus amounts accumulate in the special fund, the contracting officer may direct the treasurer to transfer the surplus, in specified amounts, to the special fund created by Section 51b (Article 5.19b) of this code.

Subd. 8. Any of the services to be performed by the contracting officer may be performed by deputies or other employees assigned by him to perform the services. In a county which does not have the separate office of county elections administrator, the county clerk may establish an elections division in his office and assign a deputy clerk to oversee the operation of the division and may delegate to the deputy the power to enter into contracts under this section.

[Added by Acts 1977, 65th Leg., p. 1505, ch. 609, § 5, eff. Aug. 29, 1977.]

¹42 U.S.C.A. § 1973 et seq.

CHAPTER TWO. TIME AND PLACE

Article

2.01b. Dates for Holding General and Special Elections [NEW].

2.01c. Joint Elections of Political Subdivisions [NEW].

2.06a. Municipal and School District Election Dates [NEW].

2.06-1. [Expired].

Art. 2.01. Time and Place

A general election shall be held on the first Tuesday after the first Monday in November, A.D. 1964, and every two years thereafter, at such places as may be prescribed by law after notice as prescribed by law. Special elections shall be held at such times and places as may be fixed by law providing therefor. In all elections, general, special, or primary, the polls shall be open from seven o'clock a. m. to seven o'clock p. m.; provided, that in any county having a population of one million or more, according to the last preceding federal census, the polls may be opened one hour earlier at six o'clock a. m. on order of the commissioners court of such county entered in the minutes thereof. The foregoing authority of the commissioners court shall extend to all elections held within the county, by whatever authority the election may be ordered, but the court may exercise this authority with respect to such elections as it deems necessary or desirable without advancing the opening hour for other elections, subject to the require-

ment that the court's order must apply uniformly to comparable types of elections held on the same day; and the order shall specify the elections to which it applies. The election shall be held for one day only.

All persons who are within the polling place and all persons who are waiting to enter the polling place at seven o'clock p. m. shall be allowed an opportunity to present themselves for voting in the same manner as if they had appeared and offered themselves for voting during regular voting hours. The presiding judge shall take necessary precautions to prevent voting by any person not present and waiting to vote at the time for official closing of the polls. If feasible, all persons waiting to vote at the time for official closing of the polls shall be required to enter the polling place, and the door to the polling place shall be closed and locked, and each such person shall remain inside the polling place until he has voted. If such procedure is not feasible, numbered identification cards or tokens shall be distributed to identify those persons waiting to vote at the time for official closing of the polls.

[Amended by Acts 1975, 64th Leg., p. 2075, ch. 681, § 2, eff. June 20, 1975.]

Art. 2.01b. Dates for Holding General and Special Elections

(a) Except as provided in Subsections (b) and (e) of this section, every general (regular) or special election held by the state or by any county, city, school district, water district, or any other political subdivision or agency of this state must be held on one of the following dates: the third Saturday in January, the first Saturday in April, the second Saturday in August, or the first Tuesday after the first Monday in November. Provided, however, that in even-numbered years the only issues which may be included on the ballot of the election held on the first Tuesday after the first Monday in November shall be the election of state and county officers, the election of officers of a general-law city wherein the governing body of said city finds that the religious tenets of more than 50 percent of the registered voters of said city prohibit the adherents from voting in an election held on Saturday, and amendments to the constitution of this state submitted to the voters by the legislature. This requirement does not apply to runoff elections, political subdivisions using the convention method of election, elections held under Chapter 467, Acts of the 44th Legislature, 2nd Called Session, 1935, as amended,¹ elections for bonds and school maintenance taxes, or to the biennial party primary elections held to nominate candidates for public office. An election held on an unauthorized date is void.

(b) When a vacancy in office is to be filled at a special election, the election must be called for a date specified in Subsection (a) unless the governor

finds the existence of an emergency that warrants calling the election for an earlier date. When the governing body of a political subdivision wishes to call an emergency special election to fill a vacancy, the governing body shall submit a request to the governor for permission to call the election, and the governor may grant permission if he finds that an emergency exists.

(c) In even-numbered years the only issues which may be included on the ballot of the election held on the first Tuesday after the first Monday in November shall be the election of state and county officers, the election of officers of a general-law city wherein the governing body of said city finds that the religious tenets of more than 50 percent of the registered voters of said city prohibit the adherents from voting in an election held on Saturday, and constitutional amendments submitted to the people by the legislature. The governing body of local political subdivisions shall be allowed to choose for their permanent election day any of the above four election dates. The filing deadline for candidates, the dates for canvassing the returns of the election, the date for commencement of terms of office filled at the election, and any other date incidental to the election shall fall on the date that has the same relationship to the date of the election as provided under the preexisting law. Where by preexisting law the terms of office are set to commence on a specified calendar date and the date of the election is changed by this section, the governing board of the political subdivision shall set the date on which the terms begin until otherwise provided by law. A runoff election, when required, shall be held on a date that provides the same time interval with relation to the main election as provided under the preexisting law.

(d) When under the provisions of Subsection (c) the beginning date for a term of office is changed to fall on an earlier date, the current term on the effective date of this section is shortened accordingly, and the holder of the current term shall surrender the office to his successor on the beginning date of the succeeding term or as soon thereafter as the successor has qualified. When the beginning date is changed to fall on a later date, the incumbent in office at the expiration of the current term as set by preexisting law shall continue to perform the duties of the office, as required by Section 17 of Article XVI of the Texas Constitution, until the successor has qualified for the succeeding term.

(e) When a preexisting law requires that a special election be called within a specified time period after the occurrence of a certain event, the election shall be called for a date authorized in Subsection (a) of this section that falls within that time period; or if there is no authorized date within the period that allows sufficient time to comply with other require-

ments of law, the election shall be called for the first authorized date after its expiration, except that the election shall be called for some other date within the time period where the constitution requires it. [Added by Acts 1975, 64th Leg., p. 2295, ch. 715, § 1, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 2032, ch. 811, § 2, eff. Aug. 29, 1977.]

¹V.A.T.S. Penal Auxiliary Laws, art. 666-1 et seq. (repealed; see, now, Alcoholic Beverage Code).

Section 2 of the 1975 Act added art. 2.01c; § 3(a) provided that the Act shall take effect on January 1, 1976; § 3(b) thereof, providing that the Act shall no longer be in effect after the first Monday after the third Saturday in January, 1978, was repealed by Acts 1977, 65th Leg., p. 2032, ch. 811, § 1.

Section 3 of the 1977 Act provided:

"The provisions of Sections 9b and 9c, Texas Election Code (Articles 2.01b and 2.01c, Vernon's Texas Election Code), enacted by Chapter 715, Acts of the 64th Legislature, 1975, supersede any inconsistent or conflicting provision of any other statute enacted before the regular session of the 65th Legislature, provided, that nothing contained herein shall be construed as superseding the provisions of Subsection (i), Section 130.082, Texas Education Code, as amended. They also supersede any inconsistent or conflicting provision of any other statute enacted at the regular session of the 65th Legislature, regardless of the relative order of passage with respect to this Act, unless the other statute expressly states that its provisions prevail over the provisions of Sections 9b and 9c."

Art. 2.01c. Joint Elections of Political Subdivisions

(a) When two or more political subdivisions of this state are holding elections on the same day in all or part of the same territory, the governing bodies of any two or more of the political subdivisions may agree to hold their elections jointly in the election precincts that can be served by common polling places. When any other statute makes a joint election mandatory, a joint election must be held in accordance with the terms of the statute; and if any other political subdivisions are holding elections in any part of the same territory, any or all of them may also join in the agreement for a joint election.

(b) When a joint election is to be held, a resolution reciting the terms of the agreement, including the method for allocating the expenses for the election, shall be adopted by the governing body of each of the participating political subdivisions. The agreement may provide for use of a single ballot form at each polling place, to contain all the offices or propositions to be voted on at that polling place, or for separate ballot forms; provided, however, that no voter shall be given a ballot containing any office or proposition on which the voter is ineligible to vote. One set of election officers may be appointed to conduct the joint election, and any person who is qualified to serve as an election officer in the election of any one of the participating political subdivisions may be appointed to serve in the joint election. Poll lists, tally lists, return forms, and other records for the various elections may be combined in any manner convenient and adequate to record and report the results of each election. Where paper ballots or punchcard ballots are used, one set of ballot boxes and one stub box may be used for receiving all ballots and ballot stubs for the joint election. Returns on joint or separate forms may be made to, and the canvass made by, each officer, board, or body designated by law to receive and canvass the

returns for each election, or one of such officers, boards, or bodies may be designated to receive and canvass the returns for the joint election and to report the results of each election to the proper authority. Where other records are combined, the officer designated by law to be the custodian of the records for any participating subdivision may be designated in the agreement to be the custodian of the combined records. Where the counted ballots for more than one subdivision are deposited in a single ballot box, the officer designated by law to be the custodian of the voted ballots for any one of the subdivisions may be designated in the agreement to be the custodian.

[Added by Acts 1975, 64th Leg., p. 2297, ch. 715, § 2, eff. Sept. 1, 1975.]

Art. 2.02. Formation of Election Precincts; Consolidation for Certain Elections

Unless a specific statute provides otherwise, the following rules shall govern the establishment of election precincts and the designation of polling places for the conduct of the various kinds of elections held within this state.

(a) County-wide elections held at the expense of the county. In general elections for state and county officers, special elections called by the Governor (including both county-wide elections and elections to fill vacancies in offices elected by districts which are less than county-wide), and in all other county-wide elections held at the expense of the county other than elections coming within Subsection (d) of this section, the election precincts shall be the regular election precincts established by the commissioners court pursuant to Section 12 of this code (Article 2.04, Vernon's Texas Election Code). The commissioners court shall designate the polling place for each regular precinct, in accordance with the following procedure. The county officer in charge of election duties (the county elections administrator in a county which has that office and the county clerk in a county which does not have the separate office of county elections administrator) shall recommend to the commissioners court the location of the polling place for each precinct, and the commissioners court shall designate as the polling place the location so recommended unless good cause exists for rejecting the recommendation.

[See Compact Edition, Volume 2 for text of (b) to (h)]

[Amended by Acts 1977, 65th Leg., p. 1508, ch. 609, § 6, eff. Aug. 29, 1977.]

Art. 2.04. County Election Precincts Formed by Commissioners Court

[See Compact Edition, Volume 2 for text of (a)]

(b) No election precinct shall be formed out of two or more justice precincts or commissioners precincts, nor out of the parts of two or more justice precincts or commissioners precincts; and no election precinct shall be formed out of two or more congressional districts or state senatorial districts or state representative districts, nor out of the parts of two or more such districts. If in September of any year there exists any election precinct in the county which does not comply with the foregoing requirements, the commissioners court shall make the necessary changes before the first day of October, either at a regular meeting or at a special meeting called for that purpose; and the order shall be published as provided in Paragraph (a) of this section. Subject to the provisions of the first sentence of this paragraph, no election precinct shall have resident therein less than 100 nor more than 2000 voters as ascertained by the number of registered voters for the last preceding presidential general election year; provided, however, that in counties of less than 100,000 population according to the last preceding federal census, the commissioners court may establish precincts of less than 100 but not less than 50 voters; and provided further, that in counties of less than 50,000 population according to the last preceding federal census, the commissioners court may establish precincts of less than 50 voters upon the petition of 25 or more registered voters within the county. In precincts in which voting machines or devices have been adopted for use in accordance with Section 79 or Section 80 of this Code,¹ the maximum number of voters shall be 3000. There shall be a minimum of one election precinct wholly contained within each commissioners precinct.

(c) In cities and towns having ten thousand or more inhabitants, each ward shall constitute an election precinct unless there are more than two thousand registered voters residing in the ward. In such cities and towns, no precinct shall be made out of parts of two wards; and no precinct shall include territory outside the corporate limits of the city or town unless the Commissioners Court finds that adjacent unincorporated territory is so situated that it cannot be formed into or included within an election precinct wholly outside the city, of suitable size and shape and containing a suitable number of voters. If the Commissioners Court finds this condition to exist, it may include such territory in a precinct or precincts formed within the city or town, and the finding of the Commissioners Court shall be conclusive. If on September 15 of any year there exists any election precinct in the county which does not comply with the requirements of this paragraph,

the Commissioners Court shall make the necessary changes before the first day of October, either at a regular meeting or at a special meeting called for that purpose; and the order shall be published as provided in Paragraph (a) of this Section.

[See Compact Edition, Volume 2 for text of (d)]

(e) Changes in election precincts shall not become operative in the holding of elections until the beginning of the following voting year. The Commissioners Court shall cause to be made out and delivered to the County Tax Collector before the first day of each September a certified copy of such last order for the year following; provided, however, that any order entered during the month of September, as provided in Paragraphs (b) and (c) of this Section, shall be delivered to the Tax Collector forthwith.

[Amended by Acts 1975, 64th Leg., p. 265, ch. 112, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1476, ch. 600, § 2, eff. Aug. 29, 1977.]

¹ Articles 7.14, 7.15.

Art. 2.06a. Municipal and School District Election Dates

In counties where voting machines or electronic voting systems are used, all municipal and school district elections in which candidates are running for office, including without limitation, elections in home-rule cities and independent, municipal, and county school districts, otherwise scheduled to be held within 14 days of the date on which a proposed amendment or amendments to the Constitution of Texas are to be submitted to a vote of the electorate, may be held on the same date as the constitutional amendment election if the governing body of the municipality or the school district so provides. If the governing body changes the date of the elections as authorized by this Act, it may set the date of any second or runoff primary which may be necessary for any date not earlier than the 14th day after the first election and not later than the latest date which would have been permissible if the date of the first election had not been changed. This Act shall make no change in the term of office or commencement thereof in any election affected hereby. [Added by Acts 1975, 64th Leg., p. 2108, ch. 638, § 1, eff. Sept. 1, 1975.]

Art. 2.06-1. Expired**CHAPTER THREE. OFFICERS OF ELECTION**

Article

3.09b. Training of Election Officers [NEW].

Art. 3.01. Appointment of Election Officers

(a) For county elections. The commissioners court at its July term shall appoint from among the citizens of each election precinct one qualified voter as presiding judge of elections held at the expense of

the county in that precinct and one qualified voter as alternate presiding judge, each of whom shall continue to act until his successor is appointed. Whenever a vacancy arises in either of such offices, the commissioners court may fill the vacancy at any regular or special term of court. All orders appointing judges and alternates shall be entered of record. Each presiding judge shall appoint two voters, who are eligible for appointment, to serve as election clerks, and shall appoint for each election as many additional clerks as he deems necessary for the proper conduct of the election, not to exceed the maximum number authorized by the commissioners court. The commissioners court shall fix the maximum number of clerks that may be appointed for each precinct, and may fix different maximums depending on the type of election. The clerks shall be selected from different political parties, when practicable. The chairman of the county executive committee of each of the two parties whose candidate for Governor received the most votes statewide in the last prior gubernatorial general election may submit a list of not less than two eligible nominees who are members of that party to each election judge at least 30 days prior to the date of a general election or 10 days prior to the date of a special election. If any such list is submitted to him, the election judge shall appoint at least one clerk from each list submitted. For the purpose of this section, the term "members of that party" means persons who affiliated with the party in the manner prescribed in Section 179a of this code. (Article 13.01a, Vernon's Texas Election Code) during the last preceding set of primary elections and conventions.

(a-1) List of recommended appointees for judges of county precincts. Prior to the time at which the commissioners court makes its appointment of election judges pursuant to Subsection (a) of this section, the county officer in charge of election duties as defined by Section 8d of this code¹ shall select a presiding judge and an alternate presiding judge for each county election precinct to recommend for appointment to those offices and shall present a list of his selections to the commissioners court. The court shall give due consideration to these recommendations in making its appointments. This procedure shall also be followed whenever a vacancy is to be filled in the office of presiding judge or alternate presiding judge.

[See Compact Edition, Volume 2 for text of (b) to (f)]

[Amended by Acts 1977, 65th Leg., p. 1508, ch. 609, § 7, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1653, ch. 649, § 2, eff. Aug. 29, 1977.]

¹ Article 1.08d.

Art. 3.02. Duties and Working Hours of Clerks

(a) In all elections, general, special, or primary, the presiding judge shall be in charge of the man-

agement of the polling place and the conduct of the election. He shall designate the working hours and assign the duties to be performed by the clerks. Clerks may be assigned to work for different lengths of time and to begin work at different hours during the day while the polls are open or during the time necessary for counting the ballots after the polls are closed. Clerks who begin work at any time before closing of the polls shall remain on duty without leaving the polling place while the polls are open, except for such periods of absence for meals and other necessary reasons as may be permitted by the presiding judge.

(b) One or more clerks shall be assigned to assist in checking the names of voters on the list of registered voters and performing such other duties as are necessary in receiving the voters and supervising the deposit of the voted ballots. At every election there shall be kept a poll list in the number of copies required by law on which an election officer shall enter the name of each voter at the time he votes. In lieu of a poll list, the signature roster, together with any other forms, may be combined with the list of registered voters in the format prescribed by the secretary of state.

(c) In elections where paper ballots are used, the ballots shall be counted by one or more sets of counting officers, each set to consist of one judge or clerk who shall read the ballots, and one or more clerks who shall enter the votes on tally lists prepared for the election. As a safeguard in the accuracy of the tallying, the votes shall be entered on three original tally lists, and during the progress of the counting the lists shall be compared and errors and discrepancies shall be corrected, and at the close of the counting the tally clerks shall certify officially to the correctness of the lists.

(d) The clerks may be assigned to perform such other duties as the presiding judge directs.

[Amended by Acts 1977, 65th Leg., p. 590, ch. 209, § 1, eff. Aug. 29, 1977.]

Art. 3.03. Qualifications of Judges, Clerks and Watchers

(a) All judges of any general, special, or primary election shall be qualified voters of the election precinct in which they are named to serve. Unless otherwise provided in a statute pertaining to the specific type of election being held, in any general, special, or primary election all clerks and watchers shall be qualified voters of the county if the election is countywide, and shall be qualified voters of the city or other political subdivision in which the election is held if less than countywide, but it shall not be necessary that they reside within the election precinct in which they are named to serve.

(b) No person shall serve as a judge or a clerk in any general, special, or primary election who is

employed by any candidate whose name appears on the ballot in that election either for a public office or for the party office of county chairman, or who is related to such candidate within the second degree either by affinity or consanguinity. Within the meaning of this section, a governmental employee is employed by the officer or officers who head the department or agency in which he is employed.

(c) No watcher shall be an employee or employer of any election judge or clerk in the election precinct in which he is named to serve or related to any such election officer within the second degree either by affinity or consanguinity.

[Amended by Acts 1977, 65th Leg., p. 966, ch. 363, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1652, ch. 649, § 1, eff. Aug. 29, 1977.]

Art. 3.04. Disqualifications

[See Compact Edition, Volume 2 for text of 1 and 2]

Subd., 3. No one shall act as chairman or as member of any district, county, or city executive committee of a political party who is not a qualified voter, or who is an officeholder or a candidate for nomination to or election to any office that would appear on a general election ballot.

[Amended by Acts 1977, 65th Leg., p. 966, ch. 363, § 2, eff. Aug. 29, 1977.]

Art. 3.07. Service, Duties, and Privileges of Watchers

[See Compact Edition, Volume 2 for text of (a) to (c)]

(d) Each watcher appointed in accordance with this code shall be permitted, but not required, to sit conveniently near the judges or clerks so that he can observe the conduct of the election, including but not limited to the reading of the ballots, the tallying and counting of the votes, the making out of the returns, the locking of the ballot boxes, their custody and safe return. He shall also be permitted to be present when assistance is given by any election judge in the marking of the ballot of any voter not able to mark his own ballot, to see that the ballot is marked in accordance with the wishes of the voter, but he must remain silent except in cases of irregularity or violation of the law. He shall not be permitted to enter into any conversation with the judges or clerks regarding the election while it is progressing, except to call the attention of the judges or clerks to any irregularity or violation of the law that he may observe. The watcher shall call the attention of officers holding the election to any fraud, irregularity or mistake, illegal voting attempted, or other failure to comply with the laws governing such election at the time it occurs, if practicable and if he has knowledge thereof at the time, and such complaint shall be reduced to writing

and a copy delivered to the election judge. Preventing a poll watcher from observing any activity including, but not limited to, the tallying of ballots at any polling place, place of canvass, or central counting station shall constitute a Class A misdemeanor.

[See Compact Edition, Volume 2 for text of (e) to (h)]

[Amended by Acts 1975, 64th Leg., p. 2076, ch. 681, § 3, eff. June 20, 1975.]

Art. 3.08. Pay of Judges and Clerks

(a) In all elections, general, special, or primary, by whatever authority conducted, the rate of pay for judges and clerks of the election shall be determined by the appropriate authority, but shall not exceed \$2.50 per hour for each judge or clerk. No judge or clerk shall be paid for more than one hour of work before the polls open. In precincts where voting machines are used, no judge or clerk shall be paid for any period of time subsequent to two hours after the official time for closing the polls or subsequent to two hours after voting is concluded by all voters offering themselves for voting during regular voting hours, whichever is the later. The judge who delivers the returns of election may be paid an amount not to exceed \$15 for that service; provided, also, he shall make returns of ballots, ballot boxes, and election supplies not used when he makes returns of the election.

[See Compact Edition, Volume 2 for text of (b) to (d)]

[Amended by Acts 1977, 65th Leg., p. 1374, ch. 546, § 1, eff. Aug. 29, 1977.]

Art. 3.09b. Training of Election Officers

Subd. 1. The governing body of each county, city, or other political subdivision which holds elections and the county executive committee of a political party which holds primary elections may require that persons appointed to serve as judge or alternate judge in its elections be trained in election law and procedure prior to their appointment or prior to their service and may adopt minimum standards for the amount of training that the person must receive to be eligible for service. The governing body of a political subdivision may appropriate funds to pay its judges and alternate judges for attending training schools at an hourly rate not to exceed the maximum amount that may be paid for their service as judge or clerk and to pay the costs for conducting the schools, including payment for the services of instructors. With the approval of the secretary of state, the county executive committee of a political party may make like payments for the training of judges and alternate judges to serve in its primary elections, to be allowed as authorized expenditures for the conduct of the elections.

Subd. 2. A political party or a political subdivision may conduct its own schools of instruction or other training programs, either independently or in conjunction with other entities. Beginning on March 1, 1979, the county executive committee of a political party or the governing body of a political subdivision other than a county may also contract with the county officer in charge of election duties for the training of its election officers, as authorized in Section 8d of this code.¹

[Added by Acts 1977, 65th Leg., p. 1509, ch. 609, § 8, eff. Aug. 29, 1977.]

¹ Article 1.08d.

CHAPTER FOUR. ORDERING ELECTIONS

Art. 4.10. Vacancy: Application to Get on Ballot

Subd. 1. (a) Any person desiring his name to appear upon the official ballot at any special election held for the purpose of filling a vacancy, when no party primary has been held, may do so by presenting his application to the proper authority. Such application shall set forth:

- (1) The name of the office sought;
- (2) His occupation, his postoffice address, and the county of his residence;
- (3) His age, place of birth, kind of citizenship, and length of residence in the county and state.

(b) In any special election for a statewide or district office which is regularly filled at the general election for state and county officers, the application shall also set forth the candidate's political party affiliation or shall state that the candidate is not affiliated with any political party.

Subd. 2. Such application must be filed not later than 5 p. m. of the 31st day before any such special election, and shall not be considered filed unless it has actually been received by the officer with whom it is to be filed.

Subd. 3. (a) The application must be filed with the Secretary of State in the case of a statewide or district special election. It must be accompanied with a fee of \$1,000 for a statewide office, including without limitation the office of United States Senator, a fee of \$500 for the district office of United States Representative, a fee of \$400 for the district office of State Senator, and a fee of \$200 for the district office of State Representative; or, in lieu of the filing fee, the application must be accompanied with a petition signed by at least 5,000 registered voters of the state in the case of a statewide office, and by at least 500 registered voters of the district in the case of a district office. A petition must show the address, voter registration number, and date of signing for each signer. No person may sign the petition of more than one candidate for the same

office, and if a person signs the petition of more than one candidate, the signature is void as to all such petitions. A petition may be in multiple parts. To each part, which may consist of one or more sheets, there must be attached the affidavit of some registered voter, giving his address and voter registration number, and stating that each signature appearing in that part of the petition was affixed in the presence of the affiant and that to the best knowledge and belief of the affiant each signature is genuine and each person signing was a registered voter at the time of signing. A petition so verified is prima facie evidence that the signatures thereon are genuine and that the persons signing it are registered voters. Fees received under this subdivision shall be deposited in the general revenue fund of the state.

(b) Upon receipt of an application which conforms to the above requirements, the Secretary of State shall issue his instruction to the county clerks of the state, or of the district in the case of a district vacancy, directing that the name of the applicant be printed on the official ballot.

(c) The party affiliation of the candidate shall be printed on the official ballot following the name of the candidate. If the candidate has stated in his application that he is not affiliated with any political party, the word "Independent" shall be printed on the ballot following the candidate's name. In other respects, the ballot shall be printed as indicated in Section 61 of this code (Article 6.05, Vernon's Texas Election Code) for a special election in which no party nomination has been made.

Subd. 4. The application must be filed with the city secretary or clerk in the case of a municipal special election. A home-rule city by charter may require that the application be accompanied with a reasonable filing fee or a petition of voters in lieu of the filing fee.

[Amended by Acts 1975, 64th Leg., p. 356, ch. 151, § 1, eff. Sept. 1, 1975.]

CHAPTER FIVE. SUFFERAGE

- Article
- 5.06. Repealed.
 - 5.11a. Expired.
 - 5.13c. Voter Registration Forms in Spanish [NEW].
 - 5.15b. Service Program of Secretary of State; Copies of Master State Voter File [NEW].
 - 5.18b. [Repealed]
 - 5.22b. [Repealed]
 - 5.22c. [Repealed]
 - 5.24a. County Elections Administrator [NEW].
 - 5.24b. Election Duties of County Clerk Transferred to County Elections Administrator [NEW].

Art. 5.01. Classes of Persons Not Qualified to Vote

The following classes of persons shall not be allowed to vote in this state:

1. Persons under 18 years of age.
2. Idiots and lunatics.
3. All paupers supported by the county.
4. All persons convicted of any felony except those restored to full citizenship and right of suffrage or pardoned."

[Amended by Acts 1975, 64th Leg., p. 2082, ch. 682, § 3, eff. Sept. 1, 1975.]

Art. 5.02. Qualifications and Requirements for Voting

(a) Every person subject to none of the foregoing disqualifications who is a citizen of the United States and a resident of this state and is eighteen years of age or older, and who has complied with the registration requirements of this code, is a qualified voter. No person may vote in an election held by a county, municipality, or other political subdivision unless he is a resident of the subdivision on the day of the election; and, except, as expressly permitted by some other provision of this code or another statute of this state, no person may vote in an election precinct other than the one in which he resides. The provisions of this section, as modified by Section 35 of this code (Article 5.03, Vernon's Texas Election Code), apply to all elections, including general, special, and primary elections, whether held by the state, by a county, municipality, or other political subdivision of the state, or by a political party.

(b) All citizens of this state who are otherwise qualified by law to vote at any election of this state or any district, county, municipality, or other political subdivision, shall be entitled and allowed to vote at all such elections. The Secretary of State shall, by directive, implement the policies stated herein throughout the elective procedures and policies by or under authority of this state. Enforcement of any directive of the Secretary of State pursuant to this section may be by injunction obtained by the Attorney General.

[Amended by Acts 1975, 64th Leg., p. 2076, ch. 681, § 4, eff. June 20, 1975; Acts 1975, 64th Leg., p. 2082, ch. 682, § 4, eff. Sept. 1, 1975.]

Art. 5.05. Absentee Voting

Who May Vote Absentee

Subd. 1. (a) Any qualified voter of this state who expects to be absent from the county of his residence on the day of the election, or who will be 65 years of age or older on the day of the election, or who because of sickness, physical disability, confinement in jail, or religious belief cannot appear at the

polling place in the election precinct of his residence on the day of the election, or who expects to serve as an election clerk or as a poll watcher on election day in an election precinct other than the precinct of his residence, may nevertheless cause his vote to be cast at any election held in this state by compliance with the applicable method herein provided for absentee voting. If a voter's religious belief prohibits him from voting during any part of the time during which the polls are open on the day of the election, he shall nevertheless be entitled to vote absentee even though the prohibition does not operate throughout the entire time that the polls are open. A voter who is confined in jail is entitled to vote absentee if at the time of applying for an absentee ballot he is:

- (1) serving a misdemeanor sentence which extends through election day;
- (2) being held for trial after a denial of bail;
- (3) being held without bail pending the appeal of a felony conviction; or
- (4) being held for trial or pending an appeal on a bailable charge but he expects not to have been released on bail by the date of the election.

(b) Absentee voting shall be conducted by two methods:

- (1) voting by personal appearance at the clerk's office, and
- (2) voting by mail.

All voters coming within the foregoing provisions of this subdivision may vote by personal appearance at the clerk's office if they are able to make such appearance within the period for absentee voting. Where the ground for voting absentee is confinement in jail, it is not mandatory that the voter be allowed to make a personal appearance, but the officer in charge of the jail, in his discretion is authorized to make the necessary arrangements to permit the voter to vote by personal appearance.

(c) The following persons, and no other, may vote by mail:

- (i) Qualified voters who will be 65 years of age or older on the day of the election, or who because of sickness or physical disability, or because of religious beliefs, cannot appear at the polling place on the day of the election. The application for an absentee ballot shall be made not more than sixty days before the day of the election. It must be mailed to the clerk, and the clerk shall preserve the envelope in which it is received. If the application is delivered to the clerk by any method other than by mailing it to him, the ballot shall be void and shall not be counted. The voter shall state in his application the address to which the ballot is to be mailed to him, which must be either his permanent resi-

dence address or the address at which he is temporarily living. If the ballot is furnished to the voter by any method other than by mailing it to him, or if it is mailed to any address other than one of the foregoing, it shall be void and shall not be counted. The marked ballot must be mailed to the clerk, and if returned in any other manner it shall be void and shall not be counted.

(ii) Qualified voters who, before the beginning of the period for absentee voting, make application for an absentee ballot on the ground of expected absence from the county of their residence on election day, and who expect to be absent from the county during the clerk's regular office hours for the entire period of absentee voting. The voter must state in his application that he expects to be absent from the county of his residence on election day and during the clerk's regular office hours for the entire period for absentee voting. The application shall be made not more than sixty days before the day of the election, and may be mailed to the clerk or delivered to him by the voter in person, but the clerk shall not furnish a ballot to the voter by any method other than by mailing it to him. Applications made under this paragraph may be mailed either from within or without the county of the voter's residence, but in every case the ballot must be mailed to the voter at an address outside the county. The ballot shall not be counted unless the carrier envelope in which the ballot is returned to the clerk is postmarked from a point outside the county and the affidavit on the carrier envelope is certified by an officer other than an officer of the county of the voter's residence.

(iii) Qualified voters who, after the beginning of the period for absentee voting, apply for an absentee ballot on the ground of expected absence from the county and who are absent from such county at the time of applying for an absentee ballot and expect to be absent from such county during the clerk's regular office hours for the remainder of the period for absentee voting. The voter must state in his application that he is absent from the county at the time of making the application and expects to be absent on election day and during the clerk's regular office hours for the remainder of the period for absentee voting. The clerk shall not mail a ballot to any such voter unless the envelope in which the application is received is postmarked from a point outside the county, and the ballot must be mailed to the voter at an address outside the county. The ballot shall not be counted unless the envelope in which the application is received and the carrier envelope in which the ballot is returned to the clerk are

each postmarked from a point outside the county and the affidavit on the carrier envelope is certified by an officer other than an officer of the county of the voter's residence.

(iv) Qualified voters who are confined in jail under one of the circumstances listed in the first paragraph of this subdivision. The application for an absentee ballot shall be made not more than twenty days before the day of the election. It must be enclosed in an envelope and either mailed to the clerk or delivered to him by the jailer or one of his deputies or assistants, who shall place his signature on the envelope at the time of its delivery. The clerk shall preserve the envelope in which the application is received. If the application is delivered to the clerk by any method other than as expressly authorized herein, the ballot shall be void and shall not be counted. The clerk shall mail the ballot to the voter in care of the jail where he is confined; and if the ballot is furnished to the voter by any method other than by mailing it to him, or if it is mailed to any other address, it shall be void and shall not be counted. The marked ballot must be mailed to the clerk, and if returned in any other manner it shall be void and shall not be counted.

(d) An application for an absentee ballot to be voted by mail shall state the applicant's permanent address and the address to which the absentee ballot is to be mailed to the applicant, and shall also state the address to which his voter registration certificate is to be mailed back to him.

Application for Ballot

Subd. 2. (a) The secretary of state shall prescribe the form or forms for an application for an absentee ballot to be voted by personal appearance and of an application for a ballot to be voted by mail. The application for a ballot to be voted by mail shall be in the form of a postcard. Each clerk for absentee voting shall obtain and keep on hand a supply of the application forms to furnish to voters who request them. The secretary of state shall keep on hand a supply of the application forms for voting by mail and shall furnish the forms in reasonable quantities to individuals and organizations requesting them for use in furnishing the forms to voters who wish to vote absentee by mail. A voter desiring to vote absentee shall make written application on the appropriate form for an official ballot to the absentee voting clerk for the election in which the voter wishes to vote, which application shall be signed by the voter, or by a witness at the direction of the voter if for any reason the voter is unable to sign his name. The application shall state the ground on which the applicant is entitled to vote absentee, and in case of an application by mail, it shall also state the additional information required by Subdivision 1 of this section.

(b) The application shall contain a space for the voter to enter his voter registration certificate number or, in case the voter does not have his certificate in his possession at the time of making the application, to indicate whether the certificate has been lost or mislaid, has been left at the voter's home (where he is applying from a temporary address), or has been used for applying for an absentee ballot in another election (stating the nature and date of the election) and has not been returned to him. Before furnishing a ballot to a voter, the clerk shall verify the voter's registration certificate number, or in case the number is not stated on the application, the clerk shall enter it from the list of registered voters. If the ground of application is sickness or physical disability by reason of which the voter cannot appear at the polling place on election day, a certificate of a duly licensed physician or chiropractor or accredited Christian Science practitioner certifying to such sickness or physical disability shall accompany the application, which certificate shall be in substantially the following form:

This is to certify that I have personal knowledge of the physical condition of _____, and that because of sickness or physical disability he (she) will be unable to appear at the polling place for an election to be held on the _____ day of _____, 19__.

Witness my hand at _____, Texas, this _____ day of _____, 19__.

(Signature of Practitioner)

(c) Expected or likely confinement for childbirth on election day shall be sufficient to entitle a voter to vote absentee on the ground of sickness or physical disability, and a physician executing a certificate for a pregnant woman may state in the certificate that because of pregnancy and possible delivery she will be or may be unable to appear at the polling place on election day.

Any person who requests a physician, chiropractor, or Christian Science practitioner to execute a certificate for another person without having been directed by such other person to do so, and any physician, chiropractor, or Christian Science practitioner who knowingly executes a certificate except upon the request of the voter named therein or upon request of someone at the voter's direction, or who knowingly delivers a certificate except by delivering it to the voter in person or by mailing it to the voter at his permanent residence address or the address at which he is temporarily living, or who knowingly falsifies a certificate, is guilty of a misdemeanor and upon conviction shall be fined not more than Five Hundred Dollars or imprisoned in the county jail for not more than thirty days, or both so fined and imprisoned.

(d) A voter who gives false information in his application for an absentee ballot is guilty of a misdemeanor and upon conviction shall be punished as provided in Section 347 of this code (Article 15.47, Vernon's Texas Election Code). Printed application forms furnished to voters by the county clerk shall contain the following statement immediately preceding the space for the voter's signature: "I certify that the information given in this application is true, and I understand that the giving of false information in the application is a crime." An informal application need not contain the statement, but a voter who gives false information is subject to the criminal penalty regardless of whether the statement appears on the application.

This is to certify that I have personal knowledge of the physical condition of _____, and that because of sickness or physical disability he (she) will be unable to appear at the polling place for an election to be held on the _____ day of _____, 19__.

Witness my hand at _____, Texas, this _____ day of _____, 19__.

(Signature of Practitioner)

Absentee Voting by Members of the Armed Forces, Etc.
Subd. 2a.

[See Compact Edition, Volume 2 for text of (a) to (c)]

(d) If the applicant is not currently registered through the registrar of voters, the clerk shall examine the information on the federal post card application, and if it shows that the applicant possesses the qualifications for voting at that election in the precinct of his residence, the clerk shall enter his name on a list headed "Absentee voters registering by FPCA for the _____ election held on _____" and shall also enter thereon the voter's local permanent address and election precinct number, the address to which the ballot is mailed, and the date on which it is mailed. The list shall be made up in duplicate and shall be kept up from day to day. After the election is held, one copy shall be filed as a record of the clerk's office if the clerk conducting the absentee voting is a county clerk or a city secretary or city clerk, and as a record of the authority which appointed the clerk for absentee voting in other instances, to be preserved for a period of two years, after which it may be destroyed. The other copy shall be placed with the records of the election which are delivered into the custody of the officer designated in Paragraph (a)(2) of Section 111b of this code (Article 8.29b, Vernon's Texas Election Code), to be subject to the same regulations as those records.

[See Compact Edition, Volume 2 for text of 2a(e) to (h) and 2b]

Comparison of Signatures

Subd. 2c. Repealed by Acts 1977, 65th Leg., p. 1688, ch. 668, § 4, eff. Aug. 29, 1977.

[See Compact Edition, Volume 2 for text of 3]

Voting by Personal Appearance in County-wide Elections

Subd. 3a. (a) In a county-wide election, or in an election less than county-wide where the authority holding the election has provided that absentee voting by personal appearance shall be conducted on a voting machine or that absentee paper ballots shall be counted by a special canvassing board, upon receipt of an application for an absentee ballot to be voted by personal appearance, if the clerk is satisfied as to the right of the applicant to vote, the clerk shall place a notation on the list of registered voters showing that the particular person has voted absentee and shall enter the voter's name on a poll list of absentee voters. The application shall be preserved in the clerk's office for the length of time provided by law for preservation of voted ballots.

(b) In the conduct of absentee voting under this subdivision, the clerk shall possess the same power as a presiding judge with respect to examination and acceptance of a voter. If the right of an applicant to vote is challenged, the procedure prescribed in Section 91 of this Code (Article 8.09, Vernon's Texas Election Code) shall be followed.

(c) Where paper ballots are used for absentee voting, after a voter has been accepted, the clerk shall furnish the voter with an official ballot which has been prepared in accordance with law for use in such election. The voter shall then and there, in the office of the clerk, mark his ballot and detach and sign the ballot stub, and shall deposit the ballot in a ballot box and the stub in a stub box in the manner provided in Section 97 of this Code (Article 8.15, Vernon's Texas Election Code). The ballots shall be deposited in a ballot box locked with two locks, the keys of one of which shall be kept during the period for absentee voting by the sheriff and the keys of the other by the county clerk. The stubs shall be deposited in a stub box prepared in accordance with Section 97 of this Code (Article 8.15, Vernon's Texas Election Code).

(d) Where a voting machine is used for absentee voting by personal appearance, after a voter has been accepted, he shall then be permitted to cast his ballot on the voting machine. Returns of absentee votes cast on a voting machine shall be made under the appropriate provision of Section 79 of this Code (Article 7.14, Vernon's Texas Election Code).

Voting by Personal Appearance in Election Less Than County-wide

Subd. 3b. (a) In an election less than county-wide in which absentee paper ballots are to be sent to the regular polling places for counting, upon receipt of an application for an absentee ballot to be

voted by personal appearance, the clerk shall thereupon furnish to the voter the following absentee voting supplies:

(1) One official ballot which has been prepared in accordance with law for use in such election.

(2) One ballot envelope, which shall be a plain envelope, without any markings except the words "Ballot Envelope" printed on the face thereof, followed by the instructions contained in this subdivision and Subdivision 4 for marking the ballot, for placing it in the carrier envelope, and for returning a ballot to be voted by mail, together with a statement of the deadline for placing the ballot in the mail and for delivery to the clerk's office in that election, the text of the provisions in Subdivision 15 of this section which relate to assistance to the voter in preparing his ballot, and the text of Section 330 of this code (Article 15.30, Vernon's Texas Election Code). The textual material may be continued onto the reverse side of the envelope if necessary.

(3) One carrier envelope, upon the face of which there shall appear the words "Carrier Envelope for Absentee Ballot" and the name, official title, and post-office address of the county clerk, upon the other side there shall appear spaces for showing the nature and date of the election and the number or name of the election precinct in which the voter resides (which the clerk shall fill in before he furnishes the supplies to the voter), and a certificate in substantially the following form:

"I certify that the enclosed ballot expresses my wishes, independent of any dictation or undue persuasion of any person and that I did not use any memorandum or device to aid me in the marking of the ballot.

(Signature of voter)

By: _____

(Signature of person who assisted voter. See Ballot Envelope for restrictions and penalties.)

(b) The voter shall then and there, in the office of the clerk, mark the ballot, sign his name on the back of the ballot stub, detach the stub from the ballot, fold the ballot and place it in the envelope marked "Ballot Envelope" and seal the same. The voter shall then place the stub and the ballot envelope in the carrier envelope, seal the same and sign the certificate on the carrier envelope, and deliver the carrier envelope to the clerk.

[See Compact Edition, Volume 2 for text of 3c and 3d]

Absentee Voting by Sick or Disabled Voter after Close of Regular Period

Subd. 3e. (a) The provisions of this subdivision apply only to county-wide elections and to elections less than county-wide where the authority holding the election has provided that absentee ballots shall be counted by a special canvassing board. In such an election, a voter who because of sickness or physical disability originating on or after the fifth day preceding election day will be unable to attend the polling place on election day may vote absentee under the procedure outlined in this subdivision. The voter shall make a written request signed by him, or signed by a witness at the voter's direction if the voter is unable to sign his name, and presented to the absentee voting clerk at his office, that the clerk send him a ballot by the person who presents the request to the clerk. The voter may select any person 18 years of age or older who shall not be employed by nor related within the third degree of consanguinity or affinity to any person whose name appears on the ballot, to act as his representative in presenting the request or delivering the marked ballot back to the clerk. No person may serve as the representative to present the request for a ballot or to deliver the marked ballot back to the clerk for more than one absentee voter in any election held under the provision of the Texas Election Code as amended. The voter's request must state in effect that sickness or physical disability will prevent the voter from appearing at the polling place on election day, giving the date of the election or otherwise identifying the election for which the ballot is requested, and that the inability to attend the polling place originated after the fifth day preceding the day of the election. The request must be accompanied by a certificate of a duly licensed physician or chiropractor or accredited Christian Science practitioner in substantially the following form:

"This is to certify that I have personal knowledge of the physical condition of _____; that because of sickness or physical disability he (she) will be unable to appear at the polling place for an election to be held on the _____ day of _____, 19____; and that the inability to attend the polling place originated after the fifth day preceding the day of the election.

Witness my hand at _____, Texas, this _____ day of _____, 19____.

(Signature of practitioner)"

The request must state in effect that sickness or physical disability will prevent the voter from appearing at the polling place on election day, giving the date of the election or otherwise identifying the election for which the ballot is

requested, and that the inability to attend the polling place arose on or after the fifth day preceding the day of the election. The request must be accompanied by the voter's voter registration certificate or his signed statement (either separately or included in the signed request) that the certificate has been lost or mislaid, has been left at the voter's home (when he is applying from a hospital or other temporary address), or has been used for applying for an absentee ballot in another election (stating the nature and date of the election) and has not been returned to him. Upon receiving a request that complies with the foregoing conditions at any time after the close of business on the fourth day preceding election day and before 12 noon on election day, the clerk shall deliver to the voter's representative the balloting materials used for voting absentee by mail, but before doing so he shall record the representative's name and address on the request and shall require the representative to place his signature alongside his name.

(b) The clerk shall add to the list of absentee voters described in Subdivision 11 of this section the name of each voter to whom an absentee ballot is sent under this subdivision, with a notation that the ballot was sent to the voter through a representative, but the clerk is not required to include the names of these voters on the precinct lists of absentee voters sent to the presiding election judges.

(c) After receiving the balloting materials, the voter shall follow the procedure prescribed in Subdivision 4 of this section for voting absentee by mail, except that the marked ballot shall be hand-delivered to the clerk by the voter's representative instead of being mailed to the clerk. The ballot must be delivered to the clerk by the deadline for receiving ballots voted by mail. It must be delivered by the person who delivered the request to the clerk. Upon receiving the marked ballot, the clerk shall make a notation on the carrier envelope of the name and address of the person who delivered it and shall require the person to place his signature alongside his name on the envelope. The clerk shall then follow the same procedure as for a ballot received by mail. He shall return the voter's registration certificate to him by mailing it to his permanent address.

(d) A voter who gives false information in his request for an absentee ballot is guilty of a misdemeanor and upon conviction shall be punished as provided in Section 347 of this code (Article 15.47, Vernon's Texas Election Code).

Voting by Mail

Subd. 4. (a) The period for absentee voting by mail shall begin on the twentieth day preceding the date of the election. An application for an absentee ballot to be voted by mail must be received in the

clerk's office not later than the close of business on the fourth day preceding election day. In county-wide elections and in elections less than county-wide where the authority holding the election has provided that absentee ballots shall be counted by a special canvassing board, the marked ballot must be received in the clerk's office before one o'clock p. m. on election day, except that in an election in which the offices of president and vice president of the United States appear on the ballot, the deadline for receipt of the ballot in the clerk's office is the official time of closing of the polls on the day of the election. In all other elections which are less than county-wide, the marked ballot must be received in the clerk's office before ten o'clock a. m. on the second day preceding election day. The ballot may be marked by the voter at any time after he receives it.

(b) On the twentieth day preceding election day, or as soon thereafter as possible, the clerk shall mail an official ballot, ballot envelope, and carrier envelope, as described in Subdivision 3b of this section, to each voter who has theretofore made application for a ballot in compliance with this section. On applications which are received between the twentieth day and the fourth day preceding election day, the clerk shall forthwith mail the absentee voting supplies to the voter.

(c) The voter shall mark the ballot, sign his name on the back of the ballot stub, detach the stub from the ballot, fold the ballot, and place it in the envelope marked "Ballot Envelope" and seal the same. The voter shall then place the stub and the ballot envelope in the carrier envelope, seal the same and sign the certificate on the carrier envelope. The carrier envelope shall then be mailed, postage prepaid, to the county clerk.

(d) Repealed by Acts 1977, 65th Leg., p. 1688, ch. 668, § 4, eff. Aug. 29, 1977.

[See Compact Edition, Volume 2 for text of 4a to 5]

Counting of Ballots in County-wide Elections

Subd. 6. (a) In all countywide elections, and in elections less than countywide where the authority holding the election has provided that absentee paper ballots shall be counted by a special canvassing board, on the day of the election the ballot box and stub box used for absentee voting by personal appearance, the keys to the ballot box, the jacket envelopes containing the ballots voted by mail and accompanying papers, the poll list for absentee voting on which the clerk has entered the names of persons voting by personal appearance, and the list of registered voters used by the county clerk, shall be delivered to a special canvassing board consisting of a presiding judge and two or more election clerks appointed in the same manner as provided for appointment of the election officers for regular polling

places at that election. The county clerk shall deliver the ballots to the canvassing board at such hour as the presiding judge shall direct, but not earlier than the hour at which the polls are opened and not later than the hour specified in Subdivision 4 of this section as the deadline for returning the marked ballots to the clerk's office. If delivered before the deadline, the clerk shall deliver in like manner to the board, immediately following the deadline, all ballots received by mail before the deadline which have not previously been delivered to the board.

(b) This special canvassing board shall open the jacket envelopes, announce the voter's name, and ascertain in each case if he is qualified to vote at that election and if he has complied with all applicable provisions of this section to entitle his ballot to be cast. On ballots voted by mail, the board shall compare the signatures on the application and the carrier envelope, and in case the board finds that the signatures correspond, that the application and the certificate on the carrier envelope are duly executed, that the voter is a qualified elector, and that he has voted in a manner authorized in this section, they shall enter his name on the official poll list (on which voters voting by mail shall be listed separately from those who have voted by personal appearance) and shall open the carrier envelope so as not to deface the certificate thereon, and shall place the sealed ballot envelope in the ballot box and the stub in the stub box. The carrier envelope, application, and accompanying papers shall be replaced in the jacket envelope and returned to the county clerk at the same time the voted ballots are returned, and shall be preserved for the length of time provided by law for the preservation of the voted ballots.

[See Compact Edition, Volume 2 for text of 6(c) to 6(f)]

(g) After the absentee ballots are counted, the ballot box containing the voted ballots and the returns and other records of the election shall be delivered to the proper officers as provided by law for regular polling places.

[See Compact Edition, Volume 2 for text of 7 to 10]

Records of Absentee Voters; Inspection of Applications, etc.

Subd. 11. (a) The county clerk and each other clerk for absentee voting designated in accordance with Subdivision 1a of this section shall maintain in his main office a complete record, in card-index or list form, of persons who have voted absentee by personal appearance and of persons to whom absentee ballots have been sent by mail (or, if authorized by some provision of law, have been sent by some other method of transmission). The record shall contain the voter's name, address, precinct of residence, voter registration number, a notation of whether the voter voted by personal appearance or

was furnished a ballot to be returned by mail (or by other means of transmission, if authorized), and the date on which the voter voted, if by personal appearance, or on which the ballot was transmitted to the voter. The record shall be kept up from day to day.

(b) On or before the day preceding election day, the clerk for absentee voting shall deliver to each presiding election judge, in person or by mail, a list containing the name, address, and voter registration number of each resident of the precinct in which the judge serves, who has voted absentee by personal appearance or has been furnished an absentee ballot to be returned by mail. Before the hour for opening the polls on election day, the presiding judge shall cause the notation "absentee voter" to be placed by the name of each such voter on the list of registered voters to be used in accepting voters for voting at the polling place.

(c) The clerk's records of absentee voters and the applications for absentee ballots and accompanying papers shall be open to public inspection during the clerk's regular office hours, but under such reasonable rules and regulations as the clerk may adopt to safeguard the records and papers and to economize his own time. The clerk may require a person to present proof of identity before permitting him to inspect the records. The clerk must accept a current Texas voter registration certificate, Texas driver's license, or Department of Public Safety personal identification certificate as sufficient proof of identity.

[See Compact Edition, Volume 2 for text of 12 and 13]

Branch Offices for Absentee Voting by Personal Appearances
Subd. 14.

[See Compact Edition, Volume 2 for text of (a) and (b)]

(c) Any voter eligible to vote absentee by personal appearance in the main office of the clerk may vote in any branch office. The deputy clerk in charge of absentee voting at each branch office shall transmit to the clerk at the close of each day of absentee voting the names of all persons who have voted absentee in the branch office on that day, together with other necessary information as provided in Subdivision 11, for inclusion in the record of absentee voters maintained in the main office. During the period for absentee voting by personal appearance, the applications and ballots of persons who have voted absentee may be retained in the branch office or may be delivered to the main office from time to time, but all applications and ballots shall be delivered to the main office not later than one o'clock p. m. on the third day prior to election day. Except as otherwise provided in this subdivision, the voting in a branch office shall be subject to the same regulations as the voting in the main office.

Branch Offices for Absentee Voting by Personal Appearance in Counties Having a Population of More Than 1,500,000

Subd. 14a.

[See Compact Edition, Volume 2 for text of (a) and (b)]

(c) The list of voters who vote absentee in each election suboffice each day shall be available for inspection the next day both in the election suboffice in which the voter voted and in the main office, with the list of each election suboffice being maintained in the main office separate and apart from the lists of the other election suboffices. Each such list of voters shall be compiled in accordance with statutory requirements.

[See Compact Edition, Volume 2 for text of (d) to (e)]

Assistance to Voter; Use of English Language

Subd. 15. (a) No assistance shall be given a voter in marking his absentee ballot except where the voter is unable to prepare the same himself because of his inability to read the language in which the ballot is printed or because of some bodily infirmity which renders him physically unable to write or to see or to operate the voting equipment. If a voter who is voting by personal appearance is entitled to assistance, he may be assisted by the clerk or a deputy clerk or by any qualified voter of the political subdivision in which the election is held, selected by the voter. If a voter who is voting by mail is entitled to assistance, he may be assisted by any person 18 years of age or older, selected by the voter. The person assisting the voter shall not suggest, by word or sign or gesture, how the voter shall vote, and shall confine the assistance to answering the voter's questions, to stating the propositions to be voted on, and to naming the candidates and the political parties to which they belong, and the person shall prepare the ballot as the voter directs. Where any assistance is rendered in marking an absentee ballot other than as allowed in this subdivision, the ballot shall not be counted but shall be void for all purposes.

(b) In absentee voting by personal appearance at the clerk's office, any voter unable to speak or understand the English language may communicate with the clerk in some other language, and if the clerk is unable to speak or understand the language used by the voter or if he requests that the voter communicate through an interpreter, the voter shall be entitled to communicate through an interpreter of his choice, who shall be a qualified voter in the county. Before acting as interpreter, the person chosen by the voter shall take the following oath, to be administered by the clerk: "I solemnly swear that I will correctly interpret and translate each question, answer, or statement addressed to the voter by the clerk and each question, answer, or state-

ment addressed to the clerk by the voter." When any language other than the English language is used either by the voter or by the clerk, any watcher present shall be entitled to request and receive a translation into the English language of anything spoken in some other language.

[See *Compact Edition, Volume 2 for text of 16 to 18*]

[Amended by Acts 1975, 64th Leg., p. 2084, ch. 682, §§ 6 to 11, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 86, ch. 43, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 376, ch. 186, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 660, ch. 247, § 9, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1653, ch. 649, § 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1682, ch. 665, §§ 1 to 4, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1687, ch. 668, §§ 1 to 4, eff. Aug. 29, 1977.]

Art. 5.05a. Repealed by Acts 1975, 64th Leg. p. 2098, ch. 682, § 28, eff. Sept. 1, 1975

Art. 5.05b. Voting by Former Residents of State in Presidential Elections

Former Residents Eligible to Vote

Subd. 1. A former resident of this state who has become a legal resident of another state of the United States or of the District of Columbia may vote for presidential and vice presidential electors in the county of his former residence if:

(1) on the day of the election he will not have resided in the state of his present residence for a period of 30 days and will not be eligible to vote in that state, and

(2) he otherwise possesses the substantive qualifications of an elector in this state, as defined in Section 34 of this code (Article 5.02, Vernon's Texas Election Code), except the requirement of residence, and

(3) at the time of his removal he was registered as a voter in this state, and

(4) he complies with the provisions of this section.

Application for Presidential Ballot

Subd. 2. (a) A person eligible to vote under the provisions of this section may vote either by personal appearance or by mail. The voter shall make a written, signed application to the county clerk of the county of his former residence for a ballot permitting him to vote for president and vice president only, on a form to be prescribed by the secretary of state and furnished by the county clerk.

Procedure for Voting by Mail

Subd. 3. When a voter desires to vote a ballot by mail, the procedure for absentee voting by mail in a countywide election shall be followed insofar as it can be made applicable and is not inconsistent with this section. The clerk shall mail the voter a ballot from which the clerk has stricken all offices and

propositions other than the offices of president and vice president, together with a ballot envelope and a carrier envelope containing such markings and instructions as the secretary of state prescribes. When the election officer checks the voter's name on the list of registered voters and enters his name on the poll list, the officer shall add a notation that the voter is voting under this section, in the presidential race only. The ballots cast under this section shall be counted and return made thereof along with and on the same forms as the other absentee ballots.

Procedure for Voting by Personal Appearance

Subd. 4. A voter may vote by personal appearance at the clerk's office at any time that the office is open to the public, beginning on the 20th day preceding the election and ending on the day of the election. When the voter appears in person, the clerk shall furnish him with a ballot, ballot envelope, and carrier envelope prepared in accordance with Subdivision 3 of this section, and the ballot shall be processed and counted along with the absentee ballots voted by mail.

Cancellation of Registration

Subd. 5. When the registrar receives a list of registered voters containing a notation that a voter has voted under this section, he shall cancel the registration if it is still in the active file in his records.

[Amended by Acts 1975, 64th Leg., p. 2089, ch. 682, § 12, eff. Sept. 1, 1975.]

Art. 5.05c. Voting Limited Ballot After Removal to Another County

Definition of Limited Ballot

Subd. 1. The term "limited ballot" is used to mean a ballot listing only the offices and propositions on which a voter is entitled to vote under the procedure outlined in this section during a period not exceeding 90 days after his removal from one county to another county within the state. The term includes the ballot for any election at which the voter is entitled to vote, even though at some special or runoff elections the ballot may be identical with the full ballot for that election. For the purposes of this section, the day of arrival in the county of new residence is counted as the first day after removal.

Who is Eligible to Vote a Limited Ballot

Subd. 2. (a) Where a registered voter moves from one county to another county in the state, during the first 90 days after the removal he is entitled to vote, under the procedure outlined in this section, on all offices, questions, or propositions to be voted on by the electors throughout the state, if on the day of the election (1) he would have been eligible to vote in the county of his former residence except for the removal, and (2) a registration in the

county of new residence has not become effective. He may also vote on all district offices for any district of which he was a resident before the removal and continues to be a resident after the removal. The term "district office" refers to the district offices which are regularly filled at the general election provided for in Section 9 of this code (Article 2.01, Vernon's Texas Election Code). After a new registration in the county of new residence becomes effective, he must thereafter vote under the normal procedures for voters registered in that county. In no event may he vote under the procedure outlined in this section after 90 days following the removal.

(b) Voting rights and registration requirements in other elections after removal from one county to another are governed by Subdivision 3 of Section 50a of this code (Article 5.18a, Vernon's Texas Election Code).

Application for Limited Ballot; Procedure for Voting

Subd. 3. A person who is entitled to vote a limited ballot, as described in Subdivision 2 of this section, shall be permitted to vote upon making a written, signed application for a limited ballot to the county clerk of the county of his residence at the time of the election, upon an official application form to be prescribed by the Secretary of State and furnished by the county clerk. The voter shall state in his application that he was registered in the county of his former residence at the time of his removal, and he shall accompany his application with his voter registration certificate from that county or shall state in his application that the certificate has been lost or misplaced. The procedure for voting a limited ballot shall be similar to the procedure for absentee voting. If the voter meets the requirements of Section 37 of this code (Article 5.05, Vernon's Texas Election Code) for voting an absentee ballot by mail, he shall be permitted to vote the limited ballot by mail under the procedure for absentee voting by mail upon submitting both an application for a limited ballot and an application for an absentee ballot. Otherwise, he shall vote by personal appearance during the period for absentee voting by personal appearance and under the procedure for voting by personal appearance in countywide elections insofar as it can be made applicable and is not inconsistent with this section. Ballots cast under this section shall be counted and return made thereof along with and on the same forms as the absentee ballots."

[See Compact Edition, Volume 2 for text of 4 and 5]

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 14, eff. Nov. 5, 1975.]

Art. 5.05d. General Provisions on Voting by Persons Lacking Full Voting Rights

Record of Applicants

Subd. 1. The county clerk shall maintain in his office, for public inspection, a complete record of persons who have applied for a ballot under Section 37b or 37c of this code (Article 5.05b or 5.05c, Vernon's Texas Election Code), stating thereon the applicant's name, address, precinct of residence, the section of this code under which the application was made, and the date on which the ballot was delivered or mailed, which record shall be kept up from day to day. The record is subject to the same regulations as the record of absentee voters under Subdivision 11 of Section 37 of this code (Article 5.05, Vernon's Texas Election Code). The names of persons voting under Section 37c shall be included on the precinct lists of absentee voters which the clerk furnishes to the presiding judges of the election, as provided in Subdivision 11 of Section 37, with a notation by each name to indicate that the voter received a limited ballot under Section 37c.

Preservation of Applications; Inspection

Subd. 2. Applications and accompanying papers received pursuant to Sections 37b and 37c of this code (Articles 5.05b and 5.05c, Vernon's Texas Election Code) shall be preserved in the clerk's office for the length of time provided by law for preservation of voted ballots and shall be open to public inspection under the same rules as apply to applications for absentee ballots.

[Amended by Acts 1975, 64th Leg., p. 2090, ch. 682, § 13, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1684, ch. 665, § 5, eff. Aug. 29, 1977.]

Art. 5.06. Repealed by Acts 1977, 65th Leg., p. 661, ch. 247, § 11, eff. Aug. 29, 1977

Art. 5.07. Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975

Art. 5.08. Rules for Determining Residence

[See Compact Edition, Volume 2 for text of (a) to (l)]

(m) Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975.

[Amended by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975.]

Art. 5.09a. Register of Voters

Subd. 1. Unless the county commissioners court makes a different designation as authorized in Section 41b or Section 56a of this code, the county tax assessor-collector of each county in this State is the registrar of voters in that county.

Subd. 2. The registrar of voters shall be responsible for the registration of voters, the keeping of

records, the preparation of lists of registered voters, and such other duties incident to voter registration as are placed upon him by law. Any of the duties of the registrar, except the hearing of appeals on denial of registration and the hearing of challenges of registration, may be performed through a deputy or deputies. The registrar shall not make any charge against a voter for performing any duty incident to voter registration unless expressly authorized by law to do so. The registrar is authorized to administer oaths and certify thereto under the seal of his office in every case where an oath is required in complying with any portion of this code connected with his official duties. The registration records, the applications for registration, and the duplicate registration certificates on file in the registrar's office shall be open for public inspection at all times when the office is open.

Subd. 3. The expenses of the registrar in excess of the reimbursements received from the state under Section 51b of this code (Article 5.19b, Vernon's Texas Election Code) shall be borne by the county. [Amended by Acts 1977, 65th Leg., p. 1497, ch. 609, § 1, eff. Aug. 29, 1977.]

Art. 5.09b. County Clerk as Registrar

Subd. 1. The commissioners court of any county in this state may designate the county clerk to be the registrar of voters for that county, by order recorded in its minutes. If some other officer is the registrar at the time the order is adopted, the order shall state the date on which the transfer of registration duties to the county clerk becomes effective. The commissioners court may rescind the order at any time after two years have elapsed from the date of its adoption, by a rescission order recorded in its minutes, to become effective on a date stated in the order. Thereafter, the duties of the registrar of voters shall be performed by the county tax assessor-collector unless the commissioners court establishes the office of county elections administrator and transfers the duties to that officer, as authorized in Section 56a of this code.¹ Within three days after the entry of an order transferring registration duties to the county clerk or after the entry of an order, rescinding an order of transfer, the county clerk shall send a copy of the order to the secretary of state and the comptroller of public accounts.

Subd. 2. In a county where the commissioners court has designated the county clerk to serve as the registrar of voters, all references to the county tax assessor-collector in Sections 3, 12, 64, 199, 301, 321, and 335 of this code (Articles 1.03, 2.04, 6.09, 13.21, 15.01, 15.25, and 15.35, Vernon's Texas Election Code), and in any other statutes pertaining to voter registration, mean the county clerk.

Subd. 3. Where the county clerk is the registrar of voters, the amount appropriated by the commissioners court for the registration duties of the registrar shall not be less than the amount previously appropriated to the county tax assessor-collector for the registration duties formerly performed by him, with additional appropriations, if required, to compensate for the effects of inflation and rising costs of supplies, equipment, and personnel.

Subd. 4. The secretary of state shall prepare advisory budgetary guidelines for the establishment and operation of a division of elections in the county clerk's office for administering the consolidated election duties of the clerk as provided in this section and for the establishment and operation of the separate office of county elections administrator as provided in Section 56a of this code. In preparing the guidelines the secretary of state shall consider and accommodate the differing needs of counties and their differing capabilities for financing the administration of the consolidated duties.

[Added by Acts 1977, 65th Leg., p. 1498, ch. 609, § 2, eff. Aug. 29, 1977.]

¹ Article 5.14a.

Art. 5.10a. Persons Entitled to Register

A person is entitled to register as a voter in the precinct in which he has his legal residence (i. e., domicile), as defined in Section 40 of this code (Article 5.08, Vernon's Texas Election Code), if:

- (1) on the date of applying for registration he is a citizen of the United States and is subject to none of the disqualifications, other than nonage, stated in Section 33 of this code (Article 5.01, Vernon's Texas Election Code); and
- (2) within 60 days after applying for registration he will be 18 years of age or older.

However, no person may vote at any election unless he fulfills all the qualifications of an elector for that election.

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 1, eff. May 27, 1975.]

Art. 5.11a. Expired

This article, as amended by Acts 1971, 62nd Leg., p. 2509, ch. 827, § 3 and Acts 1975, 64th Leg., p. 751, ch. 296, § 2, provided for an initial registration period for permanent registration to begin on November 5, 1975 and continue through January 31, 1976. Subdivision 2 of this article provided: "This section expires on March 2, 1976."

See, now, art. 5.13a.

Art. 5.13a. Mode of Applying for Registration; Period for Which Registration is Effective

Subd. 1. Registration shall be conducted at all times the registrar's office is open for business. A person may apply for registration in person or by mail. Each applicant shall submit to the registrar of the county in which he resides a written application which supplies all the information required by Sec-

tion 45b of this code (Article 5.13b, Vernon's Texas Election Code). The Secretary of State shall prescribe the application form. The application for registration by mail shall be in the form of a business reply postcard, or other suitable form, with postage to be paid by the state. The Secretary of State shall make necessary arrangements with the United States Postal Service for obtaining a permit for use of the business reply mail form, or other suitable form, and for payment of the postal charges through warrants issued by the comptroller of public accounts. The Secretary of State shall be authorized to use any form or system made available by the United States Postal Service if such other form or system will be less costly than business reply, and he shall be authorized to implement any procedures necessary to accommodate such other form or system. The application shall be available to individuals, organizations, businesses, and political subdivisions in reasonable quantities. No fee shall ever be charged for voter registration applications. The Secretary of State may prescribe one or more forms for use in counties using electronic data processing methods for issuing voter registration certificates and a different form for use in counties not using those methods, but the registrar in each county shall accept any application made upon any form prescribed by the Secretary of State which supplies all the necessary information for registration. In addition to other requirements, the application form shall contain the following statement: "I understand that the giving of false information to procure the registration of a voter is a felony." It shall also contain a space for recording the number of the voter's registration certificate.

Subd. 2. The application shall be signed by the applicant or his agent. However, if the person making the application is unable to sign his name either because of physical disability or illiteracy, he shall affix his mark, if able to do so, which shall be attested by a witness, whose signature and address shall be shown on the application. If a person making the application is physically unable to make a mark, the witness shall so state on the application.

Subd. 3. The husband, wife, father, mother, son, or daughter of a person entitled to register may act as agent for such person in applying for registration, without the necessity of written authorization therefor, may sign for the applicant, and may receive the registration certificate. However, none of these persons may act as agent unless he is a qualified elector of the county. No person other than those mentioned in this subdivision may act as agent for a person in applying for registration. Except as permitted in this subdivision, a person who wilfully acts as agent for another in applying for registration or in obtaining a registration certificate is guilty of a Class B misdemeanor.

Subd. 4. A registration becomes effective on the 30th day after the date on which the registrar receives the application or on the day that the registrant attains the age of 18 years (the day before his 18th birthday), whichever is later. An application by mail is deemed to have been received by the registrar when it is actually placed into the possession of the registrar or his agent by a post-office employee, or is deposited in the registrar's mail box, or is left at the usual place of delivery for the registrar's official mail. If the registrar is unable to determine the exact date on which the application is deposited in his mail box, he shall treat it as having been deposited on the date of the last previous removal of mail from the box. Every registration of a voter which becomes effective on or after March 1, 1976, shall continue in effect until cancelled under some provision of this code.

Subd. 5. Any person who applies for registration of any person, or who signs an application purporting to be the application for registration of any person, either real or fictitious, other than the person making the application or affixing the signature, or someone for whom he may lawfully act as agent, or someone who is unable to sign and who requests him to sign for such other person, is guilty of a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 751, ch. 296, § 3, eff. Nov. 5, 1975; Acts 1977, 65th Leg., p. 1215, ch. 468, § 3, eff. Aug. 29, 1977.]

Art. 5.13b. Information on Application

Required Information

Subd. 1. An application form for voter registration shall provide that the following required information be furnished by the applicant:

(1) The applicant's first name, middle name (if any), and surname. If the applicant is a married woman using her husband's surname, she shall furnish her first name, maiden name, and husband's surname.

(2) The applicant's sex.

(3) The month, day, and year of the applicant's birth, and city or county and state, or foreign country, where the applicant was born.

(4) A statement that the applicant is a citizen of the United States.

(5) If a naturalized citizen, the court of naturalization, or its location.

(6) A statement that the applicant is a resident of the county.

(7) If the applicant is currently registered in another county or if the applicant was registered in the previous two-year certificate period in any county in the state and has not received a registration certificate for the current two-year

certificate period, the name of that county and the applicant's residence address as shown on such registration certificate.

(8) The registrant's complete current permanent residence address (including apartment number, if any); or, if none, a concise description of the location of the registrant's residence.

(9) The address to which the registration certificate is to be mailed, but only if mail cannot be delivered to the registrant's permanent residence.

(10) If the application is made by an agent, a statement of the agent's relationship to the applicant.

Optional Information

Subd. 2. The application form shall contain a space for showing the election precinct in which the applicant resides, but an application is not deficient for failure to list the number or name of the precinct or for listing an incorrect number or name where the applicant's correct permanent residence address is given. It shall also contain a space for the applicant's social security number and telephone number, but an application is not deficient for failure to list these numbers. However, should it be made possible for the state to require that a registrant provide his social security number when applying for a registration certificate, the providing of such a number by all those applicants who possess such a number may be made mandatory by directive of the Secretary of State in the exercise of his authority pursuant to the provisions of Section 3, Texas Election Code (Article 1.03, Vernon's Texas Election Code). The registrar shall not transcribe, copy, or record any telephone number furnished on an application for registration. [Amended by Acts 1975, 64th Leg., p. 752, ch. 296, § 4, eff. Nov. 5, 1975; Acts 1977, 65th Leg., p. 1217, ch. 468, § 8, eff. Aug. 29, 1977.]

Art. 5.13c. Voter Registration Forms in Spanish

The secretary of state shall prescribe a voter registration application form that is printed in Spanish. In each county in which five percent or more of the inhabitants are persons of Spanish origin or descent, according to the last preceding federal decennial census, the registrar shall keep a supply of these, and shall keep a notice in Spanish posted at the place in his office where voter registration is conducted, stating that application forms in Spanish are available. Registrars in other counties may also use this form if they wish to do so. Every registrar in the state is required to accept and process applications that are tendered to him on the bilingual form, in the same manner as other applications. [Added by Acts 1975, 64th Leg., p. 513, ch. 213, § 2, eff. May 16, 1975.]

Art. 5.14a. Registration Certificate Forms; Issuance of Certificates; Information Required on Certificate

Registration Certificate Forms

Subd. 1. (a) The form for a voter registration certificate shall be prescribed by the Secretary of State. He may prescribe one or more forms for use in counties using electronic data processing methods for issuing certificates and a different form for use in counties not using those methods. A certificate form prescribed by the Secretary of State shall be valid for use only during a two-year period, such two-year period to begin on March 1 of even-numbered years, unless rescinded by the Secretary of State.

(b) The registration certificates for each county may be numbered or labeled in any manner which will enable the registrar to efficiently and accurately maintain the voter registration rolls. However, the Secretary of State may establish a standardized numbering or labeling system and require its adoption by the various counties.

Issuance of Certificates

Subd. 2. (a) When a properly executed application is received by the registrar, he shall make out an initial registration certificate in duplicate and shall mail the original copy to the voter at his regular mailing address, or if none, at his permanent residence address, in time for him to receive it before his registration becomes effective. The registrar may also deliver the original copy to the voter personally, or to an agent making the application under Section 45a of this code (Article 5.13a, Vernon's Texas Election Code). The duplicate copy shall be retained by the registrar. At the time he prepares the initial registration certificate, the registrar shall enter the certificate number in an appropriate space on the voter's application for registration.

(b) Between November 1 and November 15 of each year in which no general election is held, beginning in 1977, the registrar shall prepare and mail to each registered voter in the county as of the preceding October 31 a registration certificate for use during the succeeding two voting years. The certificate shall be mailed to the permanent residence address shown on the voter's registration application; or, if provided, the mailing address. It shall not be sent in the same envelope as the voter's tax statement. Attached to or made a part of the registration certificate shall be adequate space for the voter to insert any change of information other than that printed on the certificate. If the voter has noted such changes, the notice shall be signed and affirmed by the voter and returned to the registrar for correction of the records and issuance of a corrected certificate to the voter.

The registration certificate or envelope containing the certificate shall be marked with a direction to the postal authorities not to forward it to any other address and to return it to the registrar if the addressee is no longer at that address. In the event the certificate is returned, the registrar shall cancel the voter's registration. The registrar shall maintain a list of all returned and cancelled registration certificates showing the name, address, birth date, and registration number of the person to whom the certificate was issued. The list shall be kept in the registrar's office and shall be open to public inspection at all times during regular office hours of the registrar, subject to reasonable regulations and to proper safeguards against alterations, mutilation, or removal. The registrar shall furnish a copy of such list to any person requesting it and shall be permitted to charge One Dollar (\$1) for each 10,000 names contained on the list, to be paid by the person so ordering such list. Any money collected pursuant to this subdivision shall be accounted for as official fees of office.

Prior to the succeeding January 15, the registrar shall send to the Secretary of State a list of all the persons, along with all corresponding information available and required by the Secretary of State, whose registration certificates were cancelled as a result of the provisions of this section. Such list shall be in computer readable form. The Secretary of State shall furnish a copy of such list to any person requesting it and shall be permitted to charge One Dollar (\$1) for each 10,000 names contained on the list, to be paid by the person so ordering such list. Funds collected by the Secretary of State pursuant to this subdivision shall be used by the Secretary of State to defray any expenses incurred in the preparation of such list.

Any person who uses information obtained under this subdivision for any purpose other than informing voters about candidates for public offices or public issues or for voter registration purposes is guilty of a Class A misdemeanor.

(c) Each voter whose registration becomes effective after October 31 of an odd-numbered year, beginning with 1977, but before the following March 1 shall be issued an initial certificate valid for the remainder of that voting year and a certificate valid for use during the two-year period beginning the following March 1.

(d) A registrar of voters who knowingly issues, mails, or delivers a registration certificate to a person other than the applicant therefor or his lawful agent as provided in Section 45a of this code (Article 5.13a, Vernon's Texas Election Code), is guilty of a felony of the third degree.

(e) Any person whose registration is cancelled under the provision of this section shall be required to reregister in the same manner as an initial regis-

trant. The secretary of state shall prescribe forms for the various documents required by this section.

Information Required on Certificate

Subd. 3. (a) Each certificate shall show the voter's name, permanent residence address, mailing address if any, sex, election precinct number, and if an initial certificate, the effective date of the registration. It shall contain a blank space for political party affiliation of the voter, to be completed as provided in Section 179a, of this code (Article 13.01a, Vernon's Texas Election Code). It shall not show the voter's telephone number or social security number. The certificate shall have a place for the voter's signature, and shall contain or be accompanied by a written instruction to the voter that the certificate is to be signed by the voter personally immediately upon receipt, if the voter is able to sign his name. Each certificate shall clearly indicate the two-year period for which it is issued, and shall contain a statement that the voter shall receive a new certificate every two years so long as such voter does not become disqualified under some provision of the election laws. Each certificate shall contain a statement giving notice that voting by use of the certificate by any person other than the person in whose name the certificate is issued is a felony. Voting by use of certificate which has been issued to another is hereby expressly made a felony of the third degree.

(b) Each certificate may contain a notice to the voter to correct and return the certificate to the registrar in case any of the information thereon changes or is incorrect. It may be accompanied by a more detailed explanation of the registrant's rights and duties under this code, including, but not limited to: a statement that his registration is permanent unless cancelled under some provision of the election laws; the procedure by which he will receive a new certificate every two years; the need to reregister if he moves to another county; the period during which he may vote a limited ballot after removal from the county; the need to notify the registrar to transfer his registration if he moves to a new precinct within the county; the period during which he may vote in his old precinct after removal to another precinct within the county; his right to vote without a certificate; and the procedure for obtaining a replacement for a lost certificate.

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 1, eff. Nov. 5, 1975; Acts 1977, 65th Leg., p. 1213, ch. 468, § 1, eff. Aug. 29, 1977.]

Art. 5.15a. Registration Files

Subd. 1. (a) The applications on which registration certificates are issued shall be filed in an active application file and shall remain in that file as long as the registration continues in effect. The active application file shall be maintained in alphabetical

order by voter name for the entire county, except that if the registrar regularly obtains a list of registrants in that order through use of electronic data processing equipment, he may keep the file in numerical order by certificate number.

(b) The registrar shall also maintain an inactive application file. The registrar shall place in alphabetical order into this file all applications which are rejected. He shall also transfer to a separate inactive file the application of each voter whose registration is cancelled. The registrar shall enter on the application form the date on which the registration is rejected or the date on which the registration is cancelled before filing an application in the inactive file. The application shall be kept in the inactive file for a period of two years from the date of rejection or cancellation, after which it may be destroyed.

Subd. 2. (a) After the registrar adds a voter's name to the list of registered voters from the duplicate registration certificate, he shall file the duplicate in an active duplicate registration certificate file. An active file shall be maintained in numerical order for the entire county.

(b) When a registration is cancelled, the registrar shall enter the date of and reason for cancellation on the duplicate certificate and shall transfer it to an inactive file arranged numerically for each voting year. The duplicate shall be kept in the inactive file for a period of two years from the date of cancellation, after which it may be destroyed.

Subd. 3. Applications and duplicate registration certificates may be removed from the registrar's office temporarily, under proper safeguards, for use in preparing registration certificates, lists of registered voters, and other registration papers by electronic data processing methods, but they may not be removed for any other purpose. Except as permitted in the preceding sentence, the applications, and the duplicate registration certificates shall be kept in the registrar's office at all times in a place and in such a manner as to be properly safeguarded. The files shall be open to public inspection at all times during regular office hours of the registrar, subject to reasonable regulations and to proper safeguards against alteration, mutilation, or removal.

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 6, eff. Nov. 5, 1975.]

Art. 5.15b. Service Program of Secretary of State; Copies of Master State Voter File

Subd. 1. The secretary of state is hereby authorized to provide a service program to assist registrars in efficiently maintaining accurate and current

lists of registered voters. Such service program shall provide for, but is not limited to:

(a) obtaining initial lists of registered voters and other necessary information from the registrars of voters in order to create master files of such information;

(b) obtaining periodic information from registrars and from any other available sources for the following purposes:

(1) to maintain the master files,

(2) to aid in the determination of the proper status of persons on the lists of registered voters,

(3) to aid in the determination of the proper registration information to be associated with each registrant;

(c) conducting the various procedures necessary or proper for the implementation of the service program by utilization of automatic data processing equipment or by other means;

(d) furnishing information which may be useful to the registrars in the performance of their duties;

(e) contracting with political subdivisions of this state to provide such other services as are necessary to the performance of the duties of election officials. Fees collected through such contracts shall be retained by the secretary of state to defray expenses of the service program.

Subd. 2. Implementation of this program shall be by directive of the secretary of state. The secretary of state shall make a full report to the legislature which convenes in January of 1977 of all steps taken to implement this program. He shall include in his report a description of any difficulties encountered and his recommendations, if any, for corrective legislation.

Subd. 3. Each March 1 and September 1 the secretary of state shall prepare a copy of the master state voter file on magnetic tape, which shall include each voter's county, voting precinct number, name, permanent residence address, mailing address if any, sex, year of birth, and registration number. It shall not include any voter's social security number or telephone number. The secretary of state shall furnish a copy of this tape to any person requesting it. Each person requesting a copy shall submit an affidavit that the information obtained will be used only for the purpose of informing voters about candidates for public office or about public issues, and will not be used to advertise or promote commercial products or services. The secretary of state shall provide the copy within 15 days of the date on which he receives the request. He shall exact a uniform charge against each person to whom he furnishes a copy of the tape. The charge shall not be greater than an

amount deemed sufficient to reasonably reimburse the secretary of state for his actual expense in furnishing the copy, and in any event shall not exceed five cents per hundred names furnished.

Subd. 4. Any person who uses information obtained under Subdivision 3 of this section for any purpose other than informing voters about candidates for public office or about public issues is guilty of a Class A misdemeanor.

[Added by Acts 1975, 64th Leg., p. 750, ch. 296, § 7, eff. May 27, 1975.]

Sections 17 and 18 of the 1975 Act provided:

"Sec. 17. The secretary of state is hereby authorized to utilize any funds previously appropriated for the biennium ending August 31, 1975, for the purpose of publication of constitutional amendment explanatory statements, but which have not and will not be expended for that purpose, in connection with the implementation of the service program described in Section 7 of this Act.

"Sec. 18. Sections 1, 7, and 17 of this Act take effect immediately upon passage or as soon thereafter as permitted by law. All other sections preceding this section take effect on November 5, 1975."

Art. 5.16a. Correction of Errors on Certificates; Lost Certificates

Correction of Error

Subd. 1. When after issuance of a registration certificate it is discovered that an error has been made in filling out the blanks on the certificate through mistake of the registrar or through mistake of the voter in supplying the information, the voter may present the certificate to the registrar for correction and the registrar shall issue a corrected certificate and correct the information on the registration records on file in his office.

Error in Election Precinct

Subd. 2. Except as permitted in Section 50a of this code,¹ no person is entitled to vote in a precinct of which he is not a resident and an election officer shall not knowingly permit a voter to do so. However, where a voter is erroneously registered in a precinct in which he does not reside and the election officer permits him to vote without knowing of the erroneous registration, in an election contest a ballot cast in that precinct shall be given effect as to any offices or propositions on which the voter would have been entitled to vote in the precinct in which he resides unless it is proved that the voter intentionally gave false information to procure his registration in the wrong precinct, in which event the ballot is void for all purposes.

If an error in the election precinct has not been corrected at the time the voter offers to vote, he may vote in the precinct of his residence, if otherwise qualified, by making and leaving with the presiding judge an affidavit, in any form authorized by the secretary of state, that he is or has been during the previous 90 days a resident of the precinct and is voting only one ballot in this election and that the error was not intentional.

[See Compact Edition, Volume 2 for text of 3]

Cancelled Voter Registration Certificate

Subd. 3a. Cancelled voter registration certificate. For elections held between March 1 and no later than June 30 in even-numbered years, where a voter's name is not shown on the precinct list of registered voters but does appear on the precinct list of cancelled voter registration certificates, the election officer shall permit such voter to cast a ballot, provided such voter submits a completed voter registration application to the election officer and an affidavit that he still resides within the county for county administered and primary elections or within the municipality or other political subdivision if administered by such authority. In the event the runoff primary election occurs within 29 days after the date of the general primary, the voter may vote at the election under the procedure outlined in this subdivision, except that the voter shall inform the presiding judge that he voted under this procedure at a previous election, and the presiding judge shall note that fact on the application. When the registrar receives such an application, he shall attach it to the application previously received.

All affidavits required by this subdivision shall contain the content and be in the form prescribed by the Secretary of State. The date on which the election officer accepts an application is considered to be the date on which the registrar receives it, and the registration becomes effective for voting in other elections on the 30th day after that date.

[See Compact Edition, Volume 2 for text of 4 and 5]

Replacement of Lost Certificate

Subd. 6. (a) If a voter to whom a registration certificate has been issued presents to the registrar his signed statement that the certificate has been lost or destroyed, the registrar shall issue to the voter a replacement certificate as a single-copy document, showing the same registration number and the same information as shown on the original certificate. The registrar shall make a notation on the face of the certificate showing it to be a replacement. He shall attach the statement to the voter's application.

A person who states in a request for a replacement certificate that his registration certificate has been lost or destroyed, knowing the statement to be false, is guilty of a Class A misdemeanor.

(b) A replacement certificate issued after October 31 in an odd-numbered year shall be valid for use during the two-year period beginning on the following March 1. But it shall bear a notation that it may be used beginning on the date of issuance, except that a corrected replacement certificate shall be dated for use beginning on the 30th day following receipt by the registrar of the voter's old certificate or statement of loss.

[See Compact Edition, Volume 2 for text of 7]

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 8, eff. Nov. 5, 1975; Acts 1977, 65th Leg., p. 591, ch. 209, § 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1216, ch. 468, § 5, eff. Aug. 29, 1977.]

¹ Article 5.18a.

Art. 5.18a. Change of Residence; Cancellation or Transfer of Registration

Change of Residence Within Precinct

Subd. 1. A registered voter who changes his place of residence within the election precinct shall give written notice to the registrar of the change of address and obtain a corrected certificate as provided in Subdivision 1 of Section 48a of this code (Article 5.16a, Vernon's Texas Election Code).

Change of Residence to Another Precinct Within County

Subd. 2. A registered voter who changes his residence to another election precinct within the county may vote a full ballot in the precinct of his former residence, if otherwise qualified, during the first 90 days after the removal, but not thereafter, in any election in which there is listed on the ballot any office or proposition on which he is eligible to vote at his new residence.

If he obtains a transfer of his registration to the precinct of his new residence during the 90-day period, he may vote only in the precinct of his new residence after the 29th day following the transfer. He may not vote in the precinct of his new residence before the 30th day following the transfer.

To obtain a transfer of his registration, the voter shall present the registrar with a written, signed request that his registration be transferred to the precinct of his new residence. Upon receiving a request for transfer, the registrar shall make the necessary changes on the registration records in his office and shall issue a new corrected registration certificate to the voter. He shall attach the request to the registrant's original application.

Change of Residence to Another County

Subd. 3. (a) A registered voter who moves from one county to another within the State must reregister in the county of his new residence in the same manner as an initial registrant. However, during the first 90 days after removal the voter may vote a limited ballot, as provided in Section 37c of this code (Article 5.05c, Vernon's Texas Election Code), if a reregistration in the county of new residence has not become effective.

(b) Where a registered voter who resides in a municipality or other political subdivision which is situated in more than one county moves from one county to another within the political subdivision, if the election precincts of the political subdivision are

so constituted that the voter lives in the same precinct, he may continue to vote on the registration in the county of former residence at elections held by that political subdivision so long as that registration continues in effect. If he resides in a different precinct, during the first 90 days after the removal he may continue to vote in the precinct of his former residence at elections held by the political subdivision, on the registration in the county of former residence, if a reregistration in the county of new residence has not become effective.

Notification to Registrar in County of Former Residence

Subd. 4. When the registrar receives an application for registration of a voter who is registered in some other county, he shall notify the registrar of that county, giving him the voter's name, former registration certificate number if known, and former residence address. Upon receipt of notice, the registrar of the county wherein the voter was formerly registered shall cancel the registration in that county. When the registrar receives an application for registration of a voter who was registered in the previous two-year certificate period in any county and has not received a current registration certificate, he shall notify the registrar of that county, if different from the registrar's county, giving him the voter's name, former residence address, birth date, and social security number if available, and may also include a copy of the voter's signature. Upon receipt of such notice, the registrar of the county wherein the voter was formerly registered shall remove the voter from the list of cancelled voter registration certificates of the appropriate election precinct. If the voter's name is on a list of cancelled voter registration certificates in the county wherein he is attempting to register, the registrar of such county shall cause the voter's name to be removed from the appropriate precinct list. The name of any person shall not be removed from the list of cancelled voter registration certificates until such registration is effective.

Subd. 5. (a) The registrar may utilize any means available to determine whether a registered voter's current legal residence may be other than that indicated as the voter's legal residence on the registration records.

(b) Upon receiving information indicating that a registrant has a residence other than that shown on the registrant's registration records, or that indicates the existence of any grounds of disqualification other than death, the registrar shall send a notice to such person by forwardable mail at the permanent residence address or, if provided, the mailing address on the registrant's registration application and any new address of the registrant, if known, requesting a verification of the registrant's current residence address, or other relevant informa-

tion which would be determinative of the registrant's right to retain his current registered status, and providing information of the necessity for the registrant to amend the registration records subsequent to a change in legal residence or to provide information establishing his right to retain his current registered status. The notice shall state that the registrant's registration will be cancelled if the registrar does not receive an appropriate reply within 60 days from the date on which the notice is mailed. If the registrant replies to the notice, the registrar shall take the appropriate action indicated by the reply. If no reply is timely received, the registrar shall cancel the registration. Notice of such cancellation shall be sent to the registrant at the new address, if it is known; otherwise it shall be sent to the residence or mailing address on the registration records. If the notice mailed to the permanent residence address on the registrant's application is returned to the registrar with no forwarding address information available, the registrar shall cancel the registration.

(c) In the event the registrar cancels a voter's registration pursuant to Paragraph (b) of this subdivision, such voter may, within 10 days after the date of cancellation by the registrar, request, in writing, a hearing before the registrar. The registrar, upon notice to the voter, shall conduct a hearing within five days of receipt of the request from the voter, or at any later time upon the consent of the voter. The registrar shall then determine whether to cancel the registration. The voter may appeal from a decision to cancel his registration to a district court of the county of registration within 29 days after the registrar's decision, and the decision of the district court shall be final. A voter who appeals a cancellation of his registration under the provisions of this paragraph may continue to vote until a final decision is made cancelling his registration.

Subd. 6. The Secretary of State shall prescribe forms for the various documents required by this section. However, the registrar may also accept and use forms other than those prescribed by the Secretary of State.

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 10, Nov. 5, 1975; Acts 1977, 65th Leg., p. 1217, ch. 468, § 9, eff. Aug. 29, 1977.]

Art. 5.18b. Repealed by Arts. 1975, 64th Leg., p. 750, ch. 296, § 16, eff. Nov. 5, 1975

Art. 5.18d. Change of Name

[See Compact Edition, Volume 2 for text of 1]

Subd. 2. If otherwise qualified, a voter whose name is changed is eligible to vote under the new registration at any election held more than 29 days after the registrar makes the change on the registration records. He may vote under the former regis-

tration at any election held within 29 days after the new registration, upon making an affidavit that his certificate of registration under the former name has been surrendered to the registrar. The voter shall sign the form for the affidavit of a lost certificate, and the election officer shall add a notation in explanation of the circumstances.

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 11, eff. Nov. 5, 1975.]

Art. 5.19a. List of Registered Voters

(1) The registrar shall prepare for each election precinct of the county a certified list of registered voters who are registered as of the 30th day prior to the first election in each voting year. Each precinct list shall be arranged alphabetically by the names of the voters and showing each voter's name, residence address, sex, date of birth and registration number. The Secretary of State may prescribe the content and format of the precinct list. The registrar shall deliver to each board, executive committee, or other authority having the duty of furnishing supplies for any general, special, or primary election to be held within the county during the voting year for which the list is prepared, one set of such lists for all precincts in the county if any election which may be held by such authority is countywide, and one set of such lists for all precincts wholly or partially within the boundaries of the particular political subdivision if all elections which may be held by such authority are less than countywide. The registrar shall also furnish to each such authority an updated supplemental list of the voters in each precinct who will have been registered for 29 days on the day of the election and whose names do not appear on the original list. In the event the prescribed combination form in accordance with Section 16 of this code¹ has been furnished, before the first day of absentee voting in any subsequent election held by the authority during that voting year, the registrar shall furnish to the authority in either the prescribed combination form or simple list form, another copy of the original list and an updated supplemental list of the voters in each precinct who will have been registered for 29 days on the day of the election and whose names do not appear on the original list, except that in the case of a runoff election the registrar may furnish a copy of the supplemental list prepared for the preceding election and a supplemental list of the voters who will have been registered for 29 days on the day of the runoff election and whose names do not appear on the original list or the supplemental list prepared for the preceding election instead of preparing a single updated supplemental list for that election. In every instance, instead of preparing a supplemental list or lists, the registrar may prepare a revised original list consolidating into it the names of the voters that would have been included on the supplemental list or lists.

With each supplemental list or revised original list the registrar shall also furnish a list of persons whose registration information has been changed or corrected or whose registration has been cancelled or transferred to another precinct since preparation of the last set of lists. The authority shall furnish to the presiding judge in each precinct the original and supplemental lists of voters in his precinct at the time it furnishes other election supplies. Prior to the opening of the polls, the presiding judge shall strike from the registration list the names of persons whose registration has been cancelled or transferred to another precinct, and shall correct the list for persons whose registration information has been changed or corrected.

Before the first day of April in each even-numbered year and whenever appropriate thereafter, the registrar shall attach to each list herein required an alphabetical corresponding certified list of all the persons whose registration certificates were cancelled, pursuant to the provisions of Section 46a of this code,² and such list shall remain attached to the election precinct list for three months thereafter. The precinct lists may be combined with the corresponding lists of cancelled registrations in accordance with the form and content prescribed by the Secretary of State.

(2) In addition to the lists to be furnished under Subsection (1) of this section, the registrar shall furnish without charge to each clerk having the duty of conducting absentee voting in any election the appropriate lists for use in the conduct of absentee voting for the election. He shall also maintain in his office for a period of three years one set of the original lists and one set of the supplemental lists prepared for each county-wide election, which shall be public records available for public inspection at all times that his office is open.

[See Compact Edition, Volume 2 for text of (3) to (5)]

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 12, eff. Nov. 5, 1975; Acts 1977, 65th Leg., p. 591, ch. 209, § 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1214, ch. 468, §§ 2, 12, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1509, ch. 609, § 9, eff. Aug. 29, 1977.]

¹ Article 3.02.

² Article 5.14a.

Section 12 of Acts 1977, 65th Leg., p. 1218, ch. 468, repealed § 3 of House Bill No. 1788 [ch. 209] of the 65th Legislature, Regular Session, 1977, which amended subsec. (1) of this article.

Art. 5.19b. Reimbursement of County by State

Subd. 1. Before April 1 of each year, the registrar shall submit to the Comptroller of Public Accounts a certified statement of the total number of new registrants, together with the total number of registration certificates which were cancelled under the provisions of Section 50a of this code (Article 5.18a, Vernon's Texas Election Code), during the

12-month period ending February 1 of the year in which the statement is submitted. Before April 1 of each even-numbered year, the registrar shall include, in addition to the above statement, a certified statement of the total number of registered voters shown on the precinct registration lists as of March 1 of that year.

Subd. 2. Before June 1 of the year in which the statement is submitted, the Comptroller shall issue a warrant to each county in the aggregate of the following amounts:

(1) 40 cents multiplied by the total number of new registrants, and

(2) 40 cents multiplied by the number of voter registration certificates cancelled under the provisions of Section 50a of this code (Article 5.18a, Vernon's Texas Election Code), as shown by the certified statement required by Subdivision 1 of this section, and

(3) when the total number of registered voters is supplied in accordance with Subdivision 1 of this section, 40 cents multiplied by the difference between the total number of registered voters and the total number of new registrants under this Act during the two 12-month periods prior to the statement in each county. However, before issuing a warrant the Comptroller may require additional proof to substantiate the certified statement.

Subd. 3. The Secretary of State shall determine whether the registrar has complied with the provisions of Section 46a of this code¹ and he shall notify the comptroller. The comptroller shall not issue the warrant provided for in Subdivision 2 of this section until notified by the Secretary of State that the registrar is in compliance.

Subd. 4. The disbursements prescribed by this section shall be made from the general revenue fund as provided by legislative appropriations. All money received by a county under this section shall be deposited in the county treasury in a special fund to be used for defraying expenses of the registrar's office in the registration of voters. None of the money shall be deemed to be fees of office or be retained by the registrar as fees in counties where the registrar is compensated on a fee basis.

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 13, eff. Nov. 5, 1975; Acts 1977, 65th Leg., p. 1218, ch. 468, § 10, eff. Aug. 29, 1977.]

¹ Article 5.14a.

Art. 5.20a. Deputy Registrars

[See Compact Edition, Volume 2 for text of 1 to 4]

Subd. 5. No voter registrar shall refuse to depu-
tize any person to register voters because of sex,

race, creed, color, or national origin or ancestry. No bona fide resident of the county shall be excluded from serving as deputy by the registrar.

[Amended by Acts 1975, 64th Leg., p. 2079, ch. 681, § 79, eff. June 20, 1975.]

Art. 5.21a. Statement of Registrations

On or before March 5 of each year, the registrar shall make a statement to the secretary of state of the number of registered voters in each precinct as shown by the list of registered voters on March 1, and the secretary of state shall file the statement as a record of his office. The registrar shall also file a copy of the statement as a record of his office. [Amended by Acts 1977, 65th Leg., p. 1509, ch. 609, § 10, eff. Aug. 29, 1977.]

Art. 5.22b. Repealed by Arts. 1975, 64th Leg., p. 750, ch. 296, § 16, eff. Nov. 5, 1975

Art. 5.22c. Repealed by Arts. 1975, 64th Leg., p. 750, ch. 296, § 16, eff. Nov. 5, 1975

Art. 5.24a. County Elections Administrator

Subd. 1. Creation of office. In any county in this state, the commissioners court by order recorded in its minutes may establish the appointive office of county elections administrator of the county, who shall perform the duties and functions specified in Subdivision 3 of this section. The order of the commissioners court shall state the date on which the creation of the office of administrator becomes effective, but the date may not be earlier than March 1, 1979. The order may provide for placing the administrator-designate on the county payroll at a date not more than 90 days before the effective date for creation of the office so that he may make suitable plans for assuming his duties on the effective date. Within three days after the entry of the order, the county clerk shall send a copy of the order to each member of the county elections commission and to the secretary of state and the comptroller of public accounts.

Subd. 2. Appointment of administrator; county elections commission

(a) Composition of the commission. Where the office of county elections administrator is created in a county, the office shall be filled by appointment of the county elections commission of the county, which shall consist of the following members: the county judge of the county as chairman of the commission; the county clerk of the county as vice-chairman of the commission; the tax assessor-collector of the county as clerk of the commission; and the chairman of the county executive committee of each political party whose nominees at the last general election for state and county officers were nominated by primary election. In any county in which the offices of sheriff and tax assessor-collector are combined,

the sheriff shall hold the position specified for the tax assessor-collector. In any county in which a party which nominates by primary election does not have a county organization, the membership of the commission is reduced accordingly. A majority of the total membership of the commission constitutes a quorum. The affirmative vote of a majority of the total membership of the commission is necessary for the selection of an administrator. Each member of the commission who is present at a meeting, including the presiding officer, is entitled to vote. Each appointment made by the commission shall be evidenced by a written resolution or order signed by the number of members necessary to make the appointment, and the resolution or order shall be filed as a public record in the office of the county clerk. Within three days after the filing, the county clerk shall forward a copy of the resolution or order to the secretary of state.

(b) Meetings of the commission. Meetings of the commission shall be called by the chairman. If the chairman fails to call a meeting within 10 days after the entry of the order creating the office of county elections administrator or within 10 days after a vacancy arises in the office, or if he fails to call a meeting by January 15 of an odd-numbered year, preceding the expiration of the administrator's term of office, the vice-chairman shall call the meeting. The person who calls a meeting shall set the time and place for the meeting and shall give written notice of the time and place to each other member at least three days in advance of the meeting date.

(c) Qualifications for administrator. (1) The person appointed as administrator must be a resident of this state but need not be a resident of the county at the time of his appointment; but after he assumes the office, he must maintain his residence in the county during his tenure in office.

(2) He must be a registered voter at his place of residence.

(3) He may not be a candidate for public office, as defined by Chapter 14 of this code, while holding the office of county elections administrator. Filing for candidacy constitutes an automatic resignation from the position of county elections administrator effective at the time of filing.

(4) He may not actively support or contribute to any candidate for public office, any officeholder, or any political party while holding the office of county elections administrator. Violation of this provision is a Class A misdemeanor and conviction produces automatic removal from office. A person so convicted is ineligible for appointment as county elections administrator in any county in the state.

(d) Time of appointment; rescission. The county elections commission may make the initial appointment of an administrator at any time after the entry of the commissioners court's order creating the of-

office, regardless of the length of time remaining between the date of the appointment and the effective date of the creation of the office, and it may make an appointment to fill an anticipated vacancy arising from a resignation to take effect at a future date at any time after the resignation is accepted. After an appointment is made and accepted, it may not be rescinded without the consent of the appointee, regardless of any changes that may occur in the membership of the commission before the appointee assumes his duties.

Subd. 3. Duties of administrator

(a) Registration of voters. On the effective date of an order entered pursuant to Subdivision 1 of this section, or as soon thereafter as an administrator has been appointed and has qualified, the county elections administrator shall assume and thereafter perform all the duties and functions to be performed by the registrar of voters, pursuant to Section 41a of this code (Article 5.09a, Vernon's Texas Election Code).

(b) Conduct of elections. In addition to the duties and functions specified in paragraph (a) of this subdivision, the administrator shall perform all the duties and functions which are placed upon the county clerk by any provision of this code or any other statute of this state in connection with the conduct of elections, as more fully defined in Section 56b of this code.¹

Subd. 4. Salary of administrator; office staff; operating expenses. Where the office of county elections administrator is created, the commissioners court shall fix his salary, and shall also fix the number, grade, and salaries of paid deputies, assistants, and other persons that he may employ. However, the administrator may appoint unpaid deputies to assist in voter registration, as authorized in Section 52a of this code (Article 5.20a, Vernon's Texas Election Code), without the approval of the commissioners court. The salary of the administrator shall not exceed the salary paid to the county clerk of that county, and the salaries paid to his employees shall not exceed the salaries paid to the employees of the county clerk in comparable positions. The commissioners court may allow such automobile expense as it deems necessary to the administrator and to any of his employees in the performance of their official duties. The commissioners court shall make provision for furnishing the administrator with suitable office space and with the necessary equipment and operating expenses for the proper conduct of his office. The amount appropriated by the commissioners court for the administrator's office shall not be less than the amounts previously appropriated to the county clerk and the county tax assessor-collector for the duties formerly required of them but now

assigned to the administrator, with additional appropriations, if required, to compensate for the effects of inflation and rising costs of supplies, equipment, and personnel.

Subd. 5. Term of office. The initial appointment of the county elections administrator shall be until the beginning of the first regular term thereafter. The regular term of office for the administrator is for a period of two years beginning on March 1 in each odd-numbered year. Between January 1 and January 15 preceding the expiration of the term, the chairman of the county elections commission shall call a meeting of the commission for the purpose of making an appointment for the succeeding term. Any vacancy in the office shall be filled by the commission for the remainder of the unexpired term. The administrator may be removed from office in the same manner and on the same grounds as provided by general law for removal of county officers or as provided for under paragraph (c) of Subdivision 2 of this section.

Subd. 6. Bond of administrator and deputies. Before entering into the duties of his office, the county elections administrator shall take and subscribe to the official oath and shall give an official bond in an amount to be fixed by the commissioners court, made payable to the county judge and approved by the commissioners court, conditioned for the faithful performance of the duties of his office. Either the commissioners court or the administrator may require his deputies to give a similar bond in an amount not exceeding the amount of the administrator's bond.

Subd. 7. Seal of administrator. The administrator shall provide himself with an official seal, on which shall be inscribed a star with five points surrounded by the words "County Elections Administrator, _____ County, Texas" (the blank to be filled in with the name of the county), for use in certifying documents which are required to be impressed with the seal of the certifying officer.

Subd. 8. Transfer of records. As soon as practicable after the effective date of the order creating the office of county elections administrator, the officer formerly serving as the registrar of voters shall transfer to the administrator all records and papers pertaining to voter registration, and the county clerk shall transfer to him all voting equipment and supplies of which the clerk has custody and all records and papers in his possession which pertain to an uncompleted election. The commissioners court shall determine which records of prior elections are to be transferred to the administrator and which are to remain in the county clerk's office.

Subd. 9. Abolishment of office. The commissioners court may abolish the office of county elec-

tions administrator at any time after two years have elapsed from the date of the order creating it by having an order entered into the minutes of the court to become effective at the expiration of the current term of the administrator. If the office is abolished, voter registration duties thereafter shall be performed by the county tax assessor-collector and the other duties shall be performed by the county clerk, except that the commissioners court may designate the county clerk to be the registrar of voters and to perform the duties assigned to the registrar, as authorized in Section 41b of this code.² Within three days after the entry of an order abolishing the office of county elections administrator, the county clerk shall send a copy of the order to the secretary of state and the comptroller of public accounts.

[Added by Acts 1977, 65th Leg., p. 1499, ch. 609, § 3, eff. Aug. 29, 1977.]

¹ Article 5.24b.

² Article 5.09b.

Section 11 of the 1977 Act provided: "Sections 3 and 4 of this Act take effect 90 days after the adjournment of the regular session of the 65th Legislature for the purpose of authorizing the creation of the office of county elections administrator and the promulgation of rules with respect to the duties transferred to the administrator, but an appointment to that office or a transfer of duties to the administrator may not become effective before March 1, 1979."

Art. 5.24b. Election Duties of County Clerk Transferred to County Elections Administrator

Subd. 1. (a) Where the office of county elections administrator is created, in addition to performing the duties of the registrar of voters, the administrator shall perform all duties and functions which are placed upon the county clerk by any provision of this code or any other statute of this state in connection with the calling or holding of elections, the preparation of ballots, the preparation and furnishing of election equipment and supplies, the conduct of voting, the canvass of election returns, the custody of voted ballots and other election records, the filing of instruments relating to primary elections, conventions, or other affairs of political parties, and the filing of instruments under Chapter 14 of this code (the Political Funds Reporting and Disclosure Act of 1975).

(b) The enumeration in paragraph (a) of this subdivision states the general guidelines for determining what duties and functions are to be transferred from the county clerk to the administrator. In order to eliminate possible uncertainties in several types of situations, the rules stated in Subdivision 2 of this section establish the division of duties in the specific areas covered by those rules.

(c) The guidelines and rules stated in this section apply in the construction of statutes enacted or amended after the enactment of this section as well as to those previously enacted, unless the statute expressly states that the county clerk is to perform

the function in counties having the office of administrator as well as in other counties.

Subd. 2. (a) This subdivision states rules for the division of duties between the county clerk and the county elections administrator in a county which has the office of administrator.

(b) With respect to every meeting of the commissioners court, including meetings at which the only business to be conducted pertains to election matters, the county clerk shall continue to perform all duties regularly performed by that officer in giving notice of meetings of the commissioners court and making up the agenda for the meetings, in attending the meetings and making a record of the proceedings and preparing and maintaining the minutes of the court, and in filing and preserving copies of the court's orders. The administrator shall cooperate with the county clerk in supplying the information on election matters which are to be brought before the court, and he shall attend or be represented at the meetings of the court at which such matters are to be considered. The county clerk shall furnish to the administrator a copy of each order of the court which pertains to or affects any election, and the administrator shall maintain in his office a file of all such orders, in addition to the record maintained by the county clerk.

(c) Every reference in this code to the county clerk or the clerk of the commissioners court which relates to the performance of any function or the receipt or filing of any instrument by that officer is to be construed as referring to the administrator, except for Subsection (3) of Section 208 of this code (Article 13.30), relating to service of process on the county clerk in a contest of a primary election under certain circumstances. References to the clerk of the county court are not to be construed as referring to the administrator.

(d) Certificates and supporting documents filed under Subdivision 2, Section 8a (Article 1.08a) of this code for the exemption of election precincts from requirements for bilingual materials in primary elections and in elections held at the expense of the county are to be filed in the office of the administrator.

(e) When any statute, including Section 28 (Article 4.05) of this code, provides for the filing or posting of an election notice in the office of the county clerk, the notice shall be filed or posted in the office of the administrator. When a statute provides for the filing of proof of posting, publication, or issuance of an election notice in the office of the county clerk, it shall be filed in the office of the administrator.

(f) Under the supervision of the county election board, the administrator shall make the record of

blank ballots furnished for an election which is required by Section 64 (Article 6.09) of this code and shall file the record in his office, in lieu of recordation in the minutes of the commissioners court.

(g) The administrator shall have custody of and be responsible for maintaining the book for recording in detail the results of elections, as provided in Section 116 (Article 8.34) of this code.

(h) When a statute provides that the return of an election notice is to be recorded in the minutes of the commissioners court, in lieu of that procedure the return shall be filed in the office of the administrator.

(i) When a statute provides that an order declaring the outcome of an election on a question or proposition is to be filed in the office of the county clerk, the order shall be filed both in the office of the county clerk and in the office of the administrator.

(j) When a statute provides for the calling of an election on a question or proposition by the commissioners court or the county judge upon the presentation or filing of a petition therefor, the administrator shall perform, in addition to the duties and functions directly relating to the holding of the election, all duties and functions which the statute places on the county clerk or the clerk of the commissioners court, either expressly or by implication, in connection with the filing of the petition and the determination of its sufficiency, and any other preliminary matters which precede the entry of the order calling the election.

(k) The application for issuance of a petition seeking a local option election on the sale of alcoholic beverages and the signed petition for the election shall be filed with the administrator; and the administrator shall perform all duties relating to the election which are placed upon the county clerk or the clerk of the commissioners court through and including the canvassing of the returns, the posting of the order declaring the result of the election where required, and certification of the results to the proper authorities. A copy of the order declaring the result of the election shall be entered of record in the office of the county clerk and a copy shall also be filed in the office of the administrator.

(l) When a statute prescribing the procedure for creation of a special district provides for the calling of an election as a step in completing the creation, in addition to performing the duties directly related to the holding of such an election after it is called, the administrator shall also perform all acts which otherwise would be performed by the county clerk in connection with all preliminary matters leading up to the entry of the order on whether the election will be called, including but not limited to the presentation or filing of the petition for creation of the district, the holding of any hearing on the proposal,

the filing of any report or other document that is a step in the procedure, and the taking of an appeal from the order on whether the election is to be called. When the holding of an election is not one of the steps in the creation, the county clerk shall continue to perform all duties placed by statute upon that officer in connection with the creation of a district, including duties relating to a petition for its creation.

(m) The county clerk is the proper officer to receive and post copies of proposed constitutional amendments under Article XVII, Section 1, of the Texas Constitution. However, the secretary of state shall send an information copy of each proposed amendment to the administrator also.

Subd. 3. (a) In keeping with the general guidelines and the specific statutory rules stated in Subdivisions 1 and 2 of this section, the secretary of state shall promulgate rules, as necessary, classifying the various statutes according to which of the two offices of county clerk or county elections administrator is to perform the duties and functions prescribed therein. The secretary of state's classification has the force of law unless or until the legislature enacts a statute expressly providing for a different assignment of that specific function.

(b) The secretary of state may initiate the promulgation of a rule on his own motion, and he may promulgate rules at any time after this section becomes law, regardless of whether the office of administrator has yet been created in any county. Whenever the county clerk or the administrator in any county in which the office of administrator has been created is uncertain as to which officer should perform a function under a statute for which the secretary of state has not made a classification, the officer shall request the secretary of state to promulgate a rule classifying that function, and the secretary of state shall comply with the request as expeditiously as possible.

(c) In addition to other notice of a proposed rule or of an adopted rule which is required by law, the secretary of state shall mail a copy of each rule proposed under this section to the county clerk and the county elections administrator in each county having the office of administrator within five days after notice of the proposal is published in the Texas Register and shall mail a copy of each adopted rule to those officers within five days after the certified copy of the rule is filed in the secretary of state's office. However, failure to mail the notice to these officers does not invalidate any actions taken or rules adopted.

(d) Upon receiving notification of the creation of the office of administrator in a county, the secretary of state shall mail to the county clerk a complete set of the rules previously promulgated under this sec-

tion; and upon receiving notification of the appointment of the administrator, the secretary of state shall mail a complete set of rules to the administrator.

(e) Notwithstanding any other provision of law, the secretary of state may adopt an emergency rule under the emergency provisions of the Administrative Procedure and Texas Register Act¹ whenever a determination of the classification of a function is needed in a shorter time than that provided by normal procedures. The prior notice requirements prescribed in paragraph (c) of this subdivision do not apply to the promulgation of an emergency rule; however, notification of the adoption of an emergency rule is to be given in accordance with those provisions.

Subd. 4. (a) When an instrument which should be filed with the county elections administrator is mailed to the county clerk, or vice versa, the officer receiving the instrument shall make a notation thereon of the time of its receipt and shall promptly deliver it to the proper officer. If the statute does not specify that the instrument is to be filed with the administrator in a county which has that office, the misdirection does not prejudice the timeliness of the filing where time of mailing or time of receipt is material, and timeliness is determined by the time of mailing or the time of receipt by the officer to whom the instrument is addressed.

(b) When an instrument which should be filed with the county elections administrator is tendered in person to the county clerk, or vice versa, the officer to whom the instrument is tendered shall direct the person making the tender to take it to the proper office.

(c) Notwithstanding paragraphs (a) and (b) of this subdivision, where a statute specifies that an instrument is to be filed with the county clerk, without specifying that it is to be filed with a county elections administrator in a county which has that office, but the place of filing is changed to the office of the administrator by virtue of this section, if the county clerk accepts and files the instrument, the filing has the same legal effect as if the instrument had been filed with the administrator.

(d) Where a statute specifies that an action is to be taken by the county clerk, without specifying that it is to be taken by the county elections administrator in a county which has that office, but the officer to act is changed to the administrator by virtue of this section, action taken by the county clerk without objection from the administrator has the same legal effect as action taken by the administrator.

Subd. 5. Statutes prescribing criminal penalties against the county clerk or his deputies or other

employees for acts or omissions relating to duties which are transferred to the county elections administrator are to be construed as applying to the administrator or his deputies or employees, as the case may be.

[Added by Acts 1977, 65th Leg., p. 1502, ch. 609, § 4, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 6252-13a.

CHAPTER SIX. OFFICIAL BALLOT

Art. 6.01. Official Ballot

In all elections by the people, the vote shall be by official ballot, which shall be numbered and elections so guarded and conducted as to detect fraud and preserve the purity of the ballot. No ballot shall be used in voting at any general, primary or special election held to elect public officers, select candidates for office or determine questions submitted to a vote of the people, except the official ballot, unless otherwise authorized by law. At the top of the official ballot shall be printed in large letters the words "Official Ballot." It shall contain the printed names of all candidates whose nominations for an elective office have been duly made and properly certified. The names shall appear on the ballot under the head of the party that nominates them, except as otherwise provided by this Code. No name shall appear on the official ballot except that of a candidate who was actually nominated (either as a party nominee or as a non-partisan or independent candidate) in accordance with the provisions of this Code. The name of no candidate shall appear more than once upon the official ballot, except (a) as a candidate for two or more offices permitted by the Constitution to be held by the same person; or (b) when a candidate has been duly nominated for the office of President or Vice-President of the United States and also for an office requiring a state-wide vote for election. The name of no candidate of any political party that cast 20 percent or more of the votes for governor at the last preceding general election for that office shall be printed on any official ballot for a general election, unless nominated by primary election, on primary election day, except as otherwise provided in this code.

[Amended by Acts 1975, 64th Leg., p. 2091, ch. 682, § 14, eff. Sept. 1, 1975.]

Art. 6.04. Removing or Substituting Names on Printed Ballots

Subd. 1. If the ballots for an election have already been printed when notice of a substitute nomination for an office is received, instead of having new ballots printed, the official board charged with the duty of furnishing the supplies for the election may make the necessary change in either of the following methods: (1) by having the ballots overprinted to blot or line out the name of the former

nominee and to print above, below, or alongside it the name of the new nominee, if space on the ballot permits use of this method, or (2) by printing pasters or stickers bearing the name of the new nominee, to be pasted over the name of the former nominee.

Subd. 2. If after the ballots are printed it becomes necessary to remove the name of a nominee for whom a substitute nomination has not been made or to remove the name of an independent candidate in order to comply with Section 233 of this code, instead of having new ballots printed, the officer or board charged with the duty of furnishing the supplies for the election may make the change either by having the ballots overprinted to blot out the name of the candidate (and also the square beside the name in the case of paper ballots) or by furnishing blank pasters or stickers to be pasted over the name and square.

Subd. 3. When pasters are used, a paster shall be affixed to each ballot before the presiding judge of the precinct, or the absentee voting clerk, endorses his name on the ballot for identification, or before the opening of the polls where the voting is by use of a voting machine or a voting device to which ballot labels are attached. As used in this section, the term "ballots" includes ballot labels.

[Amended by Acts 1975, 64th Leg., p. 2103, ch. 685, § 1, eff. Sept. 1, 1975.]

Art. 6.05. Form of the Ballot

[See Compact Edition, Volume 2 for text of 1]

Subd. 2. The designation of the election (e. g., "General Election, Travis County, Texas") and the date on which the election is held shall be printed at the top of the ballot, above the words "Official Ballot." All ballots prepared for the election shall be numbered consecutively beginning with No. 1 in each county if the election is to be held in a single county or part thereof, or is to be held in more than one county or part thereof and the result in each county is to be canvassed separately prior to the final canvass. In elections held by a city or other political subdivision of the State, all ballots for the election shall be numbered consecutively beginning with No. 1. The numbers shall be printed or stamped in consecutive order on all the ballots prepared for any election, with a separate number for each ballot, at the time of printing and before they are divided up and delivered to the election judges.

[See Compact Edition, Volume 2 for text of 3]

Subd. 4. When presidential electors are to be voted upon, their names shall not appear on the official ballot, but the names of the candidates for president and vice-president, respectively, of the political parties shall appear at the head of their respective tickets, printed as one race, and the names

of each set of independent candidates for president and vice-president, printed as one race, shall be printed at the head of the independent column in the order determined under Subdivision 3 of Section 61c of this Code (Article 6.05c, Vernon's Texas Election Code). The votes for presidential candidates shall be canvassed, counted, and returns made in accordance with Section 171 and Section 172 of this Code (Articles 11.02 and 11.03, Vernon's Texas Election Code).

[See Compact Edition, Volume 2 for text of 5 to 7]

Subd. 8. When constitutional amendments or other propositions are to be voted on, they shall appear once on each ballot in uniform style and type. Each proposition shall be submitted by printing the word "FOR" and beneath it the word "AGAINST" on the left-hand side of a single statement of the proposition, with a brace or parallel horizontal lines or other suitable device to show clearly to which proposition each "FOR" and "AGAINST" belongs. A square shall be printed on the left-hand side of the word "FOR" and of the word "AGAINST" in the statements submitting each proposition, and the following instruction note shall be printed immediately above the propositions: "Place an 'X' in the square beside the statement indicating the way you wish to vote." The provisions of this subdivision shall supersede all existing statutes on the form in which propositions are to be submitted in all elections where paper ballots are used except local option elections held under the provisions of the Alcoholic Beverage Code, and shall also supersede any conflicting enactment passed by the 60th Legislature at its regular session unless such enactment expressly excepts it from the operation of this subdivision. [Amended by Acts 1977, 65th Leg., p. 557, ch. 194, § 3, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 649, ch. 240, § 6, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 657, ch. 247, § 1, eff. Aug. 29, 1977.]

Art. 6.05b. Order of Party Columns on the Ballot

In any election held at the expense of the county, in which party columns appear on the official ballot, the columns shall be arranged in the following order, beginning on the left-hand side of the ballot:

(1) columns of parties with state organization which have nominated candidates to be voted on at the election, arranged in the order of the number of votes cast throughout the state for each party's candidate for Governor at the last preceding general election for that office, with the party whose candidate for Governor received the highest vote being placed in the first column;

(2) columns of parties without state organization which have nominated candidates to be voted on at the election;

- (3) a column for independent candidates;
- (4) a column for write-in candidates.

If there is no independent or nonpartisan candidate whose name is to be printed on the ballot, the column for independent candidates shall be omitted.

Where voting machines are used in the election and the columns on the ballot are arranged horizontally, the columns shall appear on the ballot in the order herein provided, beginning at the top of the ballot instead of on the left-hand side.

[Amended by Acts 1975, 64th Leg., p. 2091, ch. 682, § 15, eff. Sept. 1, 1975.]

Art. 6.05c. Order of Offices and Names of Candidates

[See Compact Edition, Volume 2 for text of 1 and 2]

Order of Names of Candidates

Subd. 3.

[See Compact Edition, Volume 2 for text of 3(a) and 3(b)]

(c) The provisions of paragraph (a) of this subdivision apply to every runoff election following a general or special election, except runoff elections which are governed by Section 81 of this code (Article 7.16, Vernon's Texas Election Code) and runoff elections in home-rule cities which have charter provisions specifying a different method for determining the order of the names on the ballot in a runoff election. [Amended by Acts 1977, 65th Leg., p. 1682, ch. 664, § 2, eff. Aug. 29, 1977.]

Art. 6.06. How to Mark Ballot

In all elections, general, special, or primary, the voter shall place an "X" in the square beside the name of each candidate for whom he wishes to vote; provided, however, that if the voter places a plus sign (+) or a check mark (✓) or any other mark that clearly shows his intention, in such space, it shall be counted as a vote for that candidate, provided that no more names are thus marked than there are places to be filled. When party columns appear on the ballot, a voter desiring to vote a straight ticket may do so by placing an "X" or other clear mark in the square at the head of the column of the party for which he wishes to vote. If the name of the person for whom the voter wishes to vote is not printed on the ballot, the voter shall write in the name of the candidate for whom he wishes to vote, in the write-in column under the appropriate office title in elections where party columns appear on the ballot, and in an appropriate space under the title of the office in other elections; provided, however, that a voter shall not be entitled to vote for any candidate whose name is not printed on the ballot in any runoff election for nominating candidates or electing

officers, and a space for write-in votes shall not be provided on the ballot for such elections. A voter shall also not be entitled to vote for any candidate whose name is not printed on the ballot in any other type of election where the law expressly prohibits votes for write-in candidates. In all elections where questions or propositions are to be voted on except local option elections held under the provisions of the Alcoholic Beverage Code, the voter shall place an "X" or other clear mark in the square beside the statement indicating the way he wishes to vote on each proposition. The failure of a voter to mark his ballot in strict conformity with these directions or failure to vote a full ballot shall not invalidate the ballot, and a ballot shall be counted on all races and propositions wherein the intention of the voter is clearly ascertainable, except where the law expressly prohibits the counting of the ballot. It is specifically provided that the election officers shall not refuse to count a ballot because of the voter's having marked his ballot by scratching out the names of candidates for whom or the statement of propositions for which he does not wish to vote.

[Amended by Acts 1977, 65th Leg., p. 557, ch. 194, § 4, eff. Sept. 1, 1977.]

Art. 6.06b. Write-in Candidate for Public Office; Declaration of Candidacy

Elections to Which Applicable; Procedure for Filing Declaration

Subd. 1. In the general election for state and county officers held on the first Tuesday after the first Monday in November of even-numbered years, no write-in vote may be counted for a person unless that person files a declaration of write-in candidacy within the time specified in Subdivision 2 or Subdivision 3 of this section, whichever is applicable. The declaration shall be filed with the same person with whom an independent candidate for the same office files his application to have his name printed on the ballot. It shall contain the same information as that required on the application of a candidate whose name is to be printed on the ballot, but shall state that the person is running as a write-in candidate instead of requesting that his name be printed on the ballot.

Filing Deadline

Subd. 2. Except as provided in Subdivision 3 of this section, the declaration of write-in candidacy must be filed not later than 5 p. m. of the last day which is not a Saturday, a Sunday, or an official state holiday, preceding the beginning of the period for absentee voting in the election. The declaration must reach the office of the appropriate officer by that deadline, and a mailing without a delivery by the deadline is not sufficient.

Extended Deadline

Subd. 3. Where a candidate whose name is to be printed on the ballot dies or is declared ineligible to hold this office on or after the second day preceding the filing deadline stated in Subdivision 2 of this section, a write-in candidate may file his declaration at any time before 12 noon of the day preceding election day. Absentee ballots voted before the death or ineligibility or before the filing of the declaration of write-in candidacy shall be counted in the same manner as if the write-in candidate had filed under Subdivision 2.

Certification of Filing

Subd. 4. On a declaration which is filed under Subdivision 2 of this section, the officer with whom it is filed shall certify the name of the write-in candidate to the clerk for absentee voting in the election (or to each clerk, if there is more than one), before the absentee voting begins. On a declaration which is filed under Subdivision 3, he shall notify the clerk for absentee voting immediately if the period for applying for an absentee ballot has not expired. He shall also certify the name of each write-in candidate to the officer who is in charge of distribution of ballots to the presiding judges of the election.

Notification to Presiding Election Judges

Subd. 5. (a) Before election day, the officer having charge of distribution of the ballots for the election shall furnish to each presiding judge a sufficient number of copies of a list of the names of write-in candidates who have qualified under this section so that the presiding judge shall be able to comply with the requirements of Subsection (b) of this subdivision.

(b) Each presiding judge shall post a copy of the list of write-in candidates in the same locations where instruction cards are posted in accordance with Section 80, Texas Election Code (Article 7.15, Vernon's Texas Election Code) and Section 85, Texas Election Code (Article 8.03, Vernon's Texas Election Code), or in the same location where sample ballots are posted in accordance with Section 80, Texas Election Code (Article 7.15, Vernon's Texas Election Code) and Section 79, Texas Election Code (Article 7.14, Vernon's Texas Election Code).

[Added by Acts 1977, 65th Leg., p. 1282, ch. 503, § 1, eff. Aug. 29, 1977.]

Art. 6.07. Constitutional Amendments and Other Questions

[See *Compact Edition, Volume 2 for text of 1*]

Subd. 2. A notice of each proposed constitutional amendment shall be published, under the authority of the Secretary of State, as required by Section 1, Article XVII, Constitution of Texas. The Secretary of State shall contract with the eligible newspapers

for the publication of the notices; shall furnish affidavit forms, in duplicate, to be executed by the owner, editor or publisher of the newspaper, when two publications have been made; shall furnish one approved copy of each executed affidavit to the Comptroller, who shall then authorize the Treasurer to issue a warrant in the amount specified. Executed affidavits must be returned from the owner, editor, or publisher of the newspaper to the Secretary of State within 30 days from the date of the last publication; unless this time limit is observed, the Secretary of State shall refrain from approving affidavits for payment. Provided, however, if the Secretary of State deems it more expeditious or economical, he may make a written contract with any state-wide association of daily and weekly newspapers in Texas for the publication of the notices of such constitutional amendments in newspapers eligible to publish them. Such association shall cause such notices to be published in the eligible newspapers in the manner required by the Constitution; shall furnish such materials as are necessary for a correct and uniform publication of such notices; shall furnish affidavit forms, in duplicate, to such newspapers, to be executed by the owner, editor, or publisher thereof, when two publications have been made; shall make an itemized report to the Secretary of State showing the names of all the newspapers in which such notices were published, the number of column inches submitted to each publication, the cost of publication in each newspaper, together with a clipping for such newspaper, and any other information desired by the Secretary of State pertaining to such task; shall return within 30 days from the date of the last publication all affidavits executed by the owner, editor, or publisher of such newspapers, together with an affidavit executed in duplicate by the general manager of such association that the notices have been published by said newspapers as required by the Constitution, to the Secretary of State, who shall, after satisfying himself as to the proper publication of such notices, furnish one approved copy of the executed affidavit of the general manager of the association to the Comptroller, who shall authorize the Treasurer to issue a warrant in the amount specified to the association. The Comptroller and Treasurer shall forthwith perform their duties in this connection, so that undue length of time shall not elapse between publication and payment therefor. The Legislature shall appropriate a sufficient fund for such publication, such fund to be estimated by the Secretary of State.

Subd. 2a. (a) Where the Secretary of State contracts directly with the newspapers for publication of notices of proposed constitutional amendments, each newspaper which publishes a notice is entitled to be paid for the publication an amount computed at the rate of 85 percent of the newspaper's publish-

ed national rate for advertising per column inch if the Secretary of State furnishes to the newspaper a copy of the notice in the form of a camera-ready paste-up proof, a matrix, or a printing plate, and an amount computed at the full rate of the newspaper's published national rate for advertising per column inch if the Secretary of State does not furnish a copy of the notice in that form.

(b) Where the Secretary of State contracts with a state-wide association of newspapers for the publication of the notices, the association is entitled to be paid an amount equal to the sum of the cost of publication in each newspaper, computed at the full rate of each newspaper's national rate for advertising per column inch. The commission retained by the association shall be on a percentage basis uniformly applied to all newspapers, and the percentage shall be stipulated in the contract between the Secretary of State and the association.

[See Compact Edition, Volume 2 for text of 3]

Subd. 4. [Expired]

[Amended by Acts 1975, 64th Leg., p. 445, ch. 189, § 1, eff. May 13, 1975; Acts 1975, 64th Leg., p. 2091, ch. 682, § 16, eff. Sept. 1, 1975.]

Former subd. 4 of this article, added by Acts 1975, 64th Leg., p. 445, ch. 189, § 1, providing that the amendments to the Constitution proposed by S.J.R.No. 11 of the 64th Legislature were to be printed and numbered on the ballot in the order in which numbered by that resolution, expired by its own terms on December 31, 1975.

Acts 1975, 64th Leg., p. 1181, ch. 440, related to the methods of publicizing proposed amendments to the Constitution contained in S.J.R.No. 11 of the 64th Legislature and made an appropriation for that purpose.

CHAPTER SEVEN. ARRANGEMENT AND EXPENSES OF ELECTION

Article

7.17a. Secretary of State to Certify Voting Devices [NEW].

Art. 7.14. Providing for Voting Machines

[See Compact Edition, Volume 2 for text of 1 to 14]

Manner of Voting

Sec. 15. But one voter shall be admitted at a time, and no voter shall be permitted to keep the curtain of the machine closed longer than two minutes. However, if a voter is unable to read the language in which the ballot is printed or if because of some bodily infirmity he is physically unable to operate the machine or to see, he may be assisted by two election officials, or by a person selected by the voter, who shall operate the machine so as to vote the ballot in accordance with the voter's wishes, and he shall be permitted to keep the curtain of the machine closed no longer than five minutes. The provisions of Section 95 of this Code shall govern the assistance rendered under this section insofar as they can be made applicable.

[See Compact Edition, Volume 3 for text of 16]

Arrangement of Ballot and Write-in Vote in Certain Counties Sec. 16a.

[See Compact Edition, Volume 2 for text of (a)]

(b) In any election in which, pursuant to the authorization in paragraph (a) hereof, the ballot is so arranged that the write-in slot on the voting machine cannot be utilized, and the election is one in which write-in voting is permitted, a sufficient supply of write-in ballots as described herein shall be provided at each polling place. The ballots shall bear the heading prescribed in Subdivision 2 of Section 61 of this code, as amended (Article 6.05, Vernon's Texas Election Code), with the substitution of the words "Official Write-in Ballot" for "Official Ballot," and shall bear the following instruction note: "Do not cast a vote on the voting machine for the office for which you cast a ballot herewith by way of a write-in." The instruction note for the write-in ballot for a general election for state and county officers shall contain the following additional sentence: "If you pull the straight-party lever of a political party that has a nominee for the office for which you are casting a write-in vote, be sure to turn up the selector key by the name of the nominee before you pull the voting lever." Beneath the instruction note there shall appear the following:

FOR _____
(Name of write-in candidate)

For the office of:

(Title of office)

If an open write-in campaign is being conducted for more than one office, the ballots shall provide as many spaces as there are offices for which write-in campaigns are being conducted.

Each voter is entitled, but is not required, to receive one official write-in ballot. The procedure outlined in Section 93 of this code, as amended (Article 8.11, Vernon's Texas Election Code), shall be observed in the authentication and delivery of the ballot to the voter. After filling in the write-in ballot, the voter shall deposit the ballot in a ballot box prepared for that purpose in the manner provided for elections conducted by use of paper ballots. No write-in ballot shall be cast or counted for any person whose name appears on the ballot on the voting machine.

Provided however, that the following affidavit shall be signed by any voter who receives an official write-in ballot.

STATE OF TEXAS
COUNTY OF _____

Before me, the undersigned authority, on this day personally appeared _____, who, having been by me first duly sworn, upon his oath, did depose and say:

That I have not and will not cast a vote on the voting machine for the office of _____

_____ for which I have cast a ballot herewith by way of a write-in.

Subscribed and sworn to before me this the _____ day of _____ A.D. 19____

Presiding officer, Precinct _____, _____ County, Texas.

Making Out the Returns and Proclamation of the Result

[See Compact Edition, Volume 2 for text of (a) and (b)]

(c) If the machine is provided with a device which produces a printed record of the numbers registered on the counters, the procedure outlined herein shall be followed in lieu of the procedure set out above for preparation of the statements of canvass. The presiding judge, in the presence of at least two clerks and two watchers of opposed interest (if such there be) and of any other person lawfully present who wishes to observe, shall take the necessary steps to secure a printed record from each machine. Ample opportunity shall be given to all persons lawfully entitled to be present at the polling place to examine the printed record. The printed record shall then be signed by the presiding judge and two clerks and by two watchers of opposed interest (if such there be), certifying that the printed record was obtained from the machine designated thereon, and the certified printed record shall constitute the official statement of canvass for that machine.

[See Compact Edition, Volume 2 for text of 18(d), 19 to 25]

[Amended by Acts 1975, 64th Leg., p. 2093, ch. 682, §§ 17, 18, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 658, ch. 247, § 2, eff. Aug. 29, 1977.]

Art. 7.15. Providing for Electronic Voting Systems

[See Compact Edition, Volume 2 for text of 1]

Definitions

Subd. 2. As used in this section, unless otherwise specified:

[See Compact Edition, Volume 2 for text of 2(a)]

(b) "Automatic tabulating equipment" or "tabulating equipment" means any apparatus which automatically examines and counts voted ballots and tabulates the results.

[See Compact Edition, Volume 2 for text of 2(c)]

(d) "Ballot card" means a card which is used in conjunction with ballot labels and which is marked or pierced by the voter in the process of voting an official ballot.

(e) "Ballot labels" means a booklet or one or more pages or sheets of paper or other material containing the names of offices, candidates and parties, and statements of measures to be voted on, and which is used in conjunction with ballot cards.

(f) "Ballot" may refer to paper ballots which are counted by automatic tabulating equipment and which contain the matters to be voted on and the voter marks, stamps, or otherwise indicates his choices directly on the ballot itself, or it may refer to ballot cards, ballot labels, or combinations of ballot cards and ballot labels, or it may refer to ordinary manually-counted paper ballots, depending on the context.

[See Compact Edition, Volume 2 for text of 2(g)]

Examination and Approval of Electronic Voting Systems
Subd. 3.

[See Compact Edition, Volume 2 for text of 3(a)]

(b) Before making and filing his report, the Secretary of State shall require the system to be examined by three examiners to be appointed by the Secretary of State for such purpose, one of whom shall be expert in patent law, one of whom shall be expert in electronic data processing, and one of whom shall be expert in election law and procedure, and shall require from them a written report on their examination, which shall be attached to the Secretary of State's report and kept on file. Each examiner shall receive one hundred and fifty dollars as his compensation and expenses in making the examination and report. Neither the Secretary of State nor any examiner shall have any pecuniary interest in any electronic voting system. When a system has been approved, every improvement or change must be filed with the Secretary of State. The Secretary of State may, at any time, in his discretion, reexamine an electronic voting system. Any electronic voting system not approved as herein provided cannot be used at any election in this state.

[See Compact Edition, Volume 2 for text of 4]

Adoption by Commissioners Court

Subd. 5. (a) The commissioners court of any county in the state may adopt one or more kinds of approved electronic voting systems for use in elections in part or all of the election precincts in the county or in part or all of the conduct of absentee voting, or both. If a particular system is not adopted for use throughout the county, the commissioners court shall designate the precincts in which such system is to be used, and any other authorized method of voting may be used in the remaining

precincts. In any precinct designated for use of a particular electronic voting system, the voting in that precinct may be supplemented by use of some other authorized method of voting when in any election it appears that the number of available units of the system designated for use in that precinct is inadequate for that election; and the officer or board charged with the duty of furnishing supplies of the election may make such supplementation under those conditions.

(b) The commissioners court at any time may rescind or modify its previous order or orders adopting any electronic voting system and may discontinue use of the system altogether.

(c) The electronic voting system adopted by the commissioners court shall be used at the biennial general elections for state and county officers in precincts and for absentee voting as designated by the court for use of such system. In all other elections, general, special, or primary, the authority holding the election shall determine within its discretion whether the voting for the particular election shall be by use of such system or by some other authorized method of voting. The determination shall be made by the commissioners court in elections held at the expense of the county, by the governing body of the municipality or political subdivision in elections held by municipalities and other political subdivisions, and by the county executive committee of the party holding the election in primary elections of political parties.

[See Compact Edition, Volume 2 for text of 5(d)]

Experimental Use of Electronic Voting Systems

Subd. 6. The commissioners court of any county in the state may secure, for experimental use in elections in one or more precincts or for absentee voting, without formal adoption thereof, any kind of electronic voting system approved by the Secretary of State, and its use at any election in designated precincts or for absentee voting within the period specified by the commissioners court for experimental use of such electronic voting system shall be as valid for all purposes as if it has been formally adopted; provided, however, that the period for experimental use shall not exceed two years from the date of the order authorizing its use.

[See Compact Edition, Volume 2 for text of 7 and 8]

Absentee Voting

Subd. 9. (a) When an electronic voting system has been adopted by the commissioners court, then the system may be used in any election for absentee voting by personal appearance or by mail, or both. The authority charged with holding the election may within its discretion determine by proper resolution or order whether or not an electronic voting system

will be used for absentee voting by personal appearance or by mail, or both, at such election. If an electronic voting system is to be used for such absentee voting and more than one kind of system has been adopted by the commissioners court, the authority shall specify what kind is to be used.

(b) If the authority holding the election determines that an electronic voting system shall be used for absentee voting, the necessary ballots and voting equipment shall be provided in the clerk's office. The procedure for absentee voting where ordinary paper ballots are used shall be followed insofar as it can be made applicable. If an electronic voting system is used for voting by personal appearance and the absentee ballots voted by mail are counted manually, such ballots shall be counted by a special canvassing board as provided in Subdivision 6 of Section 37 of this code (Subdivision 6, Article 5.05, Vernon's Texas Election Code), except that the county clerk shall deliver the ballots to the canvassing board when the presiding judge so directs. The board shall also prepare the voted electronic voting system ballots for delivery to the central counting station in the manner provided in Subdivision 19 of this section, and such ballots shall be delivered to the central counting station and there tabulated, as provided in Subdivisions 19 and 20 of this section. The presiding judge of the central counting station shall add and attach the results of any manually counted ballots and attach the results of any write-in votes to the tabulation made on the automatic tabulating equipment, and shall make returns showing the totals thus obtained.

(c) When absentee ballots voted by personal appearance or by mail are to be marked with an ordinary pen or pencil in the manner that ordinary paper ballots are marked, and the absentee ballots are to be counted manually, the ballots shall be handled in the manner provided in Section 37 of this code (Subdivision 6, Article 5.05, Vernon's Texas Election Code) for the handling of absentee paper ballots, and shall be counted and tallied by a special canvassing board in the same way that ordinary paper ballots are tallied.

[See Compact Edition, Volume 2 for text of 9(d) and (e) to 10a]

Form of the Ballot

Subd. 11.

[See Compact Edition, Volume 2 for text of 11(a) to (b)(3)]

(4) Repealed by Acts 1977, 65th Leg., p. 661, ch. 247, § 11, eff. Aug. 29, 1977

(5) In elections in which party columns appear on the ordinary paper ballot, the following method of showing party affiliations may be used in lieu of party columns. The title of each

office shall be printed on the ballot followed by the names of the candidates for that office and their party affiliations, if any. Provision shall be made at the head of the ballot for voting a straight party ticket, and the candidate of the party which is printed in the first party column on ordinary paper ballots shall be printed in the first position under the office title, the candidate of the party which is printed in the second column on ordinary paper ballots shall be printed in the second position, and so on. Uncontested races may be listed separately from contested races under the heading "Uncontested Races," and may be voted on as a bloc.

(c) This paragraph (c) shall govern the form of the ballot to be used with electronic voting systems in which the names of offices, candidates and parties and statements of measures to be voted on are set forth on ballot labels and the voter records his vote by marking or punching a ballot card which is used in conjunction with the ballot labels.

(1) Ballot cards may be of such size, composition, texture and color (other than yellow, which shall be used for sample ballots only) and may be printed in any type of ink or combinations of ink that will be suitable for use in the automatic tabulating equipment in which they are intended to be placed. Ballot labels may be of such size, composition, texture and color (other than yellow) that will be suitable for the intended manner of use. Printing on the ballot label shall be of such size that it will be clearly legible when read by the voter in the manner contemplated by the voting system being used.

(2) Ballot cards may contain printed code marks or prepunched holes to assure that the card is properly positioned in the voting device, if the ballot labels are attached to a voting device, or to assure that the card is placed in correct reading position in the tabulating equipment, but the code marks or prepunched holes shall not be used in any way that will reveal the identity of the voters voting the ballots.

(3) The names of candidates, offices, parties and statements of issues to be voted on may be printed on two or more ballot labels. Where all candidates for the same office or all party columns cannot conveniently be placed on the same face of the same label, the candidates or columns may be carried on more than one page, but in such event the first page of the sequence shall contain a statement that the names of other candidates or other parties appear on the following page or pages. If the ballot is printed on more than one ballot label, different tints of paper, other than yellow, may be used for different pages of the ballot labels, and other suitable means may be adopted to facilitate the

use of the ballot labels with the ballot card. When party columns appear on the ballot, there shall be printed at the head of the ballot the names of the parties and a space for voting a straight ticket.

[See Compact Edition, Volume 2 for text of 11(c)(4)]

(5) The ballot card may have attached at the top an unnumbered detachable stub, which may contain the designation and date of the election and the instructions for marking the ballot and depositing it in the ballot box. The stub shall contain an instruction to the voter not to detach the stub; however, detachment of the stub before the ballot is deposited in the ballot box does not invalidate the ballot card. The election officers who prepare the voted ballot cards for counting shall detach and discard the stubs at the time they examine the ballots as provided in paragraph (a) of Subdivision 19 of this section.

(6) If the number of candidates and/or propositions to be voted upon in any election exceeds the capacity of one ballot card, the ballot may be divided into parts and a different ballot card used for each of the separate parts, but in all cases where more than one card is necessary to accommodate the entire ballot, the names of all candidates for any particular office shall be placed on the same part. A separate voting device shall be provided for each part at each polling place. Each ballot card shall bear the ballot number, and other appropriate provisions may be made for identifying the related ballot cards. In lieu of using separate ballot parts for listing the ballot, uncontested races may be listed separately under the heading "Uncontested Races," with the name of each candidate appearing under the title of the office for which he is a candidate, and if the election is one in which party columns appear on the ballot, the party affiliation of the candidate shall be indicated by printing the name of the party which nominated him (or the word "Independent" if he is an independent candidate) after the candidate's name; and all such uncontested races may be voted on as a bloc.

[See Compact Edition, Volume 2 for text of 11(c)(7)]

(8) A separate write-in ballot, which may be in the form of a card, ballot, or envelope which the voter places with his ballot or ballot card after voting, shall be provided to permit voters to vote for a person whose name does not appear on the ballot.

(d) This paragraph (d) shall apply to the form of the ballot for all electronic voting systems.

[See Compact Edition, Volume 2 for text of 11(d)(1)]

(2) The statement of propositions and measures submitted to the voters may be abbreviated on the ballot if necessary, provided there is displayed at the polling place the verbatim statement on each proposition or measure as it appears on paper ballots. Abbreviation of matter to be voted on throughout the state shall be done by the Secretary of State.

Preparation of Ballot and Program

Subd. 11a. (a) The ballots to be used at an election shall be prepared and procured under the same regulations as ordinary paper ballots, except that the officer responsible for making up the ballot may determine the number of ballots or ballot cards needed for the election based on the turnout for similar elections in the past and shall confer with the programmer for that election before ordering the ballots printed, to make sure that the ballot is properly prepared for counting by means of the electronic tabulating equipment which will be used.

(b) The authority charged with the duty to provide ballots shall select a competent person to prepare the program for the electronic tabulating equipment. The programmer may be one of the persons appointed or approved by the commissioners court under Paragraph (b), Subdivision 20 of this section or some other person, but if the program is prepared by anyone other than the tabulation supervisor, it must be submitted to the tabulation supervisor for his approval at least 10 days before the election.

[See Compact Edition, Volume 2 for text of 12 and 13]

Assistance to Voter

Subd. 14. If a voter is unable to read the language in which the ballot is printed or if because of some bodily infirmity he is physically unable to operate the voting equipment or to see, he may be assisted by two election officers, or by a person selected by the voter, who shall mark the ballot in accordance with the voter's wishes. The provisions of Section 95 of this code govern the assistance rendered insofar as they can be made applicable.

¹ Article 8.13.

Ballot boxes

Subd. 15. For each polling place where an electronic voting system is used, there shall be supplied two ballot boxes for the deposit of voted ballots, which shall be of suitable design and with a suitable opening for placing the ballots therein in such manner that the ballots will not be damaged or rendered unfit for counting on the tabulating equipment. There shall also be supplied suitable containers for transporting the voted ballots to the central counting station.

[See Compact Edition, Volume 2 for text of 16]

Conduct of the Voting

Subd. 17. (a) The procedure at the polls where voting is by use of an electronic voting system shall be the same as at polling places where paper ballots are used, except as provided in this section. Where the portion of the ballot to be marked by the voter consists of more than one page or ballot card, the related parts may be placed in an envelope or otherwise secured so that the parts will not become separated before delivery to the voter. When a voter selects his ballot, he shall be instructed to use only the voting equipment provided for marking the ballot and that he is not to mark his ballot in any other way and is not to place any other marks thereon, except for write-ins. After a voter has marked his ballot, he shall deposit it in the ballot box provided for the deposit of voted ballots.

[See Compact Edition, Volume 2 for text of 17(b)]

Procedure while Polls are Open

Subd. 18. (a) At any time after the expiration of one hour after the voting has begun, the presiding judge may direct the receiving officers to deliver ballot box No. 1 to the clerks preparing the ballots for the central counting station, who shall immediately deliver in its place ballot box No. 2, which shall be opened and examined and securely closed and locked; and until the boxes are again interchanged, the voters shall deposit their ballots in box No. 2. In this manner, ballot boxes No. 1 and No. 2 may be interchanged periodically as directed by the presiding judge, but the box for receiving the ballots shall not be exchanged and the ballots shall not be removed from it at any time before the polls are closed unless there are more than 10 ballots in the box. Once the box for receiving the ballots is delivered to the clerks preparing the ballots for the central counting station, they shall remove the voted ballots from the ballot box and carry out the procedures prescribed in Subdivision 19 of this section preparatory to making the ballots, envelopes, and other materials ready for delivery to the central counting station.

(b) The authority holding the election may in its discretion also provide that voted ballots of designated precincts shall be delivered by authorized election officials, in the presence of watchers, to a central counting station at stated intervals during the day and that the processing of such ballots in accordance with the procedures prescribed in Subdivision 20 may begin prior to the close of the polls. Such processing may be limited by the authority holding the election to procedures preparatory to the counting and tabulating of ballots, or the authority holding the election may also permit the preliminary counting and tabulating of ballots with automatic

tabulating equipment; but in no event shall any results be disclosed prior to the close of the polls, and all persons connected with the handling and tabulating of the ballots shall be subject to the provisions of Section 105 of this code (Article 8.23, Vernon's Texas Election Code) with respect to revealing information as to the results of the election.

Procedure after Polls are Closed

Subd. 19.

[See Compact Edition, Volume 2 for text of 19(a) to (e)]

(f) After the election officers at the polling place have delivered all ballots to the central counting station, the ballot label assemblies and all other election supplies and records, including all duplicate certificates and unused seals, shall be delivered to the proper authority designated by law to receive them.

[See Compact Edition, Volume 2 for text of 20 to 24]

[Amended by Acts 1975, 64th Leg., p. 2068, ch. 680, §§ 1 to 10, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2093, ch. 682, § 19, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 659, ch. 247, §§ 3 to 6, 11, eff. Aug. 29, 1977.]

Art. 7.16. Runoff Elections in Cities and Towns of over 200,000

Sec. 1. In all cities and towns in this State, whether incorporated under General and Special Law, (including home rule cities) having a population in excess of two hundred thousand (200,000) inhabitants, according to the last preceding or future Federal Census the election of candidates for all municipal offices shall be determined in the following manner:

[See Compact Edition, Volume 2 for text of (a)]

(b) In the event any candidate for either of said offices fails to receive a majority of all votes cast for all the candidates for such office at such election the Mayor of said city shall, on the first day following the completion of the official count of the ballots cast at said first election, issue a call for a second election to be held in said city within thirty (30) days following the issuance of such call, at which said second election the two (2) candidates receiving the highest number of votes for any such office in the first election at which no one was elected at said first election by receiving a majority of all votes cast for all candidates for such office, shall again be voted for. The official ballot to be used at said second election shall be prepared by the City Clerk or City Secretary and the name of no person shall appear thereon unless he was a candidate for the office designated at said first election, and the two (2) persons re-

ceiving at said first election the first and second highest number of votes cast for candidates for such office at such first election shall be entitled to have their names printed on said official ballot in the order of their standing in the computation of the votes cast for such candidates at said first election as candidates at said second election for such office; provided, however, that in the event any person who was a candidate at said first election and who shall be entitled to become a candidate at such second election shall fail to request that his name shall appear on the official ballot therefor at such second election as herein provided, the candidate for such office standing next highest in the computation of votes shall succeed to the rights of such candidate who failed to request that his name appear upon the ballot at said second election; provided further, that two (2) candidates for such office at said first election shall be entitled to become candidates therefor at said second election, which two (2) candidates shall be those two (2) among such candidates as shall stand highest respectively in the computation of all votes cast for all the candidates for such office at said first election as shall file written request to be placed on the official ballot as candidates for such office at said second election. In the event of a tie in the vote for the two (2) leading candidates for any office at said first election, said office shall be filled at a second election as herein provided for, at which such candidates so tied in said first election may again become candidates. In the event such candidates who tied in said first election, or either or them, shall fail so to do, the two (2) candidates for such office who are next highest in the computation of votes therefor and who desire to become candidates therefor at said second election shall be entitled so to do in order of the number of votes they respectively received at said first election. In the event of a tie between the two (2) candidates for any office at said second election, they shall cast lots to determine who shall be elected to such office.

Sec. 2. Notwithstanding any provision in Section 1 of this statute, when in any municipal election nominations have been made by one or more political parties and the names of the candidates are listed on the ballot in party columns in conformity with the provisions of this code applicable to the method of voting used in the election, if any party nominee is a candidate in a succeeding runoff election, the ballot for the runoff election shall also be arranged in party columns in the same relative order as they appeared on the ballot for the first election, omitting any column in which no candidate's name is to be printed on the runoff ballot. If all candidates whose

names appear on the runoff ballot are independent candidates, the ballot shall be made up without party columns, and the names of the two candidates in each race shall be printed on the ballot in the order of their standing in the computation of the votes cast at the first election.

Sec. 3. Whenever any home-rule city whose charter provides for election of more than one member of its governing body from the same list of candidates attains a population in excess of 200,000 inhabitants, not later than the 90th day before the first regular election at which the provisions of this section are applicable, the governing body of the city shall assign a place number to each such position, identifying it by the name of the incumbent member at the time the designation is made; and thereafter one person to fill each such position shall be elected separately by place number until such time as the charter is amended to provide for some other method of election that is consistent with an election by majority vote.

Sec. 4. This law does not apply to any city whose charter provides for the selection of its officers by means of a preferential type of ballot or to any city whose charter requires that its officers be elected by majority vote and specifies the procedures for conducting a runoff election.

[Amended by Acts 1977, 65th Leg., p. 326, ch. 157, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1681, ch. 664, § 1, eff. Aug. 29, 1977.]

The 1977 amendatory act repealed former § 3 of this article, renumbered and amended former § 2 as § 4 and added new §§ 2 and 3.

Art. 7.17a. Secretary of State to Certify Voting Devices

(a) Any person, firm, or corporation owning or controlling any voting device or system and desiring to have the same adopted for use in this state may apply to the secretary of state to have such device or system examined under the provisions of this section if in the opinion of the secretary of state the device or system cannot be adequately examined under either Section 79 or Section 80 of this code (Article 7.14 or Article 7.15, Vernon's Texas Election Code). Before the examination the applicant shall pay to the secretary of state the sum of \$450. The secretary of state shall cause the device or system to be examined as hereinafter provided and shall make and file and keep on file in the office of the secretary of state a report of such examination, which shall show whether the kind of device or system so examined can safely be used by the voters under the conditions hereinafter provided. If the report states that the device or system can be so used, it shall be deemed approved and the device or system may be adopted for use in any election held in this state. Before making and filing such report, the secretary of state shall require the voting device or system to

be examined by three examiners to be appointed by the secretary of state for such purpose, one of whom shall be an expert in patent law and the other two shall be mechanical experts or electronics experts, as may be appropriate, and shall require each of them to make a written report on such device or system, which reports shall be attached to the secretary of state's report and kept on file. Each examiner shall receive the sum of \$150 as his compensation and expenses in making an examination and report as to each voting device or system examined by him. Neither the secretary of state nor any examiner may have any pecuniary interest in any voting device or system. When a device or system has been approved, every improvement or change must be filed with the secretary of state. The secretary of state may, at any time, in his discretion, reexamine a device or system approved under this section. Any form of voting device or system not approved under either this section or Section 79 or 80 of this code cannot be used at any election in this state.

(b) A voting device or system approved by the secretary of state must be so constituted as to provide facilities for voting for such candidates as may be legally placed on an official ballot in any election in this state. It must also permit a voter in a general election to vote for any person for any office, whether or not nominated as a candidate by any party but whose name is legally on the ballot as an independent candidate, and must permit voting in absolute secrecy. It also must be so constituted that a voter cannot vote for a candidate or on a proposition for whom or on which he is not lawfully entitled to vote. It also must be so constituted as to prevent a voter from having his vote counted for more than one person for the same office, unless permitted by law, and at the same time preventing his vote from being counted for the same person twice. It must also permit each voter to vote for a person whose name does not appear on the ballot, in any election and for any office where write-in votes are permitted by law. It must also permit the voter to vote by means of a single mark or punch or other appropriate act for all the candidates of one party or to vote a split ticket as he desires. No voting device or system shall be approved by the secretary of state unless he finds that it is suitable for the purpose for which it is intended, and that it will operate efficiently and accurately and provide adequate safeguards against fraudulent manipulation under the conditions under which it is intended to be used.

(c) In the event a voting system is approved under this section for which this code prescribes no applicable or suitable procedures concerning its use, the secretary of state shall, upon certification of such system, issue a directive prescribing the procedures, limitations, and conditions for the implementation of such system.

[Added by Acts 1977, 65th Leg., p. 572, ch. 205, § 1, eff. Aug. 29, 1977.]

CHAPTER EIGHT. CONDUCTING ELECTIONS AND RETURNS THEREOF

Article

- 8.19b. Tallying Votes of Write-in Candidates [NEW].
 8.36a. County Chairmen to Send Lists of Elected Party Nominees to State Chairman [NEW].

Art. 8.07. Present Registration Certificate

No citizen shall be permitted to vote, except as provided in the Constitution of Texas unless he first presents to the judge of election his registration certificate unless the same has been lost or mislaid, or left at home, in which event he shall make an affidavit of that fact, to be left with the judges and sent by them with the returns of the election; provided, that, if since he obtained his certificate he removes from the precinct or county of his residence, he may vote on complying with other provisions of this Code. The affidavit may be incorporated into any combination signature roster and list of registered voters as prescribed by the secretary of state. [Amended by Acts 1977, 65th Leg., p. 592, ch. 209, § 4, eff. Aug. 29, 1977.]

Art. 8.08. Procedure for Accepting Voter; Signature Roster

Subd. 1. An election officer shall receive from the voter his registration certificate, when he presents himself to vote. If the voter has lost or mislaid his certificate or left it at home, he shall make an affidavit of that fact. For elections held on or after April 1 and no later than June 30 in even-numbered years, if any voter who is a resident of a county in a primary election or of a county, municipality, or district which is conducting any other election has failed to receive a certificate for the current two-year registration period, the election officer shall determine if the name of such voter appears on the list of cancelled voter registration certificates for the particular election precinct, and, if so, the election officer shall allow such voter to cast a ballot in the manner stated in Section 48a of this code. The election officer shall announce the voter's name in an audible voice and shall ascertain that his name appears on the list of registered voters or shall satisfy himself, in the manner stated in Section 48a of this code, that the voter is a registered voter and is entitled to vote in that precinct. He shall then require the voter to sign the signature roster provided for in Subdivision 3 of this section. If the voter has presented his registration certificate, the election officer shall compare the signature on the roster with the signature on the certificate to see that it is the same. If he finds that the signatures do not correspond, he shall not allow the voter to vote unless the voter complies with the procedure prescribed in Section 91 of this code for acceptance of a challenged voter.

Subd. 2. When a voter is accepted for voting, the election officer shall place a notation on the list of registered voters showing that he has voted and shall enter the voter's name on the poll list or shall use a combination signature roster and list of registered voters in the manner and format prescribed by the secretary of state. If a separate poll list is used, the names on the poll list shall be entered in the same order as the names on the signature roster. The officer shall return the registration certificate to the voter and shall allow him to select his ballot. The voter shall then immediately retire to a voting booth or a place prepared for voting by the election officers, and there prepare his ballot in the manner provided by law.

[See Compact Edition, Volume 2 for text of 3]

Subd. 4. Notwithstanding any other provision of this code which prescribes a criminal penalty, an election officer who knowingly violates any provision of this section shall be fined not less than one hundred dollars nor more than one thousand dollars, or be imprisoned in the county jail not more than 90 days, or be both so fined and imprisoned.

[Amended by Acts 1975, 64th Leg., p. 2079, ch. 681, § 20, eff. June 20, 1975; Acts 1977, 65th Leg., p. 593, ch. 209, § 5, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1215, ch. 468, § 4, eff. Aug. 29, 1977.]

Art. 8.09. Vote Challenged

When a person offering to vote at any general, special, or primary election shall be objected to by an election judge or clerk, a poll watcher, or any other person, the presiding judge shall examine him upon oath touching the points of such objection, and if such person establishes his right to vote to the satisfaction of the presiding judge, he shall be permitted to vote, and the word "sworn" shall be written upon the poll list or on the prescribed combination form opposite the name of the voter. If upon his own oath the person fails to establish his right to vote to the satisfaction of the presiding judge, his vote shall not be accepted unless in addition to his own oath he submits proof by the oath of one well-known resident of the precinct that he is a qualified voter at such election and in such precinct. When such proof is submitted, his vote shall be accepted, and the word "challenged" and the name and address of the person testifying under oath as to the voter's qualifications shall be written on the poll list or on the prescribed combination form opposite the name of the voter.

[Amended by Acts 1977, 65th Leg., p. 593, ch. 209, § 6, eff. Aug. 29, 1977.]

Art. 8.13. Aid to Voter

Subd. 1. Not more than one person at the same time shall be permitted to occupy any one compartment, voting booth or place prepared for a voter, nor

shall any assistance be given a voter in preparing his ballot, except when a voter is unable to prepare the same because of the voter's inability to read the language in which the ballot is printed or because of some bodily infirmity which renders the voter physically unable to write or to see, in which case two officers of such election shall assist the voter (with the aid of an interpreter, when necessary), they having first sworn that they will not suggest, by word or sign or gesture, how such voter shall vote; that they will confine their assistance to answering the voter's questions, to stating the propositions to be voted on, and to naming candidates and the political parties to which they belong; and that they will prepare the voter's ballot as such voter directs. If the election is a general election, the election officers who assist such voters shall be of different political parties, if there be such officers present. One or more watchers may be present when the assistance herein permitted is being given by election officers, but each watcher must remain silent except in cases of irregularity or violation of the law.

Subd. 2. Instead of being assisted by two election officers as hereinabove provided, a voter who is entitled to assistance may select any qualified voter residing in the precinct to assist him, and no other person shall be permitted to be present while the ballot is being prepared. Before assisting the voter, the person selected shall take the following oath, which shall be administered by one of the election officers: "I solemnly swear that I will not suggest, by word or sign or gesture, how the voter shall vote; I will confine my assistance to answering the voter's questions, to stating propositions to be voted on and to naming candidates and the political parties to which they belong; and I will prepare the voter's ballot as the voter directs."

Subd. 3. Where any assistance is rendered in preparing a ballot other than as herein allowed, the ballot shall not be counted, but shall be void for all purposes.

[Amended by Acts 1975, 64th Leg., p. 2093, ch. 682, § 20, eff. Sept. 1, 1975.]

Art. 8.15. Deposit of Ballot

Subd. 1. After the voter has prepared his ballot, he shall fold it so as to conceal the printing thereon and so as to expose the signature of the presiding judge on the back of the ballot (except that ballot cards and certain other types of ballots used in electronic voting systems should not be folded), and then deposit it in the proper ballot box.

Subd. 2. The ballot stub to be signed by the voter and the stub box for the deposit of the signed stub, formerly provided for in this and other sections of this code, are eliminated by amendments enacted

by the 65th Legislature at its regular session in 1977. All statutory provisions relating to the use of ballot stubs and stub boxes which appear in other statutes enacted at the regular session of the 65th Legislature, regardless of whether they are enacted before or after this amendment, or enacted at any prior session, except provisions relating to stubs attached to ballot cards used in an electronic voting system, are to be treated as void.

[Amended by Acts 1977, 65th Leg., p. 660, ch. 247, § 7, eff. Aug. 29, 1977.]

Section 12 of the 1977 amendatory act provided:

"The statutory provisions relating to the preservation, examination, and destruction of ballot stubs which were in effect on the date of the election continue to apply to the ballot stubs for elections held before the effective date of this Act."

Art. 8.17. Bystanders Excluded

From the time of opening the polls until the announcement of the results of the canvass of votes cast and the signing of the official returns, the boxes and official ballots shall be kept at the polling place in the presence of one or more of the judges, and watchers, if any. No person, except those admitted to vote, shall be admitted within the room where the election is being held, except the judges, clerks, persons admitted by the presiding judge to preserve order, inspectors, watchers, and children under 10 years old who accompany a parent who is admitted to vote. Notwithstanding any other provision of this code, the child or children may also be present in the voting booth or compartment while the parent is voting.

[Amended by Acts 1975, 64th Leg., p. 2078, ch. 681, § 17, eff. June 20, 1975; Acts 1977, 65th Leg., p. 309, ch. 143, § 1, eff. Aug. 29, 1977.]

Art. 8.19b. Tallying Votes for Write-in Candidates

In the general election for state and county officers held on the first Tuesday after the first Monday in November of even-numbered years, before the counting begins the presiding judge shall furnish the counting officers with the list of write-in candidates who have qualified for the election as provided in Section 62b of this code.¹ Only the names of the candidates printed on the ballot and the names of write-in candidates appearing on the list shall be entered on the tally sheets, and a write-in vote for any other person shall not be tallied.

[Added by Acts 1977, 65th Leg., p. 1283, ch. 503, § 2, eff. Aug. 29, 1977.]

¹ Article 6.06b.

Art. 8.22. Death or Ineligibility of Candidate Before Election

(a) When the name of a deceased or ineligible candidate is printed on the ballot for a general or special election, as provided in Section 233 of this code,¹ the votes cast for him shall be counted and return made thereof; and if he receives a plurality

of the votes cast for the office where a plurality is sufficient for election, or if he receives a majority of the votes cast for the office where a majority is required for election, the vacancy shall be filled as in the case of a vacancy occurring after the election. If he is one of the two highest candidates in an election where a majority is required and no one has a majority, the two candidates with the highest votes other than the deceased or ineligible candidate shall be certified as the two highest candidates for the runoff election.

(b) If after the 45th day preceding the first primary election, a candidate in that primary dies or is declared ineligible to be elected to the office, his name shall be printed on the first primary ballot and the ballots cast for him shall be counted and a return made thereof. If such a deceased or ineligible candidate receives a majority of the votes, the proper executive committee shall choose a nominee and certify such name to the proper officer, as provided in Section 233 of this code, to be printed on the general election ballot. If such a deceased or ineligible candidate is one of the two highest candidates in that race in the first primary and if no one has a majority vote, the two candidates with the highest votes, other than the deceased or ineligible candidate, shall be certified to have their names printed on the second primary ballot. If a candidate whose name is to appear on the second primary ballot dies between the dates of the first and second primaries, his name shall be printed on the second primary ballot and the votes cast for him shall be counted and returned for him; and if such a deceased candidate receives a majority of the votes in the second primary, the proper executive committee shall choose a nominee and certify his name to the proper officer, as provided in Section 233 of this code, to be printed on the general election ballot. Withdrawal of a candidate in the second primary is regulated by Section 204a of this code.

[Amended by Acts 1975, 64th Leg., p. 2104, ch. 685, § 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 883, ch. 332, § 2, eff. Aug. 29, 1977.]

¹ Article 13.56.

Art. 8.29b. Copies of Returns, Poll Lists or Combination Forms, and Tally Lists; Distribution

(a) In precincts using paper ballots. In all general, special, and primary elections, the number of copies of the returns, poll list or prescribed combination form, and tally list required for each precinct in which paper ballots are used shall be as follows: four copies of the returns, three copies of the poll list or prescribed combination form, and three copies of the tally list. These records shall be distributed as follows:

(1) One copy of the returns and tally list shall be delivered to the presiding officer of the au-

thority which canvasses the returns (the county judge in elections held by the county; the mayor in city elections; the presiding officer of the governing board in elections held by other political subdivisions; and the chairman of the county executive committee in county primary elections) and shall be preserved by the canvassing authority for sixty days from the day of the election.

(2) One copy of the returns, poll list, or prescribed combination form, and tally list shall be delivered to the proper officer (the county clerk in elections held by the county and in county primary elections; the city secretary or clerk in municipal elections; and the presiding officer of the governing board in elections held by other political subdivisions), to be kept by him in his office open to inspection by the public for sixty days from the day of the election.

(3) One copy of the returns, poll list, or prescribed combination form, and tally list shall be placed in the ballot box containing the voted ballots.

(4) The presiding judge shall retain in his custody one copy of the returns and one copy of the poll list or prescribed combination form of the election, and shall keep the same for sixty days after the day of the election, subject to the inspection of anyone interested in such election.

[See *Compact Edition, Volume 2 for text of (b) and (c)*]

(d) The presiding judge shall deliver all applications for registration received pursuant to Section 48a of this code¹ to the officer who receives the election records that are open to public inspection at the same time that he delivers those records. Within five days after the election, this latter officer shall forward the applications from all election precincts to the county registrar of voters, who shall process the applications and issue registration certificates thereon in the same manner as other applications.

[Amended by Acts 1977, 65th Leg., p. 593, ch. 209, § 7, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1217, ch. 468, § 7, eff. Aug. 29, 1977.]

¹ Article 5.16a.

Art. 8.36a. County Chairmen to Send Lists of Elected Party Nominees to State Chairman

Not later than February 1 following each general election for state and county officers, the chairman of the county executive committee of each political party with a state organization that had nominees on the general election ballot shall send to the state chairman of the party a list of the names of the party's nominees who were elected to county and precinct offices in that county at that election, and the office to which each was elected.

[Added by Acts 1975, 64th Leg., p. 2107, ch. 687, § 1, eff. Sept. 1, 1975.]

CHAPTER NINE. CONTESTING ELECTIONS

Article

9.29a. Application of Sunset Act [NEW].

9.38b. Compelling Voter to Testify how He Voted [NEW].

Art. 9.29a. Application of Sunset Act

The State Board of Canvassers is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1989.

[Added by Acts 1977, 65th Leg., p. 1856, ch. 735, § 2.171, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

Art. 9.38b. Compelling Voter to Testify how He Voted

In an election contest or criminal proceeding in which the issue is relevant, any voter who fraudulently or illegally casts a ballot or who casts a fraudulent or illegal ballot at any general, special, or primary election may be required and compelled, after the fraud or illegality has been established by competent evidence before a tribunal of competent jurisdiction, to disclose in testimony before the tribunal having jurisdiction of the matter the name of any candidate for whom he voted and the way he voted on any question at the election. The voter's testimony may be impeached by the testimony of other witnesses in regard to statements by the voter, either before or after the election, or by other competent evidence; and the issue of how the voter voted shall be decided on the basis of all the evidence before the tribunal. In an election contest, instead of undertaking to determine how individual voters voted, the tribunal may declare the election void and order another election if the number of illegal votes is sufficient to change the outcome of the election. This section applies to election contests and criminal proceedings instituted under any provision of this code or under any other statute of this state.

[Added by Acts 1977, 65th Leg., p. 661, ch. 247, § 10, eff. Aug. 29, 1977.]

CHAPTER ELEVEN. PRESIDENTIAL ELECTION

Article

11.01b. Independent Candidate for President [NEW].

11.01c. Write-in Candidate for President.

Art. 11.01. Time of Election; Qualifications of Electors

Subd. 1. On the first Tuesday after the first Monday in November in the year 1980 and every four years thereafter, there shall be elected by the voters of the State as many electors for President and Vice-President of the United States as the State of Texas may at that time be entitled to elect.

Subd. 2. Each elector at the time of nomination as a presidential elector candidate, at the time of election, and at the time of the convening of the electors must be a registered, qualified voter of this state and must not hold the office of senator or representative in congress, or any office of trust or profit under the United States.

[Amended by Acts 1977, 65th Leg., p. 647, ch. 240, § 1, eff. Aug. 29, 1977.]

Art. 11.01b. Independent Candidate for President

Subd. 1. Any person eligible to hold the office of President of the United States may have his name and the name of a vice-presidential running mate printed on the ballot as independent candidates in the presidential race by complying with the provisions of this section.

Subd. 2. A person desiring to become an independent candidate for president shall file with the Secretary of State, not later than the second Monday in July before the general election at which his name will appear on the ballot:

- (1) an application to have his name and the name of an eligible vice-presidential candidate as his running mate printed on the ballot on a form prescribed by the Secretary of State;
- (2) the signed written consent of the person designated as the vice-presidential candidate to have his name printed on the ballot in that capacity;
- (3) a list of the names and addresses of persons to represent the applicant as presidential elector candidates in the number to be elected, together with the signed written consent of each such person to become a candidate; and
- (4) a petition of voters signed by qualified voters of the state in a number equal to not less than one percent of the entire vote of the state cast for president and vice-president at the last preceding presidential general election.

Subd. 3. A petition may not be circulated for signatures until after the date of the general primary election in that election year, and any signature obtained on or before that date is void. A voter who voted in the general primary of any political party that held a presidential primary that year is ineligible to sign the petition of an independent candidate for president. The following statement shall appear at the head of each page of a petition: "I certify that I did not vote this year in the general primary election of any political party that held a presidential primary."

Subd. 4. The Secretary of State shall prescribe the form for the petition of voters to be filed by an independent candidate for president. For each signer the petition shall show the signer's address, the

county of issuance and number of his voter registration certificate, and the date of signing. The petition may be in multiple parts. To each part shall be attached an affidavit of the person who circulated it, stating that he witnessed the affixing of each signature, that he called the attention of each signer to the statement at the head of the page before the person signed the petition, that the correct date of signing is shown on the petition, and that to the best of his knowledge and belief each signature is the genuine signature of the person whose name is signed. A petition so verified is prima facie evidence that the signatures thereon are genuine and that the persons signing it are registered voters. [Added by Acts 1977, 65th Leg., p. 647, ch. 240, § 2, eff. Aug. 29, 1977.]

Art. 11.01c. Write-in Candidate for President

Subd. 1. Any person eligible to hold the office of President of the United States may become a write-in candidate for the office by complying with the provisions of this section. No write-in vote cast for the office may be counted unless the person whose name is written in has complied with these requirements. The Secretary of State shall certify to the county clerks the names of write-in candidates who have complied with this section at the same time that he certifies the names of the presidential candidates to be printed on the ballot.

Subd. 2. A person desiring to become a write-in candidate for president shall file with the Secretary of State, not later than the 45th day before the general election:

(1) a declaration that he is a write-in candidate for the office of president;

(2) the name of an eligible vice-presidential candidate as his running mate and the signed written consent of that person to the candidacy; and

(3) a list of the names and addressees of persons to represent the write-in presidential candidate as presidential elector candidates in the number to be elected, together with the signed written consent of each such person to become a candidate.

[Added by Acts 1977, 65th Leg., p. 648, ch. 240, § 3, eff. Aug. 29, 1977.]

Art. 11.02. Effect of Votes for Presidential Candidates

A vote for the set of candidates of any political party or for a set of independent or write-in candidates for both President and Vice-President of the United States shall be conclusively deemed to be a vote for the presidential elector candidates representing that party or that set of independent or write-in candidates, and shall be so counted and

recorded for such electors as the state shall be empowered to elect. No vote shall be counted unless the voter has cast his vote for both the candidate for President and the candidate for Vice-President of the same political party or set of independent candidates. A ballot on which a voter has written in the name of a presidential candidate who has filed a declaration of write-in candidacy in accordance with this section shall be counted as a vote for the presidential elector candidates representing that write-in candidate, regardless of whether the name of the corresponding vice-presidential candidate is written in.

[Amended by Acts 1977, 65th Leg., p. 649, ch. 240, § 4, eff. Aug. 29, 1977.]

Art. 11.03. Canvass of Votes and Returns

The canvass of the votes for candidates for President and Vice-President of the United States and the returns thereof shall be a canvass and return of the votes cast for the electors of the same party or set of independent or write-in candidates, respectively, and the certificate of such election made by the Governor shall be in accord with such return.

[Amended by Acts 1977, 65th Leg., p. 649, ch. 240, § 5, eff. Aug. 29, 1977.]

Art. 11.04. Certification of Candidates

The names of the candidates for President and Vice-President and for presidential electors, respectively, of a political party as defined in the law shall be certified to the Secretary of State by the chairman and secretary of the state committee of the party not later than the 40th day prior to the election.

[Amended by Acts 1977, 65th Leg., p. 888, ch. 332, § 6, eff. Aug. 29, 1977.]

CHAPTER THIRTEEN. NOMINATIONS

Article

13.08a-1. State Financing of Primary Expenses of State Executive Committee [NEW].

13.08c. Funding [NEW].

13.21. Repealed.

13.58a. Expired.

Art. 13.01a. Who Are Members of Organized Party

[See Compact Edition, Volume 2 for text of (1) to (3)]

(4) An applicant for party affiliation shall become a qualified member of a political party which is holding primary elections when he has voted within that party's primary or has taken part in a convention of that party prior to a primary. At the head of the signature roster for each primary election there shall be printed the following statement: "I swear

that I have not voted at a primary election or participated in a convention of any other political party during this voting year." The presiding judge or another election officer designated by him shall place each voter under oath and require him to swear to this statement before he signs the roster. The first time a voter presents his voter registration certificate at a primary election, the election officer shall stamp the appropriate party designation within the party affiliation space on the face of the certificate. If the voter is voting on a statement of a lost registration certificate, the presiding judge shall issue to him a certificate of his having voted, in the following form:

Date _____
_____ has voted on this date in the
(Name of Voter)
primary election of the _____ Party.

Presiding Judge, Precinct No. _____,
_____ County, Texas.

When a voter votes by absentee ballot in a primary election, the county clerk shall stamp the appropriate party designation on the voter's registration certificate; or if the voter is voting on a statement of a lost or unreturned certificate, the clerk shall deliver or mail to the voter, at the time specified by law for returning a registration certificate to an absentee voter, a certificate of his having voted by absentee ballot in the primary.

(5) To become qualified to participate in any party convention of a party which does not hold a primary or to become qualified for party membership for any party convention held prior to a primary, each voter who desires to participate in the convention shall present to the precinct chairman his affidavit that he has not participated in the primary or convention of any other party during that voting year. Thereupon, the precinct chairman shall stamp the appropriate party designation on the voter's registration certificate if the voter presents it, and if the registration certificate is not presented, the chairman shall issue to the voter a certificate in the following form:

Date _____
_____ has affiliated with
(Name of Voter)
the _____ Party for the current year.

Precinct Chairman, Precinct No. _____,
_____ County, Texas.

Each precinct chairman is authorized to administer the oath required by this subsection. Within 10 days after the precinct convention, he shall arrange the affidavits in alphabetical order and deliver them to the county clerk. If he receives an affidavit after the date of the precinct convention, he shall deliver it to the county clerk within 10 days after he re-

ceives it. The county clerk shall keep the affidavits on file in alphabetical order within each precinct for a period of two years after the end of the voting year in which they are filed. The county clerk shall maintain a separate file for each political party.

(6) A voter registration certificate which has been stamped with a party designation, a certificate of having voted in a primary election, or a certificate of party affiliation issued by a precinct chairman, all as provided in this section, shall serve as evidence that the person whose name appears on the certificate is affiliated with the party designated on the certificate and is therefore eligible to participate in that party's conventions.

[See Compact Edition, Volume 2 for text of
(7) and (8)]

[Amended by Acts 1975, 64th Leg., p. 750, ch. 296, § 15, eff. Nov. 5, 1975.]

Art. 13.07a. Repealed by Acts 1975, 64th Leg., p. 2054, ch. 675, § 8, eff. Sept. 1, 1975

Art. 13.08. Conduct of the Primary Elections

(a) The primary election held by a political party pursuant to Sections 180 and 181 of this code (Articles 13.02 and 13.03, Vernon's Texas Election Code) shall be conducted through the party's state executive committee and county executive committees in accordance with the procedures detailed in this code.

(b) In order for a candidate to have his name placed on the ballot for the general primary election, his application for a place on the ballot must be accompanied by a filing fee or a nominating petition in compliance with Subsection (c) or (d) of this section.

(c) The schedule of fees for either a full term or an unexpired term for the various offices is as follows:

United States Senator	\$2,000
All other statewide offices	1,500
United States representative	1,500
State senator	750
State representative	400
Member, state board of education	250
Chief justice or associate justice, court of civil appeals	750
District judge or judge of any court hav- ing status of a district court as classi- fied in Section 61c ¹ of this code	700
District attorney or criminal district at- torney or a county attorney that per- forms the same functions as either of the above	600
All county offices, as classified in Sec- tion 61c, except county surveyor and in- spectors of hides and animals	300

County surveyor or inspector of hides and animals -----	\$ 50
County commissioner,	
County of 200,000 or more inhabitants	600
County under 200,000 inhabitants -----	300
Justice of the peace or constable,	
County of 200,000 or more inhabitants	500
County under 200,000 inhabitants -----	200
Public weigher -----	50

No fee shall be charged for any office of a political party.

(d) In lieu of the payment of a filing fee, a candidate may file a nominating petition which may be in multiple parts and must be signed by the qualified voters eligible to vote for the office for which the candidate is running as follows:

For statewide office, 5,000 signatures.

For district, county, precinct, or other political subdivisions, equal in number to at least two percent of the number of votes cast in the territory for that party's candidate for governor in the last preceding gubernatorial general election. However, in no event shall the number required be more than 500; and if two percent of the votes cast in the territory was less than 25, the number required is the lesser of 25 signatures or 10 percent of the number of votes cast.

Where a candidate is running in a district, county, or precinct which has been created or the boundaries of which have been changed since the last gubernatorial general election, he may request that the secretary of state in the case of a district or county office, or the county clerk of the county in which the precinct is situated in the case of a precinct office, make an estimate in advance of the filing deadline of the number of votes cast for that party's candidate for governor within that territory at the last gubernatorial election. Not later than the 15th day after receiving such a request, the officer shall make the estimate and notify the candidate, and also the officer with whom the candidate files his application. The estimate shall be used as the official basis for computing the number of signatures required on a petition. If an advance estimate is not requested, the officer with whom the petition is filed shall make the estimate, whenever necessary, before he acts on the sufficiency of the petition. In every instance, the candidate may challenge the accuracy of the estimate, and if he is dissatisfied with the final decision of the officer he may appeal the decision to any district court having jurisdiction in the territory involved.

The following statement shall appear at the head of each page of the petition: "I know the contents of this petition. I am a qualified voter eligible to vote in the forthcoming primary election of the (fill in name) Party for the office for which (fill in name)

is a candidate. I have not signed the petition of a candidate who is running for any office² the primary of any other party. I understand that by signing this petition I become ineligible to affiliate with any other party or to participate in the primary elections, conventions, or other party affairs of any other party, including a party which is not holding a primary election, during the voting year in which this election is held, and that I am guilty of a misdemeanor if I attempt to do so."

To each part of the petition shall be attached an affidavit of the person who circulated it, stating that he called each signer's attention to the statement and read it to him before the signer affixed his signature to the petition, and further stating that he witnessed the affixing of each signature, that the correct date of signing is shown on the petition, and that to the best of his knowledge and belief each signature is the genuine signature of the person whose name is signed. A petition so verified is prima facie evidence that the signatures thereon are genuine and the persons signing it are registered voters.

The petition must show the following information with respect to each signer: His address (including his street address if residing in a city, and his rural route address if not residing in a city), his current voter registration certificate number (also showing the county of issuance if the office includes more than one county), and the date of signing. The secretary of state shall prescribe a form for the petition before the 30th day prior to the filing deadline and provide copies of that form to the state chairman and the county chairmen of each party holding a primary election. However, a candidate may use any other form which complies with the requirements of this section. It is the specific intent of the legislature that there shall be no requirement for the administering of an oath to any person signing a petition under the provisions of this section.

A petition filed under this section shall be filed with the same officer with whom an application for a place on the ballot for the office being sought is to be filed and must be filed at the same time as such an application.

(e) The fees paid to the county chairman on applications filed with him pursuant to the provisions of Section 190 of this code, as amended (Article 13.12, Vernon's Texas Election Code), the apportionment of fees received from the state chairman pursuant to this subsection, and any contributions made to the county chairman or the county executive committee for the specific purpose of helping defray the costs of the primary elections shall be deposited to the credit of the primary fund referred to in Section 196 of this code, as amended (Article 13.18, Vernon's Texas Election Code), and shall be applied to pay-

ment of the costs of the primary elections. The county chairman and the committee may also use any other available funds toward defraying costs. The remaining costs incurred shall be borne by the state except as otherwise provided by procedures outlined in this code. Within five days after the regular filing deadline, the chairman of the state executive committee shall forward to the secretary of state an itemized listing of all filing fees for statewide offices and for district offices collected on applications filed with him pursuant to Section 190. At the same time, the state chairman shall also forward all filing fees for district offices collected by him pursuant to Section 190 to the county chairmen for the counties lying partially or wholly within such district. The amount forwarded to each county chairman shall be equal to the quotient obtained upon dividing the appropriate filing fee by the number of counties in the district of the candidate paying the fee. The state chairman shall retain all filing fees for statewide offices and all filing fees for district offices paid to him under filing deadlines falling after the regular deadline and shall apply them to the sole use of helping defray the costs incurred by the state chairman and the state executive committee in conducting the primary elections.

(f) In each county in which voting machines or an electronic voting system has been adopted, the county commissioners court shall permit the county-owned voting machines or voting equipment to be used for the primary elections, including the conduct of absentee voting for the elections, at a charge for use at each election not exceeding \$16 per unit for voting machines adopted under Section 79 (Article 7.14, Vernon's Texas Election Code), and not exceeding \$3 per unit for voting equipment adopted under Section 80 (Article 7.15, Vernon's Texas Election Code); provided, however, that the county commissioners court shall not be required to provide voting machines or equipment for use in any election precinct in which fewer than 100 votes were cast in the preceding first or general primary or runoff primary election. The maximum amount fixed in this subsection includes the lease price for the use of the unit, and also the charge for its preparation and maintenance if the county provides these services. The county is entitled to reimbursement for the cost of transporting the machines or equipment to and from the polling places if the county provides this service. Where voting is by an electronic voting system, the county may not charge for use of county-owned automatic tabulating equipment at the central counting station; but all actual expenditures incidental and necessary to operation of the central counting station in counting the ballots are payable out of the primary fund.

(g) All expenses of the county clerk in conducting absentee voting in the primary elections, including the employment of additional deputies where neces-

sary, shall be paid by the county. A county is not entitled to reimbursement for any expenditure of county funds in connection with absentee voting or any other services rendered by the county clerk in the primary elections, except for voting machines and/or punch card units used in conducting the absentee voting or any other services for which reimbursement is specifically authorized by law.

(h) The secretary of state is authorized to promulgate rules under which compensation is limited to polling places at which voters of more than one election precinct cast their votes, notwithstanding the provisions of Section 10(g) (Article 2.02(g), Vernon's Texas Election Code). The rules for such common polling places shall provide for adequate public notice by the county chairman to the voters in election precincts affected by the application of such rules and shall provide for an adequate number of polling places taking into account all other relevant factors including distances of polling places from parts of the precincts served, estimated voter turnout, and geographic or other boundaries. However, the secretary of state may not require that there be less than one polling place for each commissioner's precinct for reimbursement purposes.

(i) The secretary of state is authorized to promulgate rules in regard to the maximum number of election clerks who may be compensated for their services at a polling place and the maximum number of other necessary office personnel employed to assist in the performance of the duties placed upon the county chairman, taking into account the number of registered voters in the election precinct or precincts, the number of votes cast in the precinct, county, or state in previous elections, the method of voting, and any other relevant factors. The secretary of state must allow compensation for the presiding judge, alternate judge, and at least one clerk for each precinct. The secretary of state may allow compensation for clerks and other necessary office personnel employed in excess of the applicable limits set by his rules if he finds that the employment of additional clerks or other office personnel was justified by a good cause. The total compensation paid to the county chairman and the secretary of the county executive committee (where the executive committee has named a secretary) in the performance of the duties placed upon the chairman shall not exceed five percent of the amount actually spent in holding the primary elections for the year; provided, however, that in no case shall the total compensation paid be less than \$300 nor more than \$8,000.

(j) The secretary of state is authorized to promulgate any other reasonable rules which will minimize the costs of the primary elections. The secretary of state shall furnish a copy of all rules promulgated pursuant to this section to each county chairman at

least 10 days before the election to which the rules apply.

(k) The county chairman shall account for the primary fund in the manner provided in Section 196 of this code.

(l) The secretary of state shall not approve any expenditure of state funds to any county organization that practices discrimination based on race, sex, age, creed, or national origin. The attorney general shall be specifically responsible for the enforcement of this section.

(m) In the event a court of competent jurisdiction declares any portion of this section or any other provision of this code relating to the financing of primary elections to be invalid, the secretary of state shall promulgate reasonable rules for the enforcement of the intent of the legislature, consistent with the court's judgment and the valid portions of the code. Such authority of the secretary of state shall include authority to promulgate a schedule of filing fees, if necessary, and that schedule shall be substituted for the statutory schedule until the legislature enacts a new schedule.

[Amended by Acts 1975, 64th Leg., p. 2046, ch. 675, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1281, ch. 502, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1398, ch. 563, § 1, eff. Aug. 29, 1977.]

¹ Article 6.05c.

² So in enrolled bill; word "in" probably omitted.

Section 2 of Acts 1977, 65th Leg., ch. 502, provided:

"If any filing fee amended by this Act is declared invalid, then the amount of such filing fee shall be the amount prescribed by prior law."

Art. 13.08a. State Financing

(a) Each county chairman of each political party in the state which is holding primary elections shall submit to the secretary of state at least 30 days before the first primary election a sworn itemized estimate of the costs for conducting the first primary election in his county, together with a sworn statement of the filing fees and contributions received by the chairman, for such primary elections to and including the date of such sworn statement. The secretary of state shall review the estimate and shall notify the chairman of any items which he has disallowed as unauthorized or excessive expenditures. Expenditures may be allowed only for those purposes which are properly payable out of the primary fund under existing law as established by the statutes, court decisions, and administrative rulings of this state. Any other provisions of this code notwithstanding, the secretary of state shall pay for expenditures which, in his discretion, are reasonably necessary for the proper conduct and supervision of the primary elections under the provisions of this code. The secretary of state is authorized to set forth guidelines to determine the necessity of expenditures in conducting primary elections. The secretary of state shall subtract from the approved estimate any balance remaining from previous pri-

mary elections in the appropriate primary fund, and any amount of the fees and contributions received by the chairman for the conduct and financing of the primary elections for the particular year, and shall certify to the comptroller of public accounts the net estimated amount which is payable out of the state funds, together with the secretary of state's calculation of three-fourths of that amount. The comptroller shall forthwith issue a warrant to the chairman for three-fourths of the certified amount.

(b) In each county in which a second or runoff primary is necessary, within 10 days after the first primary the county chairman shall submit to the secretary of state a sworn itemized estimate of the costs of the runoff primary. As in the case of the first primary, the secretary of state shall notify the chairman of items which he disallows, and shall certify to the comptroller the approved estimated amount which is payable out of state funds, together with the secretary of state's calculation of three-fourths of that amount; and the comptroller shall issue a warrant to the chairman for three-fourths of the certified amount.

(c) Within 20 days after the date of the runoff primary, the county chairman shall submit to the secretary of state a sworn itemized report of the actual costs, filing fees collected, and contributions received for the primary election or elections (as the case may be) held by his party in his county. If the actual expenditure for an item exceeded the estimated amount, the chairman shall submit an explanation of the reason for the increased expenditure, and the secretary of state shall allow the increase if good cause is shown. The secretary of state shall certify to the comptroller the difference between the total amount payable out of state funds and the amount which has already been transmitted to the chairman. If the total amount of fees and contributions and the payments from the state exceeds the actual expenditures incurred, the chairman shall retain the difference in the primary fund referred to in Section 196 of this code (Article 13.18, Vernon's Texas Election Code). The exact amount of the balance in the primary fund shall be reported to the secretary of state in the actual expense report provided by this section and said amount shall be a beginning balance on hand for the next ensuing primary conducted by the chairman or his successor. If the primary fund is invested as authorized in Section 196, the beginning balance on hand for the next ensuing primary shall be the amount of the primary fund after termination of the investment.

(d) Each county chairman shall deposit to the credit of the primary fund all warrants received by him under this section. Expenses properly incurred by or on behalf of the county executive committee for the conduct of the primary elections shall be paid from the primary fund, in the manner authorized by the committee.

(e) The county chairman is responsible for payment of claims for primary election expenses, and the state is not liable to any claimant for failure of the county chairman to pay a claim. No county chairman shall be personally liable, nor shall a county executive committee be liable for any debts incurred in the administration of the primary but unpaid because the appropriation provided by the legislature was not sufficient to cover the actual expenditures made.

(f) A county chairman may request that the secretary of state approve an expenditure for the purposes of the auditing of the expenditures made out of the primary fund; however, the secretary of state shall not be required to approve such an expenditure. The secretary of state may require an audit of the primary fund, without such a request, when, in his discretion, he believes a valid purpose will be served by such a procedure.

(g) The secretary of state shall prescribe and shall furnish to the county chairmen the forms which they are to use in submitting statements and reports to the secretary of state.

(h) Wherever the word "county chairman" is used in this section, it shall apply to the county chairman or his successor in office, and such county chairman shall not be personally liable except for the misapplication of funds.

(i) In any case in which the secretary of state disallows an item of expenditure under Subsection (a) or (b) of this section, or refuses to allow an increase under Subsection (c) of this section, the county chairman may appeal to the district court of Travis County by filing a petition within 20 days after the date the notification is received from the secretary of state, and the district court shall allow such expenditures as are properly payable out of the primary fund under existing law. Any item not certified to the comptroller of public accounts within 15 days after its submission to the secretary of state may be considered disallowed for this purpose.

[Amended by Acts 1975, 64th Leg., p. 2050, ch. 675, § 2, eff. Sept. 1, 1975.]

Art. 13.08a-1. State Financing of Primary Expenses of State Executive Committee

(a) If the state executive committee of a political party which is holding primary elections wishes to obtain state financing of the expenses incurred by the state chairman and the committee in conducting the primary elections in addition to the filing fees retained by the state chairman under Section 186 of this code, as amended (Article 13.08, Vernon's Texas Election Code), the state chairman shall submit to the secretary of state at least 30 days before the first primary election a sworn itemized estimate of the costs for conducting the first primary, together with an itemized statement of any filing fees re-

ceived by him under filing deadlines falling after the regular deadline to and including the date of the estimate and a statement of the amount of any balance remaining from previous primary elections. The secretary of state shall review the estimate and shall notify the chairman of any items which he has disallowed as unauthorized or excessive expenditures. No expenditure in connection with a party convention or with any party activity other than the conduct of a primary election may be allowed. The secretary of state is authorized to set forth guidelines to determine the necessity of expenditures in conducting primary elections. The secretary of state shall subtract from the approved estimate the amount of the fees collected and retained by the state chairman for that election year and any balance remaining from previous primary elections and shall certify to the comptroller of public accounts the net estimated amount which is payable out of state funds, together with the secretary of state's calculation of three-fourths of that amount. The comptroller shall forthwith issue a warrant to the chairman for three-fourths of the certified amount.

(b) When a runoff for any statewide or district office is necessary, within 15 days after the first primary the state chairman shall submit to the secretary of state a sworn itemized estimate of the state executive committee's costs for the runoff primary. As in the case of the first primary, the secretary of state shall notify the chairman of items which he disallows and shall certify to the comptroller the approved estimated amount which is payable out of state funds, together with the secretary of state's calculation of three-fourths of that amount; and the comptroller shall issue a warrant to the chairman for three-fourths of the certified amount.

(c) Within 20 days after the date of the runoff primary, the state chairman shall submit to the secretary of state a sworn itemized report of the actual costs incurred by the state chairman and the state executive committee in conducting the primary election or elections (as the case may be) and of any filing fees not previously reported. If the actual expenditure for an item exceeded the estimated amount, the chairman shall submit an explanation of the reason for the increased expenditure, and the secretary of state shall allow the increase if good cause is shown. The secretary of state shall certify to the comptroller the difference between the total amount payable out of state funds and the amount which has already been transmitted to the chairman. If the total amount of fees retained and the payments from the state exceed the actual expenditures incurred, the chairman shall retain the difference, to be used as a beginning balance on hand for the next ensuing primary conducted by the party.

(d) In any case in which the secretary of state disallows an item of expenditure under Subsection

(a) or (b) of this section or refuses to allow an increase under Subsection (c), the state chairman may appeal to the district court of Travis County by filing a petition within 20 days after the date the notification is received from the secretary of state, and the district court shall allow such expenditures as are properly payable under existing law. Any item not certified to the comptroller of public accounts within 15 days after its submission to the secretary of state may be considered disallowed for this purpose.

[Added by Acts 1977, 65th Leg., p. 1398, ch. 563, § 2, eff. Aug. 29, 1977.]

Former art. 13.08a-1 was repealed by Acts 1975, 64th Leg., p. 2054, ch. 675, § 8(a).

Art. 13.08b. Refund Upon Death of Candidate

No refund of a filing fee shall be made except to a candidate who dies or is declared ineligible to be a candidate for the office before the date of the first or general primary election, in which case the fee paid by the candidate shall be refunded to the candidate or to his estate, as appropriate.

[Amended by Acts 1975, 64th Leg., p. 2052, ch. 675, § 3, eff. Sept. 1, 1975.]

Art. 13.08c. Funding

Funds for the administration of the primary financing provisions of this code shall be supplied from the General Revenue Fund or any special fund which the legislature may direct by the General Appropriations Act. Said funds shall be appropriated for the 1976 primary elections and for subsequent primary elections thereafter, and shall be an amount payable from the General Revenue Fund or any special fund which the legislature may direct to pay all necessary expenses of primary elections approved by the secretary of state under the provisions of this code. The secretary of state is authorized to expend funds appropriated in the General Appropriations Act for the administration of primary elections for seasonal and part-time help, consumable supplies and materials, travel expenses, professional fees and services, and current and recurring operating expenses in an amount not to exceed \$60,000.

[Added by Acts 1975, 64th Leg., p. 2052, ch. 675, § 4, eff. Sept. 1, 1975.]

Art. 13.08c-1 to 13.08c-4. Repealed by Acts 1975, 64th Leg., p. 2054, ch. 675, § 8, eff. Sept. 1, 1975

Art. 13.09. Balloting at Primaries: Write-in Votes Permitted for Party Offices Only

(a) The vote at all primary elections shall be by official ballot, which shall conform to the provisions of this section and other provisions of this code relating to the official ballot for a primary election that are applicable to the method of voting used in the election. The provisions of this section which are expressed in terms applicable to paper ballots

shall be construed in a manner consistent with the method of voting used in the election whenever some other method is used. The name of the party shall be printed at the head of the ballot, and under such head shall be printed the names of all candidates, those for each nomination being arranged in the order determined by the county executive committee as provided in Section 195 of this code,¹ beneath the title of the office for which the nomination is sought.

[See *Compact Edition, Volume 2* for text of (b) to (d)]

[Amended by Acts 1977, 65th Leg., p. 660, ch. 247, § 8, eff. Aug. 29, 1977.]

¹ Article 13.17.

Art. 13.12. Application for Place on Ballot; Filing; Deadline; Extension; Withdrawal; Notice

(a) The application to have the name of any person affiliating with a party placed on the official ballot for a general primary as a candidate for the nomination of such party for any office for which a nomination may be made at such primary shall be governed by the rules stated in this section.

(b) Such application shall be in writing, indicating the office for which nomination is sought and whether for a full term or for an unexpired term, signed and duly acknowledged by the person desiring such nomination, or by twenty-five qualified voters. It shall state the occupation, county of residence, and post-office address of such person, and if made by him shall also state his age. If the application is made by qualified voters, there shall be endorsed on the application or filed in a separate instrument, before the deadline for filing applications, a statement signed by the candidate showing his consent to such candidacy.

(c) The application shall be filed with the state chairman in the case of all statewide offices and all district offices which are filled by the choice of voters residing in more than one county. It shall be filed with the county chairman of the particular county in the case of county and precinct offices and district offices which are filled by the choice of voters residing in only one county or less than one county. Except as provided in Subsection (d) of this section, the application shall be filed not later than 6 p. m. on the first Monday in February preceding such primary.

(d) The filing deadline stated in Subsection (c) of this section shall be extended for the particular party primary and office involved, as provided in this subsection:

(i) if between the fifth day preceding the filing deadline stated in Subsection (c) and the 45th day preceding the general primary, both dates included, any candidate for an office dies,

if the candidate had complied with all prerequisites for having his name placed on the ballot which he was required to perform by the date of his death;

(ii) if between the filing deadline stated in Subsection (c) and the 45th day preceding the general primary, both dates included, any candidate who is seeking nomination to an office which he then holds withdraws or is declared ineligible for election to that office; or

(iii) if between the filing deadline stated in Subsection (c) and the 45th day preceding the general primary, both dates included, the only candidate who has filed for a particular office in the primary of that party withdraws or is declared ineligible. In the enumerated circumstances, the name of the deceased, withdrawn, or ineligible candidate shall not be printed on the ballot, and applications for that party's nomination for that office may be filed not later than 6 p. m. on the 15th day following the death, withdrawal, or declaration of ineligibility of the candidate; provided, however, that where the death, withdrawal, or declaration of ineligibility occurs less than 15 days before the 40th day preceding the primary, the deadline for filing shall be 6 p. m. on the 40th day preceding the primary. Notwithstanding the provisions of Subsection (e) of this section, an application which is not received by the chairman until after 6 p. m. on the 40th day shall not be timely, and applications mailed but not actually received by that time shall not be accepted for filing.

(e) Except as otherwise provided in Subsection (d), an application filed under either Subsection (c) or (d) of this section shall be considered filed if sent to the proper chairman at his post-office address by registered or certified mail from any point in this state not later than the day on which the filing deadline falls, as shown by the postmark, provided, however, that if the deadline falls on a Saturday, Sunday, or holiday observed by the post office, it must be postmarked not later than the next regular business day for the post office. Any application not received by the chairman before the deadline does not comply with this law unless it has been mailed by registered or certified mail as herein provided, and it shall not be sufficient to send the application by any other type of mail unless it is delivered before the deadline.

(f) A candidate may withdraw by filing with the chairman with whom his application was filed, a signed request, duly acknowledged by him, that his name not be printed on the primary ballot. Whenever a filing period is extended by the death, withdrawal, or ineligibility of a candidate, each county chairman with whom the candidate's application was

filed shall give notice of the opening of the filing and of the deadline to file by mailing or delivering a news release within 48 hours after his first knowledge of the death, withdrawal, or ineligibility, to each newspaper, as defined in Article 28a, Vernon's Texas Civil Statutes, as amended, which is published in the county. Where the application was filed with the state chairman, he shall give notice in like manner by mailing or delivering the release to at least three daily newspapers which maintain news representatives in the State Capitol. The failure of a county chairman or state chairman to comply with this requirement shall be ground for his removal from office by the committee of which he is chairman.

(g) A candidate shall not be permitted to withdraw after the 45th day preceding the general primary. If after the 45th day preceding the general primary a candidate dies or is declared ineligible, the procedure detailed in Section 104 of this code¹ shall be followed. Except as provided in that section, the name of a deceased, withdrawn, or ineligible candidate shall not be printed on the ballot.

(h) Within ten days after the first Monday in February, the state chairman shall file with the Secretary of State, and each county chairman shall file with the county clerk of his county a list of the names of all candidates, arranged by office for which nomination is sought, whose applications have been timely received. In like manner each chairman shall file, within three days after any extended filing deadline under Subsection (d) of this section, a supplemental list of candidates whose applications were timely received after the original list was prepared. Each county chairman shall forward to the chairman of the state executive committee a copy of each list which he files with the county clerk.

(i) On the second Monday in March preceding each general primary, the state committee shall meet at some place to be designated by its chairman, who shall not less than three days prior to such meeting notify by mail all members of the committee and all persons whose names have been requested to be placed upon the official ballot of such designation. Such committee at this meeting by resolution shall direct their chairman to certify to each county chairman the names of such candidates as shown by the applications received by him. Copies of such certificates shall be immediately furnished to each newspaper in the state desiring to publish same, and one copy shall at once be mailed to the chairman of the executive committee of each county.

(j) The terms of this law shall apply to the county chairman and precinct committeemen, and the names of such candidates shall not be printed on the primary ballot unless such application shall have been filed as provided herein.

[Amended by Acts 1977, 65th Leg., p. 883, ch. 332, § 3, eff. Aug. 29, 1977.]

¹ Article 8.22.

Art. 13.12a. Nomination and Election to Fill Unexpired Term

(a) Offices to which applicable; occurrence of vacancy. The provisions of this section shall govern nomination for and election to unexpired terms which are to be filled by election at the general election, in state, district, county and precinct offices where the vacancy occurs by reason of the creation of a new office or the death, resignation, or removal from office of the incumbent in an existing office, and the length of the unexpired term to be filled at the election extends beyond the first day of January following the election. This section does not apply to offices, vacancies which are to be filled by special election, nor does it apply to the office of United States Senator, which is governed by Section 177 of this code.¹ For the purpose of this section, where a new office is created to come into existence at a date subsequent to the effective date of the statute or date of entry of the order creating it, the vacancy shall be deemed to occur as of the effective date of the statute or date of entry of the order, and where the incumbent of an office has submitted a resignation to become effective at a future date, the vacancy shall be deemed to occur upon acceptance of the resignation.

(b) Nominations by parties holding primary elections. For any party holding primary elections for nominating candidates for the ensuing general election, nominations for unexpired terms shall be made in accordance with the following provisions.

(1) If the vacancy occurs more than five days prior to the regular deadline for filing an application for a place on the general primary ballot, as provided in Section 190 of this Code,² nomination for the unexpired term shall be made by primary election in the same manner and under the same rules applicable to nominations for full terms.

(2) If the vacancy occurs on or after the fifth day preceding the regular filing deadline and on or before the 45th day before the day of the general primary election, nomination for the unexpired term shall be made by primary election, and candidates shall have until the end of the 40th day preceding the day of the general primary in which to file applications for a place on the primary ballot. The applications must be received and filed in the office of the proper chairman before the deadline, and applications mailed but not actually received before the deadline shall not be accepted for filing. Except as otherwise provided herein, the application shall conform to the requirements of Section 190 of this Code and shall be accompanied by the filing fee or petition provided for in Section 186 of this Code.³ Immediately following the deadline for filing applications, the state

chairman shall certify to the county chairman the names of candidates, if any, who have filed applications with him and paid their filing fee or filed a petition in accordance with this paragraph. Whenever the name of more than one candidate for the same office is to be placed on the ballot pursuant to the provisions of this paragraph, the county chairman shall call a meeting of the primary committee, in time to allow printing of the ballots before commencement of absentee voting in the general primary, and the primary committee shall determine by lot, in open meeting, the order in which the names of the candidates shall be printed on the ballot. If there is not more than one candidate for the same office, the county chairman shall make any necessary changes in the ballot as previously made up by the primary committee.

(3) If the vacancy occurs after the 45th day preceding the day of the general primary and on or before the 45th day before the day of the general election, the state executive committee in the case of state offices, the appropriate district executive committee in the case of district offices, the county executive committee in the case of county offices, and the appropriate precinct committee in the case of precinct offices, shall have the power to name a nominee for such office, and a nomination shall not be made by any other method; provided, however, that in any case where a district committee empowered to name a nominee fails to do so because it is unable to agree upon a nominee by majority vote, the state executive committee of that political party may name a candidate for such office and certify the name of the nominee to the proper officer.

(c) Nominations by parties not holding primary elections. For any party which is authorized to make nominations by party conventions, as provided in this Code, a nomination for the unexpired term shall be made at the appropriate party convention having power to make nominations for the particular office if the vacancy occurs more than two days prior to the date on which the convention is held. If the vacancy occurs on or after the second day preceding the convention and on or before the 45th day before the day of the general election, the appropriate executive committee of the party shall have the power to name a nominee, and a nomination shall not be made by any other method.

(d) Nominations by executive committees. The nomination must be made and certified to the proper officer not later than the 40th day before the day of the general election. Nominations for state offices and for district offices (including districts composed of only one county or part of one county) shall be certified to the Secretary of State, and nominations

for county and precinct offices shall be certified to the county clerk. The certificate of nomination shall be signed and acknowledged by the chairman of the committee making the nomination, and shall set forth the name of the nominee, the office for which he was nominated, and when, where, by whom, and how the nomination was made.

(e) Independent and nonpartisan candidates. If the vacancy occurs on or before the date of the second primary election, applications of independent or nonpartisan candidates must be filed in accordance with the provisions of Section 227 of this Code,⁴ not later than thirty days after the second primary election day. If the vacancy occurs after the second primary election day, and on or before the 45th day before the day of the general election, independent or nonpartisan candidates may file applications in the manner provided in Section 227, except that the application shall be filed not later than the 40th day before the day of the general election. No person shall sign an application prior to the occurrence of the vacancy, and any signature before that time shall be void.

(f) Write-in candidates. If the vacancy occurs on or before the 45th day before the day of the general election, the title of the office shall be printed on the ballot for the general election regardless of whether any nominations have been made for the unexpired term, and each voter may write in the name of the candidate of his choice.

(g) When election not to be held. If a vacancy occurs after the 45th day before the day of the general election, no one shall be elected to the unexpired term at that election, and the person appointed to fill the vacancy shall continue to hold office until the next succeeding general election and until a successor has been elected and has qualified.

(h) In all nominations made by an executive committee under this section or under Section 233 of this code,⁵ or under any other provision of law, a majority of the members of the committee must participate in making the nomination, and all nominations must be made by a majority vote of those members participating in the nomination.

[Amended by Acts 1975, 64th Leg., p. 2053, ch. 675, § 6, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 885, ch. 332, § 4, eff. Aug. 29, 1977.]

¹ Article 12.02.

² Article 13.12.

³ Article 13.08.

⁴ Article 13.50.

⁵ Article 13.56.

Arts. 13.15, 13.16. Repealed by Acts 1975, 64th Leg., p. 2054, ch. 675, § 8, eff. Sept. 1, 1975

Art. 13.18. County Executive Committees

[See Compact Edition, Volume 2 for text of 1 to 4]

Subd. 5. The funds received by the county executive committee from contributions, fees and assess-

ments paid by candidates, and expenses paid by the secretary of state shall constitute the primary fund, and any surplus remaining in the fund after payment of the necessary expenses for holding the primary elections for that year shall be retained in the primary fund, and the balance reported to the secretary of state as required by Section 186a of this code.¹ The county executive committee is authorized to invest the primary fund by deposit with any federally insured institution; provided, however, that the required length of time of the deposit shall not extend beyond 30 days prior to the next general primary election.

Subd. 6. In cases where there is no county party organization in a county, the state executive committee may, by a majority vote of the total membership of the committee, appoint a qualified voter of that county to serve as the acting county chairman until such time as his successor is elected and assumes office under the provisions of Subdivision 1 of this section. A temporary county chairman appointed under the provisions of this subdivision shall call a meeting of the voters of that county, at which time a temporary county executive committee may be elected by the voters participating in the meeting, with such committee to be empowered to fulfill all the duties placed upon a county executive committee by law until such time as a permanent executive committee is elected by the voters in the party's primary.

[Amended by Acts 1975, 64th Leg., p. 2052, ch. 675, § 5, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1702, ch. 677, § 1, eff. Aug. 29, 1977.]

¹ Article 13.08a.

Art. 13.18a. District and Precinct Executive Committees

(1) For a district composed of more than one county or part thereof, the county chairman of each county wholly within the district shall be ex officio a member of the district executive committee for each such district of which his county is a part. When a part of a county is joined with one or more other counties or parts of counties to form a district, at a meeting of the county executive committee on the second Monday in February preceding each general primary election the precinct chairman of the election precincts included within such part of the county shall elect one of their number to serve as district committeeman; and a district committeeman shall be selected in this manner for each type of district and for each district for which any part of the county less than the whole county is joined with territory in another county or counties. The district committee thus formed shall elect its own chairman. Whenever a vacancy occurs in a district office and the district committee is empowered to name a nominee or a substitute nominee, or whenever for any other reason it becomes necessary for the district

committee to meet and organize, the chairman of the state executive committee shall call a meeting of the district committee by giving notice to each member of the time and place where such meeting will be held and of the purpose of the meeting. The state chairman shall designate one member as temporary chairman, who shall call the meeting to order and preside until the committee elects its own chairman. The chairman elected by the committee shall continue to act as chairman during the remainder of that term of office, and shall call any subsequent meetings of the committee which are held during that time.

[See Compact Edition, Volume 2 for text of (2)]

(3) For a district composed of only a part of one county, the precinct chairmen of the election precincts included within the district shall constitute the district executive committee. At the meeting of the county executive committee on the second Monday in February preceding each general primary election, the precinct chairman within the district shall elect one of their number to serve as chairman of the district executive committee; and a chairman shall be selected in this manner for each type of district and for each district composed of only a part of the county.

[See Compact Edition, Volume 2 for text of (4) and (5)]

[Amended by Acts 1975, 64th Leg., p. 2053, ch. 675, § 7, eff. Sept. 1, 1975.]

Art. 13.19. Supplies

The executive committee shall have a general supervision of the primary in such county and shall be charged with the full responsibility for the distribution to the presiding judge of all supplies, including but not limited to the number of voter registration applications, necessary for holding same in each election precinct. If the duly appointed presiding officer shall fail to obtain from the executive committee the supplies for holding such election, such committee shall deliver the same to the precinct chairman for such precinct, and, if unable to deliver the same to such presiding officer or precinct chairman not less than twenty-four (24) hours prior to the time of opening the polls for such primary, such committee shall deliver the same to any qualified voter of the party residing in such precinct, taking his receipt therefor, and appointing him to hold such election in case such presiding officer or precinct chairman shall fail to appear at the time prescribed for opening the polls.

[Amended by Acts 1977, 65th Leg., p. 1216, ch. 468, § 6, eff. Aug. 29, 1977.]

Art. 13.21. Repealed by Acts 1977, 65th Leg., p. 594, ch. 209, § 8, eff. Aug. 29, 1977.

Art. 13.35. Date and Place for State Convention

At the meeting of the State Executive Committee held on the second Monday in March preceding each general primary election the said committee shall decide upon the date, hour and place where the State convention of the party shall be held, said date to be any day between the first and third Tuesdays, exclusive, in September, 1976, and each two (2) years thereafter. The chairman of the State executive committee shall file with the Secretary of State a notice of the date, hour and place of holding the State convention and a copy of such notice shall be mailed to the county chairman of that party in each county in the State at least ten (10) days before the convention is held.

[Amended by Acts 1975, 64th Leg., p. 2099, ch. 683, § 1, eff. Sept. 1, 1975.]

Art. 13.38. State Convention

The state convention to announce a platform of principles and to announce nominations for Governor and other state offices, held by a political party making nominations by primary election, shall meet on a date between the first and third Tuesdays, exclusive, in September of each even-numbered year, such date and the place of said meeting to be determined by the state executive committee as provided in Section 213 of this Code,¹ and shall remain in session from day to day until all nominations are announced and the work of the convention is finished. The convention shall elect a chairman and a vice-chairman of the state executive committee, one of whom shall be a man and the other a woman, and sixty-two members thereof, two from each senatorial district of the state, one of whom shall be a man and the other a woman, the members of the committee to be those who shall be recommended by the delegates representing the counties composing the senatorial districts respectively, each county voting its convention strength, each of whom shall hold office until his successor is elected; and, in case of a vacancy, a majority of the members of the committee shall fill the vacancy by electing some eligible person thereto, but such person shall be of the same sex as the vacating member and from the same senatorial district.

At any meeting of the state executive committee a person cannot hold a proxy or participate in such meeting unless he is a resident of the same senatorial district as the member giving the proxy, and no person shall be permitted to hold or vote more than one proxy.

[Amended by Acts 1975, 64th Leg., p. 2100, ch. 683, § 2, eff. Sept. 1, 1975.]

¹ Article 13.35.

Art. 13.45. Nominations by Parties Receiving Less Than 20 Percent of Vote for Governor

[See Compact Edition, Volume 2 for text of 1]

Parties Receiving Less Than Two Percent of Vote for Governor

Subd. 2. (a) Any political party whose nominee for governor received less than two percent of the total votes cast for governor in the last preceding general election for that office, or any new party, or any previously existing party which did not have a nominee for governor in the last preceding general election for that office, may nominate candidates by conventions as provided in Sections 224 and 225 of this code,¹ but in order to have the names of its nominees printed on the general election ballot there must be filed with the secretary of state, within 30 days after the date for holding the party's state convention, the lists of participants in precinct conventions held by the party in accordance with Sections 222a and 224 of this code,² signed and certified by the temporary chairman of each respective precinct convention, listing the names, addresses (including street address or post-office address), and registration certificate numbers of qualified voters attending such precinct conventions in an aggregate number of at least one percent of the total votes cast for governor at the last preceding general election for that office; or if the number of qualified voters attending the precinct conventions is less than that number, there must be filed along with the precinct lists a petition requesting that the names of the party's nominees be printed on the general election ballot, signed by a sufficient number of additional qualified voters to make a combined total of at least one percent of the total votes cast for governor at the last general election for that office. The address and registration certificate number of each signer shall be shown on the petition. No person who, during that voting year, has voted at any primary election or participated in any convention of any other party shall be eligible to sign the petition.

(b) The following statement shall appear at the head of each page of the petition: "I know the contents of this petition, requesting that the names of the nominees of the _____ Party be printed on the ballot for the next general election. I am a qualified voter at the next general election under the constitution and laws in force, and during the current voting year I have not voted in any primary election or participated in any convention held by any other political party, and I will not vote in a primary election or participate in a convention of any other party during the remainder of this voting year." The petition may be in multiple parts. To each part of the petition shall be attached an affidavit of the person who circulated it, stating that he called each signer's attention to the statement and

read it to him before the signer affixed his signature to the petition, and further stating that he witnessed the affixing of each signature, that the correct date of signing is shown on the petition, and that to the best of his knowledge and belief each signature is the genuine signature of the person whose name is signed. A petition so verified is prima facie evidence that the signatures thereon are genuine and the persons signing it are registered voters. The petition may not be circulated for signatures until after the date of the party's precinct conventions. Any signatures obtained on or before that date are void.

(c) Any person who signs a petition after having voted in a primary election or participated in a convention of any other party during the same voting year, or any person who votes in a primary election or participates in a convention of any other party during the same voting year after having signed the petition, is guilty of a misdemeanor and upon conviction shall be fined not less than \$100 nor more than \$500.

(d) The chairman of the state executive committee shall be responsible for forwarding the precinct lists and petition to the secretary of state.

(e) At the time the secretary of state makes his certifications to the county clerks as provided in Section 3 of this code,³ he shall also certify to the county clerks the names of parties subject to this subdivision which have complied with its requirements, and the county clerks shall not place on the ballot the names of any nominees of such a party which have been certified directly to them unless the secretary of state certifies that the party has complied with these requirements.

[Amended by Acts 1975, 64th Leg., p. 2094, ch. 682, § 21, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1702, ch. 677, § 2, eff. Aug. 29, 1977.]

¹ Articles 13.47 and 13.48.

² Articles 13.47 and 13.48.

³ Articles 13.45a and 13.47.

Art. 13.45a. Regulation of Party Affairs and Conventions

Subd. 1. Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975.

[See Compact Edition, Volume 2 for text of 2 to 4]

[Amended by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975.]

Art. 13.46. Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975

Art. 13.47a. Application for Nomination; Affidavit of Intent to Run; Filing

[See Compact Edition, Volume 2 for text of 1 and 2]

Sec. 3. Repealed by Acts 1975, 64th Leg., p. 2098, ch. 682, § 28, eff. Sept. 1, 1975.

Sec. 4. The requirements of Section 1 do not apply to candidates for unexpired terms where the vacancy in office occurs subsequent to the tenth day preceding the regular deadline for filing applications for a place on a primary election ballot as prescribed in Paragraph 2 of Section 190 of this code (Article 13.12, Vernon's Texas Election Code).

[Amended by Acts 1975, 64th Leg., p. 2095, ch. 682, §§ 22, 28, eff. Sept. 1, 1975.]

Art. 13.50. Nonpartisan or Independent Candidate

Subd. 1. This section applies to nonpartisan or independent candidates for federal, state, district, county, and precinct offices in the general election provided for in Section 9 of this code (Article 2.01, Vernon's Texas Election Code). A person may run as a nonpartisan or independent candidate for any such office, other than the offices of president, vice president, and presidential elector, by complying with this section and other applicable provisions of this code.

Subd. 2. (a) As a condition precedent to having a candidate's name printed on the official ballot as an independent candidate under this section, in addition to the application required by Subdivision 3 of this section, the person must file, by the deadline provided in Section 190 of this code (Article 13.12, Vernon's Texas Election Code), a declaration of his intent to run as an independent candidate. The declaration shall state the person's name, occupation, county of residence, post office address, age, and the office for which he intends to run, and shall be signed and duly acknowledged by the person desiring to be a candidate. It shall be filed with the officer with whom the application required by Subdivision 3 of this section is filed.

(b) The requirements of Paragraph (a) of this subdivision do not apply to candidates for unexpired terms where the vacancy in office occurs subsequent to the tenth day preceding the regular deadline for filing application for a place on a primary election ballot as prescribed in Section 190 of this code (Article 13.12, Vernon's Texas Election Code), and do not apply to candidates for any office for which the filing deadline in a primary election is extended under the provisions of Paragraph 2a of Section 190. However, an independent candidate who is not required to file a declaration of intent under Paragraph (a) of this subdivision must file with the secretary of state or the county judge, as the case may be, his written consent to become a candidate, within 30 days after the second primary election day.

Subd. 3. The name of a nonpartisan or independent candidate may be printed on the official ballot in the column for independent candidates, after a written application signed by qualified voters ad-

ressed to the proper officer, as herein provided, and delivered to him within 30 days after the second primary election day, as follows:

If for an office to be voted for throughout the state, the application shall be signed by one per cent of the entire vote of the state cast for Governor at the last preceding gubernatorial general election, and shall be addressed to the Secretary of State.

If for a district office in a district composed of more than one county, the application shall be signed by three per cent of the entire vote cast for Governor in such district at the last preceding gubernatorial general election, and shall be addressed to the Secretary of State.

If for a district office in a district composed of only one county or part of one county, the application shall be signed by five per cent of the entire vote cast for Governor in such district at the last preceding gubernatorial general election, and shall be addressed to the Secretary of State.

If for a county office, the application shall be signed by five per cent of the entire vote cast for Governor in such county at the last preceding gubernatorial general election, and shall be addressed to the county judge.

If for a precinct office, the application shall be signed by five per cent of the entire vote cast for Governor in such precinct at the last preceding gubernatorial general election, and shall be addressed to the county judge.

Notwithstanding the foregoing provisions, the number of signatures required on an application for any district, county, or precinct office need not exceed 500.

Subd. 4. No application shall contain the name of more than one candidate. No person shall sign the application of more than one candidate for the same office; and if any person signs the application of more than one candidate for the same office, the signature shall be void as to all such applications. No person shall sign such application unless he is a qualified voter, and no person who has voted at either the general primary election or the runoff primary election of any party shall sign an application in favor of anyone for an office for which a nomination was made at either such primary election.

Subd. 5. In addition to the person's signature, the application shall show each signer's address, the number of his voter registration certificate, and the date of signing.

Subd. 6. Any person signing the application of an independent candidate may withdraw and annul

his signature by delivering to the candidate and to the officer with whom the application is filed (or is to be filed, if not then filed), his written request, signed and duly acknowledged by him, that his signature be cancelled and annulled. The request must be delivered before the application is acted on, and not later than the day preceding the last day for filing the application. Upon such withdrawal, the person shall be free to sign the application of another candidate for the same office.

[Amended by Acts 1975, 64th Leg., p. 2095, ch. 682, § 23, eff. Sept. 1, 1975.]

Art. 13.51. Signer's Statement on Application; Verification

The following statement shall appear at the head of each page of the application: "I know the contents of this application; I have not participated in the general primary election or the runoff primary election of any party which has nominated, at either such election, a candidate for the office for which I desire _____ (here insert the name of the candidate) to be a candidate; I am a qualified voter at the next general election under the Constitution and laws in force and am signing this application of my own free will." The application may be in multiple parts. To each part of the application shall be attached an affidavit of the person who circulated it, stating that he called each signer's attention to the statement and read it to him before the signer affixed his signature to the application, and further stating that he witnessed the affixing of each signature, that the correct date of signing is shown on the application, and that to the best of his knowledge and belief each signature is the genuine signature of the person whose name is signed. An application so verified is prima facie evidence that the signatures thereon are genuine and the persons signing it are registered voters.

[Amended by Acts 1977, 65th Leg., p. 1703, ch. 677, § 3, eff. Aug. 29, 1977.]

Art. 13.52. Consent to Run

Upon receipt of an application which conforms to the above requirements, the Secretary of State shall issue his instruction to the county clerks of the state or of the district, as the case may require, and the county judge shall issue his instruction to the county clerk of the county, directing that the name of the candidate on whose favor the application is made shall be printed on the official ballot in the independent column under the title of the office for which he is a candidate; provided, that any candidate who is required by Subdivision 2, Section 227 of this code (Subdivision 2, Article 13.50, Vernon's Texas Election Code) to file a statement of intent to become an independent candidate must have filed such statement in compliance with the provisions of that subdivision, and any candidate not required to file such

statement must file with the Secretary of State or the county judge, as the case may be, his written consent to become a candidate, within 30 days after the second primary election day.

[Amended by Acts 1975, 64th Leg., p. 2097, ch. 682, § 24, eff. Sept. 1, 1975.]

Art. 13.54. Nominations by Parties Without State Organization

Any political party without a state organization desiring to nominate candidates for county and precinct offices only may nominate such candidates therefor by a county convention held on the second Saturday in May of the election year, which convention shall be composed of delegates from the various election precincts in the county, elected therein at conventions held in such precincts on the first Saturday in May. All nominations made by any such parties shall be certified to the county clerk by the chairman of the county committee of such party, and, after taking the same course as nominations of other parties so certified, shall be printed on the official ballot in a separate column, headed by the name of the party; provided, a written application for such printing shall have been made to the county judge not later than June 30 following the conventions, signed by qualified voters of the county equal in number to at least three per cent of the entire vote cast for governor in such county at the last general election for that office. No person who is affiliated with any other political party is eligible to sign the application. The application shall contain the following information with respect to each person signing it: his address, the number of his voter registration certificate, and the date of signing. The application may not be circulated for signatures until after the date of the precinct conventions, and any signatures obtained on or before that date are void. The application may be in multiple parts. To each part there shall be attached an affidavit of the person who circulated it, who must be a registered voter in the county, stating that he witnessed the affixing of each signature, that the correct date of signing is shown on the application, and that to his best knowledge and belief each signature is the genuine signature of the person whose name is signed. An application so verified is prima facie evidence that the signatures thereon are genuine and that the persons signing it are qualified voters of the county.

[Amended by Acts 1975, 64th Leg., p. 2097, ch. 682, § 25, eff. Sept. 1, 1975.]

Art. 13.56. Death, Withdrawal, or Ineligibility of Candidate; Filling Vacancy in Nomination

(a) A nominee of a political party may decline and annul his nomination by delivering to the officer with whom the certificate of his nomination is filed

and to the chairman of the executive committee having the power to fill a vacancy in such nomination, not later than the 45th day before the day of the general election, a declaration in writing, signed by him and acknowledged before some officer authorized to take acknowledgments, whereupon the officer receiving the declaration shall take the necessary action to have the name of the nominee removed from the ballot. A nominee may not decline the nomination after the 45th day before election day.

(b) If on or before the 45th day before the day of the election, a nominee dies or declines the nomination, or is declared ineligible to be elected to or to hold the office for which he is a candidate, the executive committee of the party for the state, district, county, or precinct, as the office to be nominated may require, may nominate a candidate to supply the vacancy. A certificate of such nomination, signed and duly acknowledged by the chairman of the executive committee, must be filed with the officer with whom the certificate of the original nomination was filed and must set forth the name of the original nominee, the cause of the vacancy, the name of the new nominee, the office for which he was nominated, and when, where, by whom, and how he was nominated. The certificate must be filed not later than the 40th day before the day of the election. The officer with whom the substitute nomination is filed shall immediately take the necessary action to cause the name of the new nominee to be placed on the ballot.

(c) In any case where a district committee is empowered to name a nominee and fails to do so, the state executive committee may name a candidate for such office and certify the name to the proper officer to have the name printed on the official ballot for the general election. The certification must be filed not later than the 5th day after the deadline for certification by the district committee and in any event not later than the 40th day before election day.

(d) If a party nominee dies or declines the nomination or is declared ineligible after the 45th day preceding the day of the general election, the procedure set out in Section 104 of this code¹ shall be followed.

(e) An independent candidate may withdraw his candidacy and cause his name to be kept off the ballot by delivering to the officer with whom the application requesting his name to be placed on the ballot was filed, not later than the 40th day before election day a declaration in writing, signed and duly acknowledged by him, whereupon the officer with whom the declaration is filed shall immediately take the necessary action to cause the candidate's name to be removed from the ballot. A candidate may not withdraw after the 40th day before election day.

(f) If an independent candidate in the general election for state and county officers withdraws or is declared ineligible before the 44th day before election day, his name shall not be printed on the ballot. If he dies after completing all the procedural requirements for candidacy and before the 44th day before election day, his name shall be printed on the ballot if he was the incumbent in the office for which he was a candidate or if no other candidate's name is to be printed on the ballot in that race; otherwise, his name shall not be printed on the ballot. If he dies or is declared ineligible after the 45th day before election day, his name shall be printed on the ballot. When a deceased or ineligible candidate's name is printed on the ballot, the procedure set out in Section 104 of this code shall be followed.

(g) If an independent candidate in any election other than the general election for state and county officers dies before the second day before the filing deadline for independent candidates in that election, or if he withdraws or is declared ineligible before the 20th day before election day, his name shall not be printed on the ballot. If he dies on or after the second day before the filing deadline or if he is declared ineligible on or after the 20th day before election day, his name shall be printed on the ballot and the procedure set out in Section 104 of this code shall be followed.

(h) When a candidate dies and his name is to be removed from the ballot under any provision of this section, the officer responsible for making up the ballot for the election shall remove the candidate's name upon receiving reliable information of the death. However, in the case of a candidate whose name is certified to the county clerk by the secretary of state, the clerk shall not remove the candidate's name from the ballot without authorization from the secretary of state.

(i) The provisions of this section in regard to independent candidates apply to all general and special elections, by whatever authority held, except that charter provisions of a home-rule city supersede the provisions of this section. The term "independent candidate" means any candidate, not the nominee of a political party in a partisan election, who is seeking ballot position in any general or special election.

[Amended by Acts 1975, 64th Leg., p. 2104, ch. 685, § 3, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 887, ch. 332, § 5, eff. Aug. 29, 1977.]

¹ Article 8.22.

Art. 13.58. National Convention

(a) Any political party holding primary elections in an election year during which it desires to elect delegates to a national convention shall hold a state convention at such hour and place and on such date as may be designated by the state executive commit-

tee of the party, such date to be any day between the second and fourth Tuesdays, inclusive, following the second primary election date. Such convention shall be composed of delegates duly elected at the county and senatorial district conventions as provided for in Section 212 of this code. The chairman of the state executive committee shall notify the Secretary of State as to the date, hour and place at which the state convention will be held and shall also mail a copy of such notice to each county chairman and the temporary chairman of each senatorial district convention in the state at least ten days prior to the date of the state convention.

[See Compact Edition, Volume 2 for text of (b)]
[Amended by Acts 1975, 64th Leg., p. 2100, ch. 683, § 3, eff. Sept. 1, 1975.]

Art. 13.58a. Expired

This article, enacted by Acts 1975, 64th Leg., p. 630, ch. 261, § 1, requiring certain political parties to hold presidential primary elections and prescribing the method for selecting delegates to national nominating conventions of those parties, expired by the terms of § 2 of the Act on March 1, 1977.

CHAPTER FOURTEEN. POLITICAL FUNDS REPORTING AND DISCLOSURE ACT

Article

14.03a. Repealed.

14.10. Campaign Communications [NEW].

14.10A. Repealed.

Art. 14.01. Definitions

As used in this chapter—

(A) "Candidate" is defined as any person who has knowingly and willingly taken affirmative action for the purpose of seeking nomination or election to any public office which is required by law to be determined by an election. Some examples of affirmative action are:

1. Filing of application for a position on a ballot.
2. Filing of application for nomination by a convention under Section 224a of this code.¹
3. Independent candidate's declaration of intent under Section 224a of this code.
4. Public announcement of a definite intent to run for office at a particular election, either with or without designating the specific office to be sought.
5. Statement of definite intent and solicitation of support through letters or other modes of communication, prior to a public announcement.
6. Solicitation of or acceptance of a contribution for use in a future election.

The filing of a designation of a campaign treasurer is not affirmative action which makes one a candidate as defined in this chapter.

(B) "Office-holder" is defined as any person serving in a public office as defined herein and any other constitutionally designated member of the Executive Department.

(C) "Corporation" is defined as every organization organized or operating under authority of the Texas Business Corporation Act or the Texas Non-Profit Corporation Act, any corporation or association organized by authority of any law of Congress or of any other state or nation than Texas, national, state, private or unincorporated banks, trust companies, building and loan associations or companies, insurance companies, reciprocal or interinsurance exchanges, railroad companies, cemetery companies, cooperatives, abstract and title insurance companies, and stock companies. However, any political committee whose only principal purpose is to accept contributions and to make expenditures, as defined in this section, shall not be deemed to be a corporation under the provisions of this chapter if such committee is incorporated for liability purposes only. Incorporation of a political committee shall not relieve any person of any liability, duty, or obligation created pursuant to any provision of the Texas Election Code.

(D) "Contribution" is defined as:

(1) any advance, loan, deposit or transfer of funds, goods, services or any other thing of value, or any contract or obligation, whether enforceable or unenforceable, to transfer any funds, goods, services, or anything of value to any candidate, or political committee, which advance or other such item is involved in an election; providing that an individual or group of persons is involved in an election upon the receipt of a contribution or the making of an expenditure which was given or made and received with the intent that it be used or held for some election and that the receipt of or making of the contribution or expenditure may occur before, during, or after an election; or as

(2) any advance, deposit or transfer of funds, goods, services or anything of value or creation of any contract or obligation, enforceable or unenforceable, to transfer any funds, goods, services, or anything of value knowingly accepted by any office-holder for the purpose of assisting such person in the performance of duties or activities in connection with the office which are nonreimbursable by the state or political subdivision.

(E) "Expenditures" is defined as any payments made or obligations incurred

(1) by a candidate, or political committee, when such payments or obligations are involved in an election; or

(2) by an office-holder, when such payments are made in the performance of duties or activities in connection with the office which are nonreimbursable by the state or the political subdivision.

"Involved in an election" has the same meaning as in (D) above.

(F) "Election" is defined as any election held to nominate or elect a candidate to any public office. It shall also include any election at which a measure is submitted to the people.

(G) "Public office" is defined as any office created by or under authority of the laws of the state, that is filled by the voters.

(H) "State office" is defined as any public office of the state government which is to be filled by the choice of the voters of the entire state, except presidential electors.

(I) "District office" is defined as any public office of the state government, less than statewide, which is to be filled by the choice of the voters residing in more than one county, and the offices of State Senator, State Representative, and State Board of Education.

(J) "County office" is defined as any public office of the state or county government which is to be filled by the choice of the voters residing in only one county or less than one county, except for those offices specifically enumerated as district offices above.

(K) "Municipal office" is defined as any public office of any incorporated city, town, or village which is to be filled by the choice of the voters.

(L) "Office of a political subdivision" is defined as any public office of any political subdivision of this state which is organized as a body politic and has a governing board or body, except counties, cities, towns and villages, which is to be filled by the choice of the voters residing in that subdivision.

(M) "Measure" is defined as any proposal submitted to the people for their approval or rejection at an election, including any proposed law, Act or part of an Act of the legislature, revision of or amendment to the constitution, local, special, or municipal legislation or proposition or ballot question.

(N) "Person" is defined as an individual, corporation, partnership, labor union or labor organization, or any unincorporated association, firm, committee, club, or other organization or group of persons including any group of persons associated with a political party or element thereof.

(O) "Political committee" is defined as any group of persons

(1) formed to collect contributions or make expenditures in support for or in opposition to a candidate or candidates, whether presently identifiable or not, or a measure or measures, whether presently identifiable or not, on a ballot in a public election; or

(2) formed to collect contributions or make expenditures for office holders whether presently identifiable or not.

(P) "Specific purpose political committee" is defined as:

(1) any political committee which accepts only contributions and/or makes only expenditures in support for or in opposition to candidates who are identifiable and for whom the office(s) to be sought are known and any political committee only accepting contributions and/or making expenditures in support for or in opposition to measures which are identifiable; or

(2) any political committee which accepts only contributions and/or makes only expenditures in assisting identifiable office-holders.

(Q) "General purpose political committee" is defined as:

(1) any political committee which accepts contributions and/or makes expenditures in support for or in opposition to candidates who are indefinite in identity or for whom the office(s) to be sought are unknown and any political committee which accepts contributions and/or makes expenditures in support for or in opposition to measures which are indefinite in identity; or

(2) any political committee which accepts contributions and/or makes expenditures in assisting office-holders, who are not identified.

(R) "Political advertising" is defined as anything in favor of or in opposition to any candidate for public office or office of a political party, or in favor of or in opposition to any political party, or in favor of or in opposition to the success of any public officer, or in favor of or in opposition to any measure submitted to a vote of the people, which is communicated in any of the following forms:

(1) anything published in a newspaper, magazine, or journal or broadcast over a radio or television station in consideration of money or other thing of value; or

(2) any handbill, pamphlet, circular, flier, commercial billboard sign, bumper sticker, or similar printed material.

The term does not include nonpolitical letter-heads, ordinary printed invitations to and tickets for fund-raising events or other affairs, campaign pins, buttons, fingernail files, matchbooks, emblems, hats, pencils, and similar materials.

[Amended by Acts 1975, 64th Leg., p. 2257, ch. 711, § 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 735, ch. 276, §§ 1, 2, eff. Aug. 29, 1977.]

¹ Article 13.47a.

The 1975 Act, which by §§ 2 to 14 amended arts. 14.01 to 14.10, 14.13 and 14.15, provided in §§ 1, 15 to 17:

"Sec. 1. This Act shall be styled the Political Funds Reporting and Disclosure Act of 1975.

"Sec. 15. Nothing in this Act repeals or otherwise affects Article 5428a, Vernon's Texas Civil Statutes, as added by Chapter 48, Acts of the 63rd Legislature, Regular Session, 1973.

"Sec. 16. There is hereby appropriated to the Secretary of State out of the General Revenue Fund the amount of \$204,020 for the year ending August 31, 1976, and the amount of \$147,020 for the year ending August 31, 1977, for the purpose of implementing this Act.

"Sec. 17. If any provision of this Act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

Art. 14.02. Appointment of Campaign Treasurer

(A) Notwithstanding the following subsections of this section, no designation of a campaign treasurer shall be required in order that an office-holder accept contributions or make expenditures as defined in Section 237(D)(2), Texas Election Code, as amended (Article 14.01(D)(2), Vernon's Texas Election Code) and Section 237(E)(2), Texas Election Code, as amended (Article 14.01(E)(2), Vernon's Texas Election Code). Unexpended campaign contributions, as defined in Subsection (D)(1) of Section 237, which are lawfully accepted, may be used by an office-holder for expenditures in connection with the office pursuant to subsection (E)(2) of Section 237. Notwithstanding the requirement set forth in subsection (F)(1) of this section, any contribution as defined in Section 237(D)(2), Texas Election Code, as amended (Article 14.01(D)(2), Vernon's Texas Election Code) that has been lawfully accepted prior to the designation of a campaign treasurer may be utilized as campaign contributions after such designation.

(B) Every candidate for nomination to or election to a state or district office and every specific purpose political committee in any such election or in an election involving a statewide or district measure and every general purpose political committee shall designate a campaign treasurer by written appointment filed with the Secretary of State, and may also designate assistant campaign treasurers for each county by written appointment to be filed either with the county clerk of said county, or the Secretary of State.

(C) Every candidate for nomination to or election to a county office and every specific purpose political committee in any such election or in an election involving a county measure shall designate a campaign treasurer by written appointment to be filed with the county clerk of such county.

(D) Every candidate for nomination to or election to a municipal office or an office of a political subdivision and every specific purpose political committee in any such election or in an election involving a measure of a municipality or political subdivision shall designate a campaign treasurer by written appointment to be filed with the clerk or secretary of the municipality or political subdivision and, if the political subdivision extends beyond the boundaries of one county, may also designate assistant campaign treasurers for each county affected by such candidacy.

(E) Any campaign treasurer or assistant campaign treasurer designated as provided in this Section may be removed by the candidate or political committee at any time by the written appointment of a successor filed in the manner provided for the original designations.

(F)(1) Except as expressly permitted in this chapter, no contribution as defined in Section 237(D)(1) shall be accepted nor any expenditure, as defined in Section 237(E)(1), including the paying of any filing fee, made by an individual until he has filed the name of his campaign treasurer with the appropriate authority. No contribution shall be accepted nor any expenditure made by a political committee until it has filed the name of its campaign treasurer with the appropriate authority. If it is not otherwise possible for a candidate or specific purpose political committee to determine which authority is appropriate for the filing of campaign treasurer designation, then a filing with the Secretary of State shall be sufficient, but only until such time as the appropriate authority may be determined in accordance with the provisions of Subsections (a), (b), and (c) of this Section.

(2) A political committee existing prior to the effective date of this Act shall file a new designation of a campaign treasurer with the appropriate authority for that committee before accepting any additional contributions or making any additional expenditures after the effective date of this Act.

(G) It shall be unlawful for any candidate, political committee, campaign treasurer, assistant campaign treasurer, or any other person to expend funds from any unlawful contributions.

(H) Nothing in this Act shall be construed to prohibit a candidate from appointing himself or herself as the campaign treasurer.

(I) An individual intending to become a candidate for public office may file a designation of campaign treasurer before taking any affirmative action for the purpose of seeking nomination or election.

(J) A designation of a campaign treasurer shall be deemed to be timely filed if it is placed in the United States Post Office or in the hands of a common or contract carrier properly addressed to the appropriate authority within the time limits applicable to

such designation. The postmark or receipt mark (if received by a common or contract carrier) will be prima facie evidence of the date that such statement was deposited with the post office or carrier. The person filing the designation may show by competent evidence that the actual date of posting was to the contrary. No charge shall be made for filing designations of campaign treasurer with any authority.

[Amended by Acts 1975, 64th Leg., p. 2259, ch. 711, § 3, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 736, ch. 276, §§ 3, 4, eff. Aug. 29, 1977.]

Art. 14.03. Campaign Contributions

(A) It shall be lawful for an individual not acting in concert with any other person to expend a sum in a campaign which shall not in the aggregate exceed \$100 per election for any lawful purpose out of his own funds to aid or defeat any candidate or measure, where the sum is not to be repaid to him. Such a sum will not be reportable to any authority unless it constitutes a contribution. If an individual not acting in concert with any person wishes to expend more than \$100 for any lawful purpose out of his own funds to aid or defeat any candidate or candidates or measures, he may do so either by making a contribution or by complying with all of the provisions of this chapter as if he were a campaign treasurer of a political committee.

(B) It shall be lawful for any individual to donate his own personal services and personal traveling expenses to aid or defeat any candidate or measure and such a donation shall not constitute a contribution or expenditure, as defined in Section 237 of this code¹ only so long as he either is not compensated or reimbursed for same.

(C) It shall be unlawful for any person to make any contribution or expenditure in the name of another or on behalf of another without revealing that fact in order that the proper disclosure may be made.

(D) Except as expressly permitted by Paragraphs (A) and (B) of this Section it shall be unlawful for any person, other than a candidate, his campaign treasurer, or assistant campaign treasurer, or the campaign treasurer of a political committee, to make or authorize any campaign expenditure. Except as provided in Paragraphs (A) and (B) of this Section, campaign expenditures must be made by the candidate, campaign treasurer, or assistant campaign treasurer, or the campaign treasurer of a political committee.

[Amended by Acts 1975, 64th Leg., p. 2261, ch. 711, § 5, eff. Sept. 1, 1975.]

¹ Article 14.01.

Former article 14.03, Purposes of Expenditures, was repealed by Acts 1975, 64th Leg., p. 2261, ch. 711, § 4. Prior to repeal the article was amended by Acts 1973, 63rd Leg., p. 1103, ch. 423, § 4.

Former article 14.04 was renumbered article 14.03 and amended by § 5 of the 1975 Act.

Art. 14.03a. Repealed by Acts 1977, 65th Leg., p. 743, ch. 276, § 16, eff. Aug. 29, 1977

Art. 14.04. Civil Remedy

(A) Any person who knowingly makes or knowingly accepts an unlawful campaign contribution or who knowingly makes an unlawful expenditure in support of a candidate shall be civilly liable to each opposing candidate whose name appeared on the ballot in the election in which the unlawful contribution or expenditure was involved for double the amount or value of such unlawful campaign contribution or expenditure and reasonable attorneys fees for collecting same.

(B) Any person who knowingly makes or knowingly accepts an unlawful campaign contribution or expenditure not expressly supporting any candidate but opposing a particular candidate or candidates shall be civilly liable to each of such opposed candidates for double the amount or value of such unlawful campaign contribution or expenditure and reasonable attorneys fees for collecting same.

(C) Any person who knowingly makes or knowingly accepts an unlawful contribution or expenditure shall, in addition to any other penalties, be civilly liable to the State of Texas for an amount equal to triple the amount or value of such unlawful contribution or expenditure.

[Amended by Acts 1975, 64th Leg., p. 2261, ch. 711, § 6, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 737, ch. 276, § 5, eff. Aug. 29, 1977.]

This article was renumbered from article 14.05 and amended by the 1975 Act.

Art. 14.05. Criminal Penalty

Any person who knowingly makes or knowingly accepts an unlawful contribution or who knowingly makes an expenditure in violation of this Chapter shall be guilty of a Class A misdemeanor unless otherwise provided by law.

[Amended by Acts 1975, 64th Leg., p. 2262, ch. 711, § 7, eff. Sept. 1, 1975.]

This article was renumbered from article 14.06 and amended by the 1975 Act.

Art. 14.06. Corporations and Labor Organizations Not to Contribute

(A) Except to the extent permitted in Section 317, Texas Election Code,¹ it is unlawful for any corporation, as defined in this Act, to make a contribution or expenditure, as defined in Section 237 of this code,² or any labor organization to make a contribution or expenditure, or for any candidate, officeholder, political committee, or other person to knowingly accept any contribution prohibited by this Article except as herein expressly provided.

(B) For the purpose of this section, "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which ex-

ists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(C) As used in this section, the phrase "contribution or expenditure" shall also include giving, lending, or paying any money or other thing of value, directly or indirectly, to any candidate, or political committee, campaign treasurer, assistant campaign treasurer, or any other person, for the purpose of aiding or defeating the nomination or election of any candidate or of aiding or defeating the approval of any measure submitted to a vote of the people of this state or any subdivision thereof; provided, however, that nothing in this section or in Section 317, Texas Election Code, shall prevent the making of a loan or loans to any candidate, office-holder, or political committee, for campaign or other lawful purposes by any corporation which is legally engaged in the business of lending money and which has conducted such business continuously for more than one year prior to the making of such loan, provided the loan is made in the due course of business and is not directly or indirectly a contribution. As used in this Chapter, the phrase "contribution or expenditure" shall not include expenditures for the following purposes: communications, on any subject, by a corporation to its stockholders and their families or, if the corporation is an association, to its members and their families, or by a labor organization to its members and their families; non-partisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and their families, or, if the corporation is an association, at its members and their families, or by a labor organization aimed at its members and their families; or the establishment, administration and solicitation of contributions from the members and their families of one or more labor organizations, or from the stockholders, employees and their families of one or more corporations, or from the members and their families of one or more associations to a separate segregated fund or other general purpose political committee to be utilized for political purposes by one or more corporations or one or more labor organizations. It is provided that it shall be unlawful for such a fund to make a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, or financial reprisals, or by threats thereof, or by dues, fees, or other moneys required as a condition of membership in a labor organization or as a condition of employment, or by moneys obtained in a commercial transaction.

(D) Any corporation or labor organization making or promising a gift, loan, or payment to any candidate, political committee, campaign treasurer, assistant campaign treasurer, or other person in violation of this section shall be civilly liable for double the amount or value of such loan or gift, promised or

made, to each opponent of the candidate, or political committee, opposed by such gift, loan, or payment. An opponent of the candidate is an opposing candidate whose name appeared on the ballot in the election in which the unlawful gift, loan, or payment was involved. The corporation or labor organization shall be civilly liable to the State of Texas for an amount equal to triple the amount or value of any unlawful gift, loan, or payment to any candidate, office-holder, political committee, campaign treasurer, or assistant campaign treasurer.

(E) Any corporation or labor organization that violates Subsection (A), (B), or (C) of this section shall be guilty of a felony of the third degree.

(F) Every officer or director of any corporation or labor organization who shall consent to any such unlawful gift, loan, or payment or such unlawful promise to give, lend, or pay by the corporation or labor organization shall be guilty of a felony of the third degree.

(G) Any candidate, office-holder, political committee, campaign treasurer, or assistant campaign treasurer who knowingly accepts such unlawful gift, loan, or payment from a corporation or labor organization shall be guilty of a felony of the third degree. [Amended by Acts 1975, 64th Leg., p. 2262, ch. 711, § 8, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 737, ch. 267, § 6, eff. Aug. 29, 1977.]

¹ Article 15.17.

² Article 14.01.

This article was renumbered from article 14.07 and repealed in its entirety, substituting new provisions therefor, by the 1975 Act.

Art. 14.07. Records and Sworn Statement

(A) Each candidate, office-holder, and political committee, or a campaign treasurer representing the same, is hereby required to keep an accurate record of contributions received, and of all expenditures made. Such record shall contain all information hereinafter required to be reported by such candidate, office-holder, or political committee.

(B) Each opposed candidate whose name is printed on the ballot, each write-in candidate taking affirmative action in an election and each political committee involved in an election concerning a candidate or measure shall file a sworn statement at each time required herein. Each office-holder and political committee as defined in Subsections (O)(2), (P)(2), or (Q)(2) in Section 237 of this Code,¹ shall file a sworn statement as required herein.

(C) The statements filed by a candidate, or office-holder, shall list all contributions received and all expenditures made by the candidate, the office-holder, his campaign treasurer, and his assistant campaign treasurers during the appropriate reporting period as described in Subsection (H) of this section. The statements filed by a political committee, or a campaign treasurer representing the same, shall list all contributions received and expenditures made by

the committee during the appropriate reporting period as described in Subsection (H) of this section. Each statement shall include the dates and amounts and the full name and complete address of each person from whom contributions in an aggregate amount of more than \$50 has been received or borrowed during the appropriate reporting period as described in Subsection (H) of this section. Each statement shall also include the dates and amounts and the full names and complete addresses of all persons to whom any expenditures aggregating more than \$50 were made during the appropriate reporting period, and the purpose of such expenditures. Each report shall also include a total of all contributions received and all expenditures made during the appropriate reporting period and a total of all contributions of \$50 and less received and all expenditures of \$50 and less made during the appropriate reporting period. However, for purposes of the time and manner of reporting, no expenditure need be deemed to have been made until the amount is readily determinable or, if the character of the expenditure is such that normal business practice is not to disclose the amount until the next periodic bill is received, then such expenditure need not be deemed to have been made until the date of receipt of such bill.

(D) Each political committee receiving contributions or making expenditures on behalf of a candidate, or office-holder, shall notify the candidate, or office-holder, as to the name and address of the political committee and its campaign treasurer, if one is required. The candidate, or office-holder, shall include within each statement required by this code a list identifying the name and address of each such political committee and its campaign treasurer, if one is required. "On behalf of" means the knowing acceptance of a contribution for a candidate(s), or office-holder(s), or the making of an expenditure for a candidate(s), or office-holder(s). Any campaign treasurer, candidate, office-holder, or other person managing a political committee, who violates the provisions of this subsection shall be guilty of a Class A misdemeanor.

(E) Such statements shall be accompanied by the following affidavit verified by the person filing the statement:

"I do solemnly swear that the foregoing statement, filed herewith, is in all things true and correct, and fully shows all information required to be reported by me pursuant to the Political Funds Reporting and Disclosure Act of 1975."

(F) The statement and oath shall be filed as follows: for a county office, or a measure submitted at an election called by a county, with the county clerk of the county; for a district office or a state office, or statewide measure, or other constitutionally designated members of the Executive Department, with

the secretary of state; for a municipal office, or a measure submitted at an election called by a municipality, with the city secretary or city clerk of the municipality; and for an office of a political subdivision, or a measure submitted at an election called by a political subdivision other than a county or municipality, with the secretary of the governing body of the political subdivision. General purpose political committees shall file the required sworn statements and oaths with the Secretary of State. The deadline for filing any statement required under this section is 5 p. m. of the last day designated in the pertinent subsection for filing the statement. When the last day of filing falls on a Saturday or Sunday or an official state holiday enumerated in Article 4591, Revised Civil Statutes of Texas, 1925, as amended, the deadline for filing is extended to 5 p. m. of the next day which is not a Saturday or Sunday or enumerated holiday. A statement shall be deemed to be timely filed if it is placed in the United States Post Office or in the hands of a common or contract carrier properly addressed to the appropriate authority within the time limits applicable to the statement. The postmark or receipt mark (if received by a common or contract carrier) will be prima facie evidence of the date that such statement was deposited with the post office or carrier. The person making the report may show by competent evidence that the actual date of posting was to the contrary.

(G) In the event a political committee has elected to comply with the provisions applicable to political committees within this state, the requirements of this paragraph shall not be applicable. A candidate, office-holder, or political committee shall not accept a contribution aggregating more than \$500 in a reporting period from a political committee not in this state unless the contribution is accompanied by a written statement which sets forth the full name and complete address of each person who contributed more than \$100 to such committee during the preceding twelve months and which is certified by an officer of the contributing political committee. A correct copy of any such statement shall be included with the statement filed on which the contribution is reported. For the purpose of reporting, "political committee not in this state" shall mean any political committee expending 80 percent or more of its expenditures in any combination of elections outside of this state and federal offices not voted on in this state within the immediately preceding twelve-month period.

(H)(1)(a) Candidates and the campaign treasurers of specific purpose political committees as defined in subsection (P)(1) of Section 237, shall file sworn statements at the times required in paragraph (4) of this subsection.

(b)(i) Office-holders and specific purpose political committees assisting office-holder(s) as defined in

subsection (P)(2) of Section 237 of this Code shall file sworn statements on January 15 of each year of all contributions received and all expenditures made during the previous calendar year in accordance with the provisions of subsection (C) of this section but reporting only such contributions accepted and expenditures made that have not been previously reported.

(ii) In addition to the annual statement required in subsection (H)(1)(b)(i) above, any such office-holder shall file additional statements to cover all contributions received and expenditures made by such office-holder for that period of time prior to the designation of a campaign treasurer by such office-holder, and after such designation all contributions and expenditures are to be reported pursuant to subsection (H)(1)(a). The statements required by this subsection shall be filed not later than the 15th day following the designation of a campaign treasurer.

(2) Campaign treasurers of general purpose political committees shall file sworn statements at times required in paragraph (7) of this subsection.

(3) If the operations of a political committee necessitate a change in the applicability of paragraph (1) or (2) of this subsection, the campaign treasurer of such political committee shall make such change and declare the identity of the authorities with whom future filings are expected to be made by filing (a) notification(s) with the authority(ies) with whom such committee has previously been required to file sworn statements. Failure to file such notice(s), when such change has been properly made, before the next applicable deadline for filing sworn statements under the formerly applicable sections, shall constitute a Class B misdemeanor.

(4) Every candidate or specific purpose political committee shall file three sworn statements relating to the election in which such person is involved in addition to any statement as provided in paragraph (6) below. The three sworn statements shall be filed not later than the 30th day prior to the election, not later than the 7th day prior to the election, and not later than the 30th day after the election, respectively. A candidate who has been nominated by his party's primary or a specific purpose political committee existing for the sole purpose of supporting such candidate and having given notice of such sole purpose in lieu of filing his third statement which encompasses nine (9) days prior to the twenty-five (25) days after the election shall include in his first statement prior to the general election all previously unreported contributions and expenditures. The period reported in the first such statement shall begin on the day of campaign treasurer designation, and end on and include the 40th day prior to the election. The period reported in the second such statement shall begin on the 39th day before the election and

end on and include the 10th day before the election. The period reported in the third such statement shall begin on the 9th day before the election and end on and include the 25th day after the election. In the event a candidate or specific purpose political committee becomes involved in an election after the end of any period covered by the regular reports otherwise required herein, the first applicable sworn statement shall be filed at the next regularly required deadline and its reporting period shall begin on the date of designation of campaign treasurer.

(5) In lieu of any third statement required, which falls on the 30th day after any general primary or special elections, whenever a candidate or specific purpose political committee is involved in a run-off election, not later than the 7th day before the run-off election, the candidate or specific purpose political committee shall file a statement of all previously unreported contributions and expenditures through the 10th day before the run-off election. The next statement required shall be filed not later than the 30th day after the run-off election and shall report all contributions received and all expenditures made during a period beginning on the 9th day before the run-off election and ending on the 25th day after the run-off election.

(6) Each year after the last deadline for filing a statement of contributions and expenditures, an additional statement shall be filed, provided, however, if there have been no expenditures made or contributions knowingly accepted since the last required reporting period, or if any contributions knowingly accepted and any expenditures made have all been reported under Subsection (H)(1)(b) of this section, there shall be no filing required. The annual statement shall be filed on or before January 15 (following the last filing) and the period shall cover all previously unreported contributions and expenditures through and including the 31st day of December.

(7) All general purpose political committees shall file sworn statements as designated either in this paragraph or in Paragraph (8) of this subsection:

(a) On January 15th of each year, a statement of all contributions received and all expenditures made during the previous calendar year which have not been previously reported;

(b) Not earlier than the 40th day and not later than the 30th day before the date of an election in which the general purpose committee is involved, a statement of all contributions received and all expenditures made during the period from the date on which the general purpose political committee filed a designation of a campaign treasurer through the 40th day before the date of the election which have not been previously reported;

(c) Not earlier than the 10th day and not later than the 7th day before the date of an election in which the general purpose political committee is involved, a statement of all contributions received and all expenditures made through the 10th day before the date of the election which have not been previously reported;

(d) Not earlier than the 25th day and not later than the 30th day after the date of an election in which the general purpose political committee is involved, a statement of all contributions received and all expenditures made since the date covered by the last report filed under this subsection;

(e) Whenever a general purpose political committee is involved in a run-off election, in lieu of the statement to be filed by not later than the 30th day after the first election, the committee shall file a statement on the 7th day before the date of the run-off election showing all contributions received and all expenditures made since the date of the last report filed under this subsection;

(f) In the event a general purpose political committee becomes involved in an election after the end of any periods covered by the regular reports otherwise required herein, the first applicable sworn statement shall be filed at the next regularly required deadline and its reporting period shall begin on the date of designation of campaign treasurer.

(8) In lieu of the sworn statements required under Paragraph (7), a general purpose political committee may elect to file sworn monthly statements of all contributions received and all expenditures made which have not been previously reported by filing the sworn statements designated herein:

(a) Between January 1 and January 15 of each year, even if there has been no activity, in addition to a statement of all contributions received and all expenditures made during the previous calendar year which have not been previously reported, a notice of intent to file monthly statements pursuant to this paragraph. However, a general purpose political committee formed after January 15 of any particular year may upon designation of its campaign treasurer file at the same time a notice of intent to file monthly statements pursuant to this paragraph;

(b) On the first day of each calendar month, even if there has been no activity, a statement of all previously unreported contributions received and all previously unreported expenditures made through the 25th day of the preceding month. Any general purpose political committee filing under the procedures of this paragraph shall include in each statement the dates

and amounts and the full name and complete address of each person from whom contributions in an aggregate amount of more than \$10 has been received or borrowed during the reporting period. Each statement shall also include the dates and amounts and the full names and complete addresses of all persons to whom any expenditures aggregating more than \$10 were made during the appropriate reporting period and the purpose of such expenditures.

(c) If a general purpose political committee electing to file sworn monthly statements wishes to revert to filing the sworn statements required under Paragraph (7), such committee must file its intent to do so between January 1 and January 15 in addition to a statement of all contributions received and expenditures made which have not previously been reported.

(9) Candidates for offices created under laws of the United States are specifically exempted from the requirements of this section. It is provided, however, that they shall file copies of any reports required by federal laws with the secretary of state on the same date they file such reports with the appropriate federal authorities.

(10) Final Statement. A candidate or political committee may cease filing sworn statements regarding a campaign after a final statement has been filed and designated as such. Any of the required sworn statements may constitute a final statement if its filing results in the completion of the reporting of all contributions and expenditures involved in an election, together with the appropriate related information, required to be reported.

(11) In the event a general purpose political committee makes a contribution to either another general purpose political committee or an out of state political committee, and cannot thereby make the determination of the appropriate times to make filings of sworn statements, such contributing general purpose political committee shall be deemed to have complied with the requirements of this Section by filing a sworn statement with the Secretary of State fully reporting such contribution (as an expenditure) no later than the next succeeding filing deadline for the January 15th annual statement.

(12) In the event a campaign treasurer of a political committee is terminated, either voluntarily or by action of the political committee, he shall file a sworn statement no later than the 10th day after such termination, reporting all appropriate matters for the period from the end of the period reported in the preceding sworn statement through the day of his termination. Any subsequent sworn statement which is to be filed by a successor campaign treasurer need not report those matters included in the previous campaign treasurer's termination statement.

(I)(1) If any candidate, office-holder, or campaign treasurer of a political committee fails to file a sworn statement containing all information required by this chapter, such person shall be guilty of a Class C misdemeanor.

(2) Any candidate, office-holder, campaign treasurer, or other person managing a political committee who swears falsely in a filed statement is subject to the provisions of Section 37.02 of the Texas Penal Code.

(J) Any candidate or campaign treasurer of a political committee who fails to report in whole or in part any contribution or expenditure as provided in the foregoing provisions of this Section shall be liable for double the amount or value of such unreported contribution or expenditure or unreported portion thereof, to each opposing candidate in the election in which same should have been reported. Each of such opposing candidates shall also recover reasonable attorneys' fees for collecting the above liquidated damages.

(K) Any candidate, office-holder, or campaign treasurer, of a political committee who fails to report in whole or in part any contribution or expenditure as provided in this Section, shall be civilly liable to the State of Texas for an amount equal to triple the amount or value of such unreported contribution or unreported expenditure.

(L) Statements filed under this Section shall be open to public inspection. They shall be preserved for a period of two years, after which they may be destroyed unless a court of competent jurisdiction has ordered their further preservation.

(M) No charge shall be levied for the filing of any report required by this section.

(N) No charge greater than that authorized by the State Board of Control for copies of similar documents filed with state agencies shall be charged for copies of any reports required to be filed by this section.

[Amended by Acts 1975, 64th Leg., p. 2263, ch. 711, § 9, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 738, ch. 276, §§ 7 to 14, eff. Aug. 29, 1977.]

¹ Article 14.01.
This article was renumbered from article 14.08 and amended by the 1975 Act.

Art. 14.08. Leave Name Off Ticket

Any candidate who shall knowingly permit or assent to the violation of any provision of this Chapter by any campaign treasurer or assistant campaign treasurer, or other person, shall thereby forfeit his right to have his name placed upon the primary ballot, or if nominated in the primary election, to have his name placed on the official ballot at the general election. Provided, no candidate in the general election shall forfeit the right to have his name printed on the ballot for such election if the Constitution of this State prescribes the qualifications of the holder of the office sought by the candidate.

Proceedings by quo warranto to enforce the provisions of this Section, or to determine the right of any candidate alleged to have violated any provision of this Chapter, to have his name placed on the primary ballot, or the right of any nominee alleged to have violated any provision of this Chapter to have his name placed upon the official ballot for the general election, may be instituted on the complaint of any citizen in the district court of any county, the citizens of which are entitled to vote for or against any candidate who may be charged in such proceedings with any such violation. All such proceedings so instituted shall be advanced, and summarily heard and disposed of by both the trial and appellate courts.

[Amended by Acts 1975, 64th Leg., p. 2268, ch. 711, § 10, eff. Sept. 1, 1975.]

This article was renumbered from article 14.09 and amended by the 1975 Act.

Art. 14.09. Political Advertising

(A) It is unlawful for any person knowingly to enter into a contract or transaction to print, publish or broadcast, any political advertising which does not disclose thereon that it is political advertising and which does not state thereon the name and address either of the agent who personally entered into the contract or transaction with the printer, publisher, or broadcaster, or the person represented by such agent. A violation of this provision shall constitute a Class A misdemeanor. However, in the event the political advertisement conveys the impression that it emanates from a source other than its true source for the purpose of injuring any candidate or influencing the vote in any election, the candidate, campaign treasurer, assistant campaign treasurer or any other person purchasing or contracting for the furnishing of such political advertisement in support of or in opposition to any candidate or measure, who knowingly violates this subsection shall be guilty of a felony of the third degree.

(B) Any advertising medium or any officer or agent thereof who willfully demands or receives for any political advertising any money or other thing of value in excess of the sum due for such service, or any person who pays or offers to pay for such service any money or other thing of value in excess of the sum due, or any person who pays or offers to pay any money or other thing of value for the publication or broadcasting of political advertising except as advertising or production matter, shall be fined not more than \$100. No advertising medium may charge a rate for political advertising in excess of the following:

(1) For advertising broadcast over a radio or television station, including a community antenna or cable television system, the rate charged shall not exceed the lowest unit charge of the station for the same class, condition and amount of time for the same period;

(2) For advertising printed or published by any other medium, the rate charged shall not exceed the lowest charge made for comparable use of such space for other purposes. The rate shall take into account the amount of space used, the number of times used, the frequency of use, and the kind of space used, as well as the type of advertising copy submitted by or on behalf of a candidate, or political committee. All discount privileges otherwise offered by a newspaper or magazine to advertisers shall be available upon equal terms to all candidates, or political committees.

(C) It is unlawful for an officer or employee of any political subdivision of this state to expend or authorize the expenditure of the funds of such political subdivision for the purpose of political advertising. The provisions of this subsection shall not apply to any advertising which describes the factual reasons for a measure and which does not advocate the passage or defeat of such measure.

(D) It is the legislative intent to impose both civil and criminal responsibility on persons, corporations, partnerships, labor unions, or labor organizations, or any unincorporated associations, firms, committees, clubs, or other organizations, or groups of persons, including any groups of persons associated with a political party or element thereof, for violations of this section.

[Amended by Acts 1975, 64th Leg., p. 2268, ch. 711, § 11, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 742, ch. 276, § 15, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2001, ch. 799, § 1, eff. Aug. 29, 1977.]

This article was renumbered from article 14.10 and amended by the 1975 Act.

Art. 14.10. Campaign Communications

(A)(1) It is unlawful for an individual to misrepresent his identity or, if acting or purporting to act as an agent for any person, to misrepresent the identity of that person in any written or oral communication relating to the campaign of a candidate for nomination or election to a public office or election to the office of a political party or relating to the success or defeat of any ballot measure with the intent to injure any candidate or to influence the vote on the measure.

(2) It is unlawful for any person to issue any communication relating to the candidacy of a person for nomination or election to a public office or election to the office of a political party or relating to the success or defeat of any ballot measure, which purports to emanate from any source other than its true source.

(B)(1) It is unlawful for any candidate for nomination or election to a public office to use the title of an office in his political advertising when the use of such title could reasonably be construed to lead the voters to believe that the candidate is the holder of an office, unless the candidate is the holder of the office at the time the representation is made.

(2) It is unlawful for any person to print, publish, or broadcast any political advertising, or to make any written or oral commercial communication, relating to the campaign of a candidate for nomination or election to a public office which states, implies, or otherwise represents that the candidate is the holder of an office, unless the candidate is the holder of the office at the time the representation is made.

(C) A violation of this section is a Class A misdemeanor.

[Added by Acts 1975, 64th Leg., p. 2269, ch. 711, § 12, eff. Sept. 1, 1975. Amended by Acts 1977, 65th Leg., p. 1663, ch. 657, § 1, eff. Aug. 29, 1977.]

Art. 14.10A. Repealed by Acts 1977, 65th Leg., p. 1663, ch. 657, § 2, eff. Aug. 29, 1977

The repealed article, relating to the misleading use of office title, was added by Acts 1975, 64th Leg., p. 2098, ch. 682, § 26.

Art. 14.13. Regulation of Illegal Acts; Providing Duties for Secretary of State

(A) Filing complaint with Secretary of State. Any citizen of this state may file with the Secretary of State a complaint alleging that a person has committed one or more of the following violations of this chapter:

(1) Failure to file a statement of contributions and expenditures that is required to be filed with the Secretary of State, or late filing of a statement with the Secretary of State.

(2) Filing of a statement of contributions and expenditures with the Secretary of State that does not conform to law.

(3) Accepting a contribution or making an expenditure before the filing of a designation of a campaign treasurer in an election in which the designation is required to be filed with the Secretary of State.

(4) Making or accepting an unlawful contribution or making an unlawful expenditure.

(B) Form and contents of complaint. A complaint must:

(1) be signed and sworn to by the complainant as containing allegations that are true and correct and made on personal knowledge; and

(2) state the name of the person accused, the election involved, if any, and the alleged violation; and

(3) allege facts indicating that the person accused has committed a violation.

(C) Notice to the accused. Upon receipt of a complaint meeting the requirements of Paragraphs (A) and (B) of this section, the Secretary of State shall give notice by registered or certified mail, restricted delivery, return receipt requested, to the person who is the subject of the complaint:

(1) informing the person that the complaint has been filed;

(2) attaching a copy of the complaint;

(3) requesting the person to make a written response within 15 days after the date shown on the notice (the date of mailing); and

(4) attaching a copy of this section.

(D) Referral to prosecuting attorney and Attorney General.

(1) If the accused is a candidate or the campaign treasurer of a candidate or of a political committee supporting a candidate, the Secretary of State shall not report any alleged violations to the prosecuting attorney or to the Attorney General while the candidate is still engaged in the campaign in the specific election in which the alleged violation is said to have occurred or in a subsequent runoff or general election for the same term of office.

(2) After a lapse of 25 days from the date of a notice pursuant to Paragraph (C) or after a lapse of 25 days from an election described in (D)(1) above of this section, if it appears that the person accused in the complaint may have failed to comply with the relevant provisions of law, the Secretary of State shall forward to the appropriate prosecuting attorney the original complaint and the accused's response (if any) to the notice, together with certified copies of all pertinent records filed with the Secretary of State, in order that appropriate action may be taken.

(3) If the alleged violation is one for which a civil penalty accrues in favor of the state, the Secretary of State shall also forward to the Attorney General certified copies of the original complaint, the accused's response, and all pertinent records filed with the Secretary of State, in order that appropriate action be taken.

(E) Malicious complaints. A civil action for damages exists against the complainant in favor of any person against whom a complaint is filed maliciously and without probable cause, after the termination of any resulting prosecution. In addition, a person who makes a false allegation in a complaint is subject to the provisions of the Texas Penal Code relating to the offense of perjury.¹

(F) The procedures outlined in this section are cumulative of other available procedures for investigation and enforcement of violations of this chapter. Nothing in this section shall be taken as precluding the filing of a complaint directly with a prosecuting attorney or as precluding investigations and prosecutions by a prosecuting attorney and actions by the Attorney General for recovery of civil penalties without a referral from the Secretary of State.

(G) Duties of Secretary of State.

(1) It shall be the duty of the Secretary of State to prescribe forms for any instruments

required to be filed by this code, regardless of whether the instruments are to be filed with the Secretary of State or with some other authority, and to make such forms available to persons required to file such statements and information with the Secretary of State, or any other authority.

(2) It shall be the duty of the Secretary of State to furnish such forms to the following: the State Executive Committee of any political party, the clerk of each county, the duly elected chairman of each county political subdivision or authority holding an election under this code.

(3) The State Executive Committee, county clerk, county chairman, and secretary or clerk shall make available to all candidates, officeholders, or political committees the forms provided by the Secretary of State.

(4) It shall be the duty of the Secretary of State to interpret and administer the provisions of this Act in the exercise of his authority stated in Section 3, Texas Election Code (Article 1.03, Vernon's Texas Election Code) and to make such interpretations and administrative rulings available to any person upon request.

[Added by Acts 1975, 64th Leg., p. 2270, ch. 711, § 13, eff. Sept. 1, 1975.]

¹ See Penal Code, § 37.01 et seq.
Former article 14.13, added by Acts 1973, 63rd Leg., p. 1110, ch. 423, § 11, establishing County Election Commissions and a State Election Commission, was repealed by § 13 of the 1975 Act, enacting this article.

Art. 14.15. Venue for Offenses

Venue for any offense resulting from a violation of this chapter shall lie exclusively in the county of residence of the accused, except when the accused is a nonresident of Texas, in which case venue shall lie in Travis County.

[Amended by Acts 1975, 64th Leg., p. 2272, ch. 711, § 14, eff. Sept. 1, 1975.]

CHAPTER FIFTEEN. OFFENSES RELATING TO ELECTIONS

SUBCHAPTER F. MISCONDUCT AT ELECTIONS

Article

15.73. Intimidation or Reprisal Against a Voter [NEW].

15.74. Inducing Another Person to Make False Statement on Registration Application [NEW].

SUBCHAPTER B. OFFENSES BEFORE ELECTION

Art. 15.17. Corporation Contributing

(a) In any election in this State or any district, municipality, or political subdivision thereof, wherein the question to be voted upon directly affects the granting, refusing, existence or value of any franchise granted to a corporation which has the right of eminent domain, such corporation may present facts and arguments to the voters bearing upon such

question by any lawful means of publicity and pay the expense thereof; provided, however, that all such means of publicity employed shall contain a clear statement that the same are sponsored and paid for by such corporation; and the use of any such means of publicity by such corporation which do not contain such statement shall subject such corporation to the penalties hereinafter provided. Provided that nothing in this subsection shall be construed as permitting any such corporation to directly or indirectly give, pay, expend, or contribute or promise to give, pay, expend, or contribute any money or thing of value in order to aid or hinder the nomination or election of any person to any public office in this State.

(b) If any corporation authorized by Section (b)¹ hereof, or if any person, partnership or association makes any expenditure or incurs any obligation directly or indirectly for the purpose of influencing an election of the character described in Section (b) hereof, it shall be the duty of such corporation, person, partnership or association to file with the governing body of the political subdivision in which such election is held and also with the Secretary of State by mail, not more than ten (10) days nor less than five (5) days before the date of such election and also within ten (10) days after the date of such election, itemized, verified accounts correctly showing as of the date of filing, the amounts of money and description and value of all things given, paid, expended and contributed and the names of the recipients thereof and all amounts of money and description and value of all things promised or obligated to be given, paid, expended, and contributed, and the names of the promisees thereof, by such corporation, person, firm or association, in connection with such election; all such accounts to be verified under oath by an officer of such corporation, or by such person or member of the partnership or association as the case may be; provided, however, that no such corporation, person, partnership or association may give, pay, expend, contribute or promise to give, pay, expend, or contribute money and things of value of the total amount exceeding Seven Hundred and Fifty Dollars (\$750), or exceeding Twenty-five Dollars (\$25) for each one hundred population of the district, municipality or political subdivision according to the last preceding Federal Census in which such election is held, whichever amount is greater; provided further that such amounts expended may not, in fixing rates to be charged by such corporation, be charged as operating cost or capital. Any corporation, person, partnership or association failing to file the accounts as provided herein or filing an account which is false in any material respect, or violating the limitation or expenditures provided herein, shall be subject to the penalties hereinafter provided, but in no event shall any such corporation be authorized to spend more

than Ten Thousand Dollars (\$10,000) in any one election.

(c) Any person who violates any provision of this article, or who, as an officer, director or employee of a corporation, or as a member of a partnership or association, authorizes or does any act in violation hereof, shall be fined not less than one hundred dollars nor more than five thousand dollars, or be imprisoned not less than one nor more than five years, or be both so fined and imprisoned.

[Amended by Acts 1977, 65th Leg., p. 743, ch. 276, § 16, eff. Aug. 29, 1977.]

¹ Now, Section (a) hereof.

The 1977 Act repealed sec. (a) and relettered former secs. (b) to (d) as (a) to (c).

SUBCHAPTER C. OFFENSES BY OFFICERS OF ELECTION

Art. 15.28. Election Officer Divulging Vote

Any presiding officer, judge, clerk, watcher, interpreter, person assisting a voter in preparing his ballot, inspector, or any other person performing official functions, of any general, primary or special election who shall from an inspection of the ballot or other information obtained at the polling place and not in a judicial investigation divulge how any person has voted at such election is guilty of a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 5, eff. June 20, 1975.]

Art. 15.30. Aid to Voter

Any judge or clerk at an election or any other person who assists any voter to prepare his ballot except when a voter is unable to prepare the same himself because of his inability to read the language in which the ballot is printed or because of some bodily infirmity which renders him unable to write or to see or to operate the voting equipment, or who in assisting a voter in the preparation of his ballot prepares the same otherwise than as the voter directs, or who suggests by word or sign or gesture how such voter shall vote, shall be fined not less than two hundred dollars nor more than five hundred dollars or be confined in jail for not less than two nor more than twelve months, or both.

[Amended by Acts 1975, 64th Leg., p. 2098, ch. 682, § 27, eff. Sept. 1, 1975.]

SUBCHAPTER D. ILLEGAL VOTING

Art. 15.41. Illegal Voting

If any person knowing himself not to be a qualified voter, shall at any election vote for or against any officer to be then chosen, or for or against any proposition to be determined by said election, he shall be guilty of a third degree felony.

[Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 6, eff. June 20, 1975.]

Art. 15.42. Instigating Illegal Voting

Whoever shall procure, aid, or advise another to give his vote at any election, knowing that the person is not qualified to vote, or shall procure, aid, or advise another to give his vote more than once at such election, shall be guilty of a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 7, eff. June 20, 1975.]

Art. 15.43. False Swearing

Whoever shall swear falsely as to his own qualifications to vote, or who shall swear falsely as to the qualifications of a person offering to vote who is challenged as unqualified, shall be guilty of a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 8, eff. June 20, 1975.]

Art. 15.44. Inducing Voter to Swear Falsely

Whoever knowingly and intentionally induces or attempts to induce another person to swear falsely as prohibited in the preceding article, shall be guilty of a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 9, eff. June 20, 1975.]

Art. 15.49. Participating in Primary Elections or Conventions of More Than One Party

Whoever votes or offers to vote at either a general primary election or a runoff primary election or participates or offers to participate in a convention of a political party, having voted at either a general primary election or a runoff primary election or participated in a convention of any other party during the same voting year, shall be guilty of a Class A misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 10, eff. June 20, 1975.]

Art. 15.50. Voting More Than Once

Whoever at a general, special or primary election votes or attempts to vote more than once shall be guilty of a Class A misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 2077, ch. 681, § 11, eff. June 20, 1975.]

SUBCHAPTER E. OFFENSES AFTER ELECTION

Art. 15.61. Altering or Destroying Ballots, etc.

If any person shall willfully alter, obliterate, or suppress any ballots, election returns or certificates of election, or shall willfully destroy any ballots or election returns except as permitted by law, he shall be guilty of a third degree felony.

[Amended by Acts 1975, 64th Leg., p. 2078, ch. 681, § 12, eff. June 20, 1975.]

Art. 15.62. Messenger Tampering with Ballot

Any person legally intrusted with the ballots cast at an election who shall open and read a ballot or permit it to be done before delivering the same shall be guilty of a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 2078, ch. 681, § 13, eff. June 20, 1975.]

Art. 15.65. Failure to Keep Ballot Box

Whoever fails to keep securely any ballot box containing ballots voted at an election, when committed to his charge by one having authority over the same, shall be guilty of a felony of the third degree.

[Amended by Acts 1975, 64th Leg., p. 2078, ch. 681, § 14, eff. June 20, 1975.]

SUBCHAPTER F. MISCONDUCT AT ELECTIONS

Art. 15.73. Intimidation or Reprisal Against a Voter

Whoever knowingly and intentionally harms or threatens to harm another person by an unlawful act or economic reprisal in retaliation for or on account of having voted for or against any candidate or measure or refusing to reveal how he voted is guilty of a felony of the third degree.

[Added by Acts 1975, 64th Leg., p. 2078, ch. 681, § 15, eff. June 20, 1975.]

Art. 15.74. Inducing Another Person to Make False Statement on Registration Application

Whoever requests, commands, or attempts to induce another person to make any false statement on any voter registration application shall be guilty of a felony of the third degree.

[Added by Acts 1975, 64th Leg., p. 2078, ch. 681, § 16, eff. June 20, 1975.]

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INSURANCE CODE

Chapter	Article
20A. Health Maintenance Organization [NEW]	20A.01
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CHAPTER ONE. THE BOARD, ITS POWERS AND DUTIES

Article

- 1.09A. Office of the State Fire Marshal [NEW].
- 1.30. Hazardous Financial Condition [NEW].
- 1.30. Notification [NEW].

Art. 1.02. State Board of Insurance

[See Compact Edition, Volume 2 for text of (a) to (e)]

(f) The State Board of Insurance is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1983.

[Amended by Acts 1977, 65th Leg., p. 1840, ch. 735, § 2.058, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

Art. 1.09. Commissioner of Insurance

[See Compact Edition, Volume 2 for text of (a)]

(b) Repealed by Acts 1975, 64th Leg., p. 853, ch. 326, § 3, eff. May 30, 1975.

[See Compact Edition, Volume 2 for text of (c) to (g)]

[Amended by Acts 1975, 64th Leg., p. 853, ch. 326, § 3, eff. May 30, 1975.]

Art. 1.09A. Office of the State Fire Marshal

The chairman of the board shall appoint a state fire marshal, who shall be a state commissioned officer, and who shall function as such subject to the rules and regulations of the board. He shall administer, enforce, and carry out the applicable provisions of this code relating to the duties and responsibilities of the state fire marshal under the supervision of the board. He shall hold his position at the pleasure of the board and may be discharged at any time. The state fire marshal shall be the chief investigator in charge of the investigation of arson and suspected arson within the state, and may commission arson investigators to act under his supervision, and may revoke an investigator's commission for just cause. After consultation with the state fire marshal, the

State Board of Insurance shall adopt necessary rules and regulations to guide the state fire marshal and his investigators in the investigation of arson and suspected arson.

[Added by Acts 1975, 64th Leg., p. 853, ch. 326, § 2, eff. May 30, 1975.]

Art. 1.30. Notification

[Text as added by Acts 1975, 64th Leg., p. 457, ch. 194, § 1]

Definitions

Sec. 1. (a) "Insurer" shall include but not be limited to capital stock companies, reciprocal or interinsurance exchanges, Lloyds associations, fraternal benefit societies, mutual and mutual-assessment companies of all kinds and types, statewide assessment associations, local mutual aids, burial associations, county and farm mutual associations, fidelity, guaranty and surety companies, trust companies organized under the provisions of Chapter 7 of Texas Insurance Code,¹ and all other organizations, corporations, or persons transacting an insurance business, whether or not named above, unless such insurers are by statute specifically by naming this article exempted from the operation of this article.

(b) "Board" means the State Board of Insurance of Texas.

(c) "Commissioner" means the Commissioner of Insurance of Texas.

Notice of Order or Judgment

Sec. 2. An insurer shall notify the commissioner and deliver a copy of any order or judgment to the commissioner within 30 days of the happening in another state of any one or more of the following:

- (1) suspension or revocation of his right to transact business;
- (2) receipt of an order to show cause why its license should not be suspended or revoked;
- (3) imposition of any penalty, forfeiture, or sanction on it for any violation of the insurance laws of such other state.

Penalty for Failure to Notify

Sec. 3. Any insurer who has failed to notify the commissioner and to deliver a copy of any order or judgment to him pursuant to Section 2 of this article shall forfeit to the people of the state a sum not to

exceed \$500 for each such violation, which may be recovered by a civil action. The board may also suspend or revoke the license of an insurer or agent for any such wilful violation.

[Added by Acts 1975, 64th Leg., p. 457, ch. 194, § 1, eff. Sept. 1, 1975.]

¹Article 7.01 et seq.

For text as added by Acts 1975, 64th Leg., p. 1019, ch. 388, § 1, see art. 1.30, post

Art. 1.30. Hazardous Financial Condition

[Text as added by Acts 1975, 64th Leg., p. 1019, ch. 388, § 1]

Definitions

Sec. 1. (a) "Insurer" shall include but not be limited to capital stock companies, reciprocal or interinsurance exchanges, Lloyds associations, fraternal benefit societies, mutual and mutual assessment companies of all kinds and types, state-wide assessment associations, local mutual aids, burial associations, county and farm mutual associations, fidelity, guaranty, and surety companies, trust companies organized under the provisions of Chapter 7 of the Texas Insurance Code of 1951, as amended,¹ and all other organizations, corporations, or persons transacting an insurance business, whether or not named above, unless such insurers are by statute specifically, by naming this article, exempted from the operation of this article.

(b) "Board" means the State Board of Insurance of Texas.

(c) "Commissioner" means the Commissioner of Insurance of Texas.

Order to Rectify Financial Condition

Sec. 2. Whenever the financial condition of an insurer when reviewed in conjunction with the kinds and nature of risks insured, the loss experience and ownership of the insurer, the ratio of total annual premium and net investment income to commission expenses, general insurance expenses, policy benefits paid, and required policy reserve increases, its method of operation, its affiliations, its investments, any contracts which lead or may lead to contingent liability, or agreements in respect to guaranty and surety, indicate a condition such that the continued operation of the insurer might be hazardous to its policyholders, creditors, or the general public, then the commissioner may, after notice and hearing, order the insurer to take such action as may be reasonably necessary to rectify the existing condition, including but not necessarily limited to one or more of the following steps:

(a) reduce the total amount of present and potential liability for policy benefits by reinsurance;

(b) reduce the volume of new business being accepted;

(c) reduce general insurance and commission expenses by specified methods;

(d) suspend or limit the writing of new business for a period of time; or

(e) increase the insurer's capital and surplus by contribution.

Standards and Criteria for Early Warning

Sec. 3. The board is authorized, by rule and regulations, to fix uniform standards and criteria for early warning that the continued operation of an insurer might be hazardous to its policyholders, creditors, or the general public, and to fix standards for evaluating the financial condition of an insurer, which standards shall be consistent with the purposes expressed in Section 2 of this article.

Arrangements with Other Jurisdictions

Sec. 4. The commissioner is authorized to enter into arrangements or agreements with the insurance regulatory authorities of other jurisdictions concerning the management, volume of business, type of risks to be insured, expenses of operation, plans for reinsurance, rehabilitation, or reorganization, and method of operations of an insurer that is licensed in such other jurisdictions and that is deemed to be in a hazardous financial condition or needful of specific remedies which may be imposed by the commissioner and insurance regulatory authorities of such other jurisdictions.

Additional Authority of Article

Sec. 5. Authority granted by the provisions of this article is in addition to other provisions of law and not in substitution, restriction, or diminution thereof.

[Added by Acts 1975, 64th Leg., p. 1019, ch. 388, § 1, eff. June 19, 1975.]

For text as added by Acts 1975, 64th Leg., p. 457, ch. 194, § 1, see art. 1.30, ante

¹Article 7.01 et seq.

CHAPTER THREE. LIFE, HEALTH AND ACCIDENT INSURANCE

SUBCHAPTER A. TERMS DEFINED; DOMESTIC COMPANIES

Article

3.14. Repealed.

SUBCHAPTER D. POLICIES AND BENEFICIARIES

3.44b. Standard Non-forfeiture Law for Individual Deferred Annuities [NEW].

SUBCHAPTER E. GROUP; INDUSTRIAL AND CREDIT INSURANCE

3.50-2. Employees Uniform Group Insurance Benefits Act [NEW].

3.50-3. Texas State College and University Employees Uniform Insurance Benefits Act [NEW].

Article

- 3.51-5. Payments of Group Life and Health Insurance Premiums for Retired Employees of the Texas Central Education Agency, the Texas Rehabilitation Commission, the Texas Department of Mental Health and Mental Retardation, the Texas Youth Council, a Texas Senior College or University, and the Coordinating Board, Texas College and University System [NEW].
- 3.51-6. Group and Blanket Accident and Health Insurance [NEW].
- 3.51-7. Payments of Additional Death Benefits for Retired Appointed Officers and Employees of the Teacher Retirement System of Texas, and the Texas Central Education Agency, and the Texas Schools for the Blind and Deaf [NEW].
- 3.51-7. Continuation of Group Life and Group Accident and Health Insurance During Labor Dispute [NEW].

SUBCHAPTER A. TERMS DEFINED;
DOMESTIC COMPANIES

Art. 3.14. Repealed by Acts 1975, 64th Leg., p. 464, ch. 198, § 2, eff. May 15, 1975

See, now, art. 21.39-B.

SUBCHAPTER C. RESERVES AND INVESTMENTS

Art. 3.28. Standard Valuation Law

[See Compact Edition, Volume 2 for text of 1 to 3]

Minimum Standard for Valuation of Policies and Contracts

Sec. 4. (a) This Section shall apply to only those policies and contracts issued on or after the operative date of Article 3.44a (the Standard Non-forfeiture Law), except as otherwise provided in Subsection (b) of this Section for coverages purchased on or after the operative date of such subsection under group annuity and pure endowment contracts issued prior to such operative date. Except as otherwise provided in Subsection (b) of this Section, the minimum standard for the valuation of all such policies and contracts shall be the commissioners reserve valuation method defined in Section 5, three and one-half per cent (3½%) interest for policies and contracts issued prior to June 14, 1973, four per cent (4%) interest for policies and contracts, except annuity and pure endowment contracts, issued on or after June 14, 1973, and prior to the effective date of this amendatory Act of 1977, five and one-half per cent (5½%) interest for single premium life insurance policies, and four and one-half per cent (4½%) interest for all other such policies and contracts, except annuity and pure endowment contracts, issued on and after the effective date of this amendatory Act of 1977, and the following tables:

(1) For all ordinary policies of life insurance issued on the standard basis, excluding any disability and accidental death benefits in such policies, the Commissioners 1941 Standard Ordinary Mortality Table for such policies issued prior to the operative date of Section 6 of Article 3.44a (the Standard Non-forfeiture Law) as amended, and the Commissioners 1958 Standard Ordinary Mortality Table for such policies is-

sued on or after such operative date; provided that for any category of such policies issued on female risks all modified net premiums and present values referred to in this Article may be calculated according to an age not more than three (3) years younger than the actual age of the insured for policies issued prior to the effective date of this amendatory Act of 1977 and not more than six (6) years younger than the actual age of the insured for policies issued on and after the effective date of this amendatory Act of 1977.

[See Compact Edition, Volume 2 for text of 4(a)(2) to (7)]

(b) The minimum standard for the valuation of all individual annuity and pure endowment contracts issued on or after the operative date of this Section 4(b), as defined herein, and for all annuities and pure endowments purchased on or after such operative date under group annuity and pure endowment contracts, regardless of the issue date of such contracts, shall be the commissioners reserve valuation method defined in Section 5(A) or 5(B) and the following tables and interest rates:

(1) For individual annuity and pure endowment contracts issued prior to the effective date of this amendatory Act of 1977, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the State Board of Insurance, and six per cent (6%) interest for single premium immediate annuity contracts, and four per cent (4%) interest for all other individual annuity and pure endowment contracts.

(2) For individual single premium immediate annuity contracts issued on or after the effective date of this amendatory Act of 1977 and prior to January 1, 1990, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the State Board of Insurance, and seven and one-half per cent (7½%) interest. For such contracts issued on or after January 1, 1990, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the State Board of Insurance, and six per cent (6%) interest.

(3) For individual annuity and pure endowment contracts issued on or after the effective date of this amendatory Act of 1977, other than single premium immediate annuity contracts, excluding any disability and accidental death benefits in such contracts, the 1971 Individual Annuity Mortality Table, or any modification of this table approved by the State Board of Insur-

ance, and five and one-half per cent (5½%) interest for single premium deferred annuity and pure endowment contracts and four and one-half per cent (4½%) interest for all other such individual annuity and pure endowment contracts.

(4) For all annuities and pure endowments purchased prior to the effective date of this amendatory Act of 1977 under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table, or any modification of this table approved by the State Board of Insurance, and six per cent (6%) interest.

(5) For all annuities and pure endowments purchased on or after the effective date of this amendatory Act of 1977 and prior to January 1, 1990, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table, or any modification of this table approved by the State Board of Insurance, and seven and one-half per cent (7½%) interest.

For all annuities and pure endowments purchased on or after January 1, 1990, under group annuity and pure endowment contracts, excluding any disability and accidental death benefits purchased under such contracts, the 1971 Group Annuity Mortality Table, or any modification of this table approved by the State Board of Insurance, and six per cent (6%) interest.

After June 14, 1973, any company may file with the State Board of Insurance a written notice of its election to comply with the provisions of this subsection after a specified date before January 1, 1979, which shall be the operative date of this subsection for such company; provided, a company may elect a different operative date for individual annuity and pure endowment contracts from that elected for group annuity and pure endowment contracts. If a company makes no such election, the operative date of this Subsection (b) for such company shall be January 1, 1979.

Reserves for Life Insurance and Endowment Benefits of Policies Providing Uniform Amount of Insurance and Requiring Payment of Uniform Premiums

Sec. 5. (A) Except as otherwise provided in Section 5(B), reserves according to the commissioners reserve valuation method, for the life insurance and endowment benefits of policies providing for a uniform amount of insurance and requiring the payment of uniform premiums shall be the excess, if any, of the present value, at the date of valuation, of such future guaranteed benefits provided for by such policies, over the then present value of any future modified net premiums therefor. The modi-

fied net premiums for any such policy shall be such uniform percentage of the respective contract premiums for such benefits that the present value, at the date of issue of the policy, of all such modified net premiums shall be equal to the sum of the then present value of such benefits provided for by the policy and the excess of (a) over (b), as follows:

[See Compact Edition, Volume 2 for text of 5(A)(a) and (b)]

Reserves according to the commissioners reserve valuation method for (1) life insurance policies providing for a varying amount of insurance or requiring the payment of varying premiums, (2) group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code of 1954, as amended (Title 26, United States Code, as amended), (3) disability and accidental death benefits in all policies and contracts, and (4) all other benefits, except life insurance and endowment benefits in life insurance policies and benefits provided by all other annuity and pure endowment contracts, shall be calculated by a method consistent with the principles of the preceding paragraph, except that any extra premiums charged because of impairments or special hazards shall be disregarded in the determination of modified net premiums. Such impairments and special hazards may also be disregarded in determining present value of benefits.

(B) This subsection shall apply to all annuity and pure endowment contracts other than group annuity and pure endowment contracts purchased under a retirement plan or plan of deferred compensation, established or maintained by an employer (including a partnership or sole proprietorship) or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code, as now or hereafter amended.

Reserves according to the commissioners annuity reserve valuation method for benefits under annuity and pure endowment contracts, excluding any disability and accidental death benefits in such contracts, shall be the greatest of the respective excesses of the present values, at the date of valuation, of the future guaranteed benefits, including guaranteed non-forfeiture benefits, provided by such contracts at the end of each respective contract year, over the present value, at the date of valuation, of any future valuation considerations derived from future gross considerations, required by the terms of

such contract, that become payable prior to the end of such respective contract year. The future guaranteed benefits shall be determined by using the mortality table, if any, and the interest rate or rates specified in such contracts for determining guaranteed benefits. The valuation considerations are the portions of the respective gross considerations applied under the terms of such contracts to determine non-forfeiture values.

Aggregate Reserves for all Life Policies; Minimum Amount

Sec. 6. In no event shall a company's aggregate reserves for all life insurance policies, excluding disability and accidental death benefits, issued on or after the operative date of Article 3.44a (the Standard Non-forfeiture Law), be less than the aggregate reserves calculated in accordance with the methods set forth in Sections 5 and 8 and the mortality table or tables and rate or rates of interest used in calculating non-forfeiture benefits for such policies.

Calculation of Reserves for Policies and Contracts Issued Prior to Operative Date of Standard Non-forfeiture Law; Standards

Sec. 7. Reserves for all policies and contracts issued prior to the operative date of Article 3.44a (the Standard Non-forfeiture Law) may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for all such policies and contracts than the minimum reserves required by the laws in effect immediately prior to such date.

Reserves for any category of policies, contracts or benefits as established by the State Board of Insurance, issued on or after the operative date of Article 3.44a (the Standard Non-forfeiture Law), may be calculated, at the option of the company, according to any standards which produce greater aggregate reserves for such category than those calculated according to the minimum standard herein provided, but the rate or rates of interest used for policies and contracts, other than annuity and pure endowment contracts, shall not be higher than the corresponding rate or rates of interest used in calculating any non-forfeiture benefits provided for therein.

Any such company which at any time shall have adopted any standard of valuation producing greater aggregate reserves than those calculated according to the minimum standard herein provided may, with the approval of the State Board of Insurance, adopt any lower standard of valuation, but not lower than the minimum herein provided.

Deficiency Reserve

Sec. 8. If in any contract year the gross premium charged by any life insurance company on any policy or contract is less than the valuation net premium for the policy or contract calculated by the

method used in calculating the reserve thereon but using the minimum valuation standards of mortality and rate of interest, the minimum reserve required for such policy or contract is the greater of either the reserve calculated according to the mortality table, rate of interest, and method actually used for such policy or contract, or the reserve calculated by the method actually used for such policy or contract but using the minimum standards of mortality and rate of interest and replacing the valuation net premium by the actual gross premium in each contract year for which the valuation net premium exceeds the actual gross premium.

[Amended by Acts 1977, 65th Leg., p. 2098, ch. 842, §§ 1 to 5, eff. Aug. 29, 1977.]

Art. 3.34. Texas Securities

The term "Texas Securities," as used in this Chapter, shall be held to include the following:

PART I. INVESTMENTS.

[See Compact Edition, Volume 2 for text of Part I, 1 to 6]

7. Federal Farm Loan Bonds.

Bonds issued under and by virtue of the Federal Farm Loan Act approved July 17, 1916,¹ where such bonds are issued against and secured by promissory notes or other obligations, the payment of which is secured by mortgage, deed of trust, or other valid lien upon unencumbered real estate situated in this state.

8. Corporate First Mortgage Bonds, Notes, and Debentures.

(1) First mortgage bonds or first lien notes secured by real estate or personal property:

(a) of any solvent corporation incorporated under the laws of this state and doing business in this state which has not defaulted in the payment of any debt within five (5) years next preceding such investment; or

(b) of any solvent corporation incorporated under the laws of this state and doing business in this state which has not been in existence for five (5) consecutive years but whose first mortgage bonds or first lien notes on real estate or personal property are fully guaranteed by a solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment; or

(c) of any solvent corporation incorporated under the laws of this state and doing business in this state which has not been in existence for five (5) consecutive years but whose first mortgage bonds or first lien notes on real estate or personal property

are secured by leases or other contracts executed by a solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment, the required rentals or other required payments under which leases or other contracts are sufficient in any and every circumstance to pay interest and principal when due on such bonds or notes; or

(d) of any solvent corporation incorporated under the laws of this state and doing business in this state which has not been in existence for five (5) consecutive years next preceding such investment, provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment; or

(2) in the notes or debentures of any such corporation incorporated under the laws of this state and doing business in this state with a net worth of not less than Five Million Dollars (\$5,000,000) where no prior lien exists in excess of 10 percent (10%) of the net worth of such corporation, and, under the provisions of the indenture providing for the issuance of such notes or debentures, no such prior lien can be created in excess of 10 percent (10%) of the net worth of such corporation, against the real or personal property of such corporation at the time the notes or debentures were issued; or

(3) in the notes or debentures of any solvent corporation incorporated under the laws of this state and doing business in this state which has not been in existence for five (5) consecutive years where no prior lien exists, and, under the provisions of the indenture providing for the issuance of such notes or debentures, no such prior lien can be created against the real or personal property of such corporation at the time the notes or debentures were issued, but whose notes or debentures are secured by leases or other contracts executed by a solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment and has a net worth of at least Five Million Dollars (\$5,000,000), the required rentals or other required payments under which leases or other contracts are sufficient in any and every circumstance to pay interest and principal when due on such bonds or notes or whose notes or debentures are fully guaranteed by any such corporation; or (4) in the bonds, bills of exchange, or other commercial notes or bills of

any solvent corporation incorporated under the laws of and doing business in this state which has not defaulted in the payment of any debt within five (5) years next preceding such investment, or of any solvent corporation incorporated under the laws of and doing business in this state which has not been in existence for five (5) consecutive years next preceding such investment, provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment, and which corporation has a net worth of not less than Fifty Million Dollars (\$50,000,000) and has no long-term indebtedness in excess of its net worth, as evidenced by its latest published financial statements or other financial data available to the public; but in no event shall the amount of such investment in the bonds, notes, debentures, or other obligations or any one such corporation exceed five per cent (5%) of the admitted assets of the insurance company making such investment.

[See Compact Edition, Volume 2 for text of Part I, 9]

10. Bank and Bank Holding Company Stocks.

The stock of state banks incorporated under the laws of this state and national banks domiciled and doing business in this state that are members of the Federal Deposit Insurance Corporation and the stock of bank holding companies as defined in the Bank Holding Company Act of 1956 (12 U.S.C.A. Section 1841 et seq.), as amended by the Bank Holding Company Act Amendments of 1970 (12 U.S.C.A. Section 1841 et seq., 1971 et seq.) enacted by the United States Congress, and which are incorporated under the laws of this state and doing business in this state; provided, however, that no such investment shall exceed twenty per cent (20%) of the total outstanding shares of the stock of any such bank or bank holding company, and in no event shall the amount of investment in any such stock exceed ten per cent (10%) of the admitted assets of the insurance company making such investment.

The values of any stock owned by an insurance company in a bank holding company which is directly attributable to an original investment by the insurance company in the stock of either a state bank incorporated in Texas or a national bank domiciled and doing business in Texas, which bank subsequently became the bank holding company as previously defined, shall be treated as Texas Securities hereunder even

though such bank holding company is not incorporated in Texas.

11. Debt Obligations of Corporations Not Otherwise Qualified.

In addition to those investments otherwise qualifying as Texas Security under other provisions of this Act, investments in corporate first mortgage bonds, debentures, and other debt obligations of any solvent, dividend-paying corporation, which has not defaulted in the payment of any debt within five (5) years next preceding such investment, or of any solvent dividend corporation which has not been in existence for five (5) consecutive years, but whose corporate obligations are fully guaranteed by a solvent, dividend-paying corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment, and which issuing corporation meets at least one of the following criteria, shall be considered as Texas Securities for the purposes of this Act:

- a. more than fifty per cent (50%) of the corporation's total assets are "Texas Securities" as herein defined,
- b. more than fifty per cent (50%) of the corporation's total gross receipts are from sales which accrued within the State of Texas,
- c. more than fifty per cent (50%) of the corporation's employees perform their duties and jobs within the State of Texas.

An insurer claiming as a "Texas Security" one of the foregoing defined investments shall have the burden of proving that such investment meets one of the three above-listed tests.

PART II. LOANS.

[See Compact Edition, Volume 2 for text of Part II, 1 to 5]

6. Insurance Requirements on Improvements Securing First Liens on Real Estate.

If any part of the value of buildings is required to be included in the value of such real estate to attain the minimum authorized value of the security, such buildings shall be insured against loss by fire in a company authorized to transact business in the State of Texas for at least fifty per cent (50%) of the value thereof; provided, that the insurance coverage need not exceed the outstanding balance owed to the lending company when the outstanding balance falls below fifty per cent (50%) of the value of the buildings. The loss clause shall be payable to such company.

[See Compact Edition, Volume 2 for text of Part II, 7]

PART III. REAL ESTATE.

All real estate situated in this state now owned and held and all real estate situated in this state hereafter acquired, owned and held by such insurance company in accordance with the provisions of this Chapter.

PART IV. MISCELLANEOUS.

1. Bank Deposits.

For the purpose of this Act, "Texas Securities" shall include the average daily balance of cash on deposit, subject to check and withdrawal, in a state or national chartered bank which has qualified for Federal Deposit Insurance Corporation coverage, provided the bank and the deposits are both located within the State of Texas.

The amount to be included in the average daily balance of cash on deposit shall be the sum of the balances on the bank's books at the close of each day, including weekends and/or holidays, divided by the total days of the year.

Each tax return reflecting an amount of average daily balance as a Texas Security must be supported by a sworn certification as to the amount, which shall have been executed by an officer of the bank where the deposits were maintained.

Nonnegotiable certificates of deposit held in a state or national chartered bank, which is insured by Federal Deposit Insurance Corporation coverage, shall be defined as a "Texas Security" and not subject to the foregoing restriction if the issuing bank and the deposit is located within the State of Texas and if the funds evidenced by the certificates have been on deposit for at least one year or such funds are committed by the terms of the certificate of deposit for one or more years, or such funds represent the renewal of a certificate of deposit which previously qualified under this provision.

Negotiable certificates of deposit may be treated the same as nonnegotiable if they are held to maturity and the funds evidenced by the certificates have been on deposit for at least one year, or such funds are committed by the terms of the certificate of deposit for one or more years, or such funds represent the renewal of a certificate of deposit which previously qualified under this provision. If not held to maturity, the negotiable certificate shall be included in the average daily balance of cash on deposit and subject to the average daily balance of cash on deposit provisions herein. The amount to be

included in the numerator of the formula for the calculation of the average daily balance of cash on deposit shall be the sum of the days on deposit, including weekends and holidays, multiplied by the face amount of the certificate of deposit.

[See *Compact Edition, Volume 2 for text of Part III, 2 and 3*]

4. Valuation of Texas Securities and/or Similar Securities.

The value of the foregoing Texas Securities, exclusive of cash on deposit, shall be limited to the original cost of common or preferred stock, the amortized value of bonds, debentures, warrants, and other interest-bearing indebtedness, and the unpaid principal balance of mortgage loan notes and collateral loan notes. The improvements situated on Texas real estate held under Articles 3.40 and 3.40-1, Insurance Code, 1951, as amended, shall be valued at the depreciated cost less any outstanding indebtedness. The land shall be valued at the original cost less any outstanding indebtedness. No increases in value to either land or improvements by reason of appraisals will be allowed as a part of the "Texas Securities" for the purposes of this Article.

[Amended by Acts 1977, 65th Leg., p. 1982, ch. 793, § 1, eff. Jan. 1, 1978.]

¹ 12 U.S.C.A. § 641 et seq. (repealed).

Section 2 of the 1977 Act provided for a January 1, 1978 effective date.

Art. 3.39. Authorized Investments and Loans for "Domestic" Life Insurance Companies

PART I. AUTHORIZED INVESTMENTS

A life insurance company organized under the laws of this state may invest its several funds, identified as follows, in the following securities, respectively, and none other:

A. ANY OF ITS FUNDS AND ACCUMULATIONS

[See *Compact Edition, Volume 2 for text of Part I, A, 1 to 9*]

10. Corporate First Mortgage Bonds, Notes and Debentures.

(1) First mortgage bonds or first lien notes on real estate or personal property: (a) of any solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment; or (b) of any solvent corporation which has not been in existence for five (5) consecutive years but whose first mortgage bonds or first lien notes on real estate or personal property are fully guaranteed by a solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment; or (c) of any

solvent corporation which has not been in existence for five (5) consecutive years but whose first mortgage bonds or first lien notes on real estate or personal property are secured by leases or other contracts executed by a solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment, the required rentals or other required payments under which leases or other contracts are sufficient in any and every circumstance to pay interest and principal when due on such bonds or notes; or (d) of any solvent corporation which has not been in existence for five (5) consecutive years next preceding such investment, provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment; or (2) in the notes or debentures of any such corporation with a net worth of not less than Five Million Dollars (\$5,000,000) where no prior lien exists in excess of 10 percent of the net worth of such corporation, and, under the provisions of the indenture providing for the issuance of such notes or debentures, no such prior lien can be created in excess of 10 percent of the net worth of such corporation, against the real or personal property of such corporation at the time the notes or debentures were issued; or (3) in the notes or debentures of any solvent corporation which has not been in existence for five (5) consecutive years where no prior lien exists, and, under the provisions of the indenture providing for the issuance of such notes or debentures, no such prior lien can be created against the real or personal property of such corporation at the time the notes or debentures were issued, but whose notes or debentures are secured by leases or other contracts executed by a solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment and has a net worth of at least Five Million Dollars (\$5,000,000), the required rentals or other required payments under which leases or other contracts are sufficient in any and every circumstance to pay interest and principal when due on such bonds or notes, or whose notes or debentures are fully guaranteed by any such corporation; or (4) in the bonds, bills of exchange, or other commercial notes or bills of any solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment, or of any solvent corporation which has not been in existence for five (5) consecutive years next preceding such investment, provided such corporation has succeeded to the business

and assets and has assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment, and which corporation has a net worth of not less than Fifty Million Dollars (\$50,000,000) and has no long-term indebtedness in excess of its net worth, as evidenced by its latest published financial statements or other financial data available to the public; but in no event shall the amount of such investment in the bonds, notes, debentures, or other obligations of any one such corporation exceed five percent (5%) of the admitted assets of the insurance company making such investment.

[See Compact Edition, Volume 2 for text of Part I, A, 11 and 12]

13. Debentures of Public Utility Corporations.

The debentures of any solvent public utility corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment, or of any solvent public utility corporation which has not been in existence for five (5) consecutive years next preceding such investment provided such corporation has succeeded to the business and assets and has assumed the liabilities of another such corporation, and which public utility corporation and public utility corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment; provided further, that such public utility corporation shall not have failed in any one of the five (5) years next preceding such investment to have earned, after taxes, including income taxes, and after deducting proper charges for replacements, depreciation and obsolescence, a sum applicable to interest on its outstanding indebtedness equal at least to two times the amount of interest due for that year, or where, in the case of issuance of new debentures, such earnings applicable to interest are equal to at least two times the amount of annual interest on such public utility corporation's obligations after giving effect to such new financing; or, in the case of a public utility corporation which has not been in existence for five (5) consecutive years next preceding such investment but has succeeded to the business and assets and has assumed the liabilities of another such corporation, and which public utility corporation and the public utility corporation so succeeded have not failed in any one of the five (5) years next preceding such investment to have earned, after taxes, including income taxes, and after deducting proper charges for replacements, deprecia-

tion and obsolescence, a sum applicable to interest on the outstanding indebtedness equal to at least two times the amount of interest due for that year, to where in the case of issuance of new debentures such earnings applicable to interest are equal to at least two times the amount of annual interest on such public utility corporation's obligations after giving effect to such new financing; but in no event shall the amount of such investment in debentures under this Subdivision exceed five per cent (5%) of the admitted assets of the insurance company making the investment.

[See Compact Edition, Volume 2 for text of Part I, A, 14 to 17; B to F]

PART II. AUTHORIZED LOANS

A life insurance company organized under the laws of this state may loan its several funds identified as follows, taking as collateral security for the payment of such loans the securities named below, and none other.

A. ANY OF ITS FUNDS ACCUMULATIONS

Such company may loan any of its funds and accumulations on the following securities:

1. First Liens Upon Real Estate.

First liens upon real estate, the title to which is valid and the value of which is at least one-third more than the amount loaned thereon; provided, however, that the aggregate amount of loans secured by first liens on real estate to any one corporation, company, partnership, individual or any affiliated person or group may not exceed ten (10%) per cent of the admitted assets of such insurer, and provided further that the amount of any such single loan secured by a first lien on real estate may not exceed five (5%) per cent of the admitted assets of the insurer. The limitation provided by this subsection shall not apply to any first lien on real estate where the Commissioner of Insurance finds that: (1) the making or acquiring of such lien is beneficial to and protects the interest of the insurer and (2) no substantial damage to the policyholders and creditors of such insurer appears probable from the taking or acquiring of such lien.

2. First Liens Upon Leasehold Estates.

First liens upon leasehold estates in real property and improvements situated thereon, the title to which is valid; provided that the duration of any loan upon such leasehold estates shall not exceed a period equal to four-fifths ($\frac{4}{5}$) of the then unexpired term of such leasehold estate, provided the unexpired term of the leasehold estate must extend at least ten (10) years beyond the term of the loan, and any such

loan shall be payable only in equal monthly, quarterly, semi-annual or annual installments, on principal and interest during a period not exceeding four-fifths ($\frac{4}{5}$) of the then unexpired term of such leasehold estate.

3. Collateral Securities.

Upon any obligation secured collaterally by any such first liens on real estate or leasehold estates.

4. Policy Loans.

Security of its own policies. No loan on any policy shall exceed the reserve values thereof.

5. Other Securities.

It may loan any of its funds and accumulations, taking as collateral to secure the payment of such loan, any of the securities named or referred to in Part 1 of this Article 3.39 above in which it may invest any of its funds and accumulations.

6. Restrictions as to Value of Real Estate Removed Where Loans Insured by the United States.

The foregoing restrictions as to the value of the real estate security compared to the amount loaned thereon and as to the duration of such loans shall not be applied to loans if the entire amount of the indebtedness is insured or guaranteed in any manner by the United States, the Federal Housing Administration pursuant to the National Housing Act of 1934, as amended (12 U.S.C.A. Sec. 1701 et seq.), or by the State of Texas, or, if not wholly insured or guaranteed, the difference between the entire amount of the indebtedness and that portion thereof insured or guaranteed by the United States, the Federal Housing Administration pursuant to the National Housing Act of 1934, as amended, or by the State of Texas, would not exceed the amount of loan permissible under said restrictions.

7. Loans to be Authorized by Board of Directors.

No loan, except policy loans, shall be made by any such insurance company unless the same shall first have been authorized by the Board of Directors or by a committee charged with the duty of supervising such loans.

8. Insurance Requirements.

If any part of the value of buildings is required to be included in the value of such real estate to attain the minimum authorized value of the security, such buildings shall be insured against loss by fire in a company authorized to transact business in the state in which such real estate is located, or in a company recognized as acceptable for such purpose by the insurance regulatory official of the state in which such real estate is located, which insurance shall be in

an amount of at least fifty per cent (50%) of the value of such buildings; provided, that the insurance coverage need not exceed the outstanding balance owed to the lending company when the outstanding balance falls below fifty per cent (50%) of the value of the buildings. The loss clause shall be payable to such company.

B. CAPITAL, SURPLUS AND CONTINGENCY FUNDS OVER AND ABOVE POLICY RESERVES

1. Capital Stock, Bonds, and Other Obligations of Solvent Corporations, and Educational or Religious Corporations.

It may loan its capital, surplus, and contingency funds, or any part thereof over and above the amount of its policy reserves, taking as security therefor the capital stock, bonds, bills of exchange, or other commercial notes or bills and the securities of any solvent corporation which has not defaulted in the payment of any debt within five (5) years next preceding such investment; or of any solvent corporation which has not been in existence for five (5) consecutive years next preceding such investment, provided such corporation has succeeded to the business and assets and has assumed the liabilities of another corporation, and which corporation and the corporation so succeeded have not defaulted in the payment of any debt within five (5) years next preceding such investment; or in the bonds or notes of any Educational or Religious Corporation where provision has been made for the payment of a sufficient amount of the first weekly or monthly revenues thereof to an interest and sinking fund account in a bank or trust company as an independent paying agent; provided, the market value of such stock, bills of exchange, or other commercial notes or bills and securities shall be at all times during the continuance of such loan at least fifty per cent (50%) more than the sum loaned thereon; provided that it shall not take as collateral security for any loan its own capital stock, nor shall it take as collateral security for any loan the stock of any one corporation to any extent more than ten per cent (10%) of the amount of its own capital, surplus, and contingency funds, nor shall it take as collateral security for any loan the stock of any manufacturing corporation with a net worth of less than Twenty-Five Thousand Dollars (\$25,000), nor the stock of any oil corporation with a net worth of less than Five Hundred Thousand Dollars (\$500,000); and provided further, that it shall not take as collateral security for any such loan any stock on account of which the holder or owner thereof may in any event be or become liable to any assessment except for taxes.

[See Compact Edition, Volume 2 for text of Part III]

[Amended by Acts 1975, 64th Leg., p. 1109, ch. 418, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 202, ch. 101, § 1, eff. Aug. 29, 1977.]

Art. 3.40. May Hold Real Estate

Every such insurance company may secure, hold and convey real property only for the following purposes and in the following manner:

[See Compact Edition, Volume 2 for text of 1(a) to (c), 2 to 4]

5. All such real property specified in Subdivisions 2, 3, and 4 of this Article which shall not be necessary for its accommodation in the convenient transactions of its business, except interests in minerals and royalties reserved upon the sale of land acquired under such Subdivisions 2, 3, and 4 hereof, and further excepting interests in producing royalties and producing overriding royalties otherwise acquired, shall be sold and disposed of within five (5) years after the company shall have acquired title to the same, or within five (5) years after the same shall have ceased to be necessary for the accommodation of its business. It shall not hold such property for a longer period, unless it shall procure a certificate from the Board that its interests will suffer materially by the forced sale thereof; in which event the time for the sale may be extended to such time as the Board shall direct in such certificate.

In addition to, and without limitation on, the purposes for which real property may be acquired, secured, held or retained pursuant to other provisions of this Article, every such insurance company may secure, hold, retain and convey production payments, producing royalties and producing overriding royalties as an investment for the production of income; provided, however, that the total amount of all such investments in production payments, producing royalties and producing overriding royalties plus the total amount of investments in home office and branch office properties under Subdivision 1(a) of this Article shall not exceed the total amount permitted by and shall be subject to all of the limitations and restrictions of Subdivisions 1(b) and 1(c) of this Article and for this purpose all investments in production payments, producing royalties and producing overriding royalties pursuant to the provisions of this paragraph shall be deemed to be "properties described in Subdivision 1(a)" of this Article; and provided further, that in valuing each such production payment, producing royalty and producing overriding royalty for the purposes of Subdivision 1(c) of this Article the State Board of Insurance may establish such value as being the maximum amount which the company purchasing such

production payment, producing royalty and producing overriding royalty could loan against a first lien on such production payment, producing royalty and producing overriding royalty under the provisions of Part II, Section A, Subsection 2 of Article 3.39 of the Insurance Code; and provided further, no such company shall make any investment in such production payments, producing royalties and producing overriding royalties solely as an investment for the production of income if, after making such investment, the total investment of the company at cost in such production payments, producing royalties and producing overriding royalties is in excess of ten per cent (10%) of its admitted assets as of December 31st next preceding the date of such investment. For the purposes of this paragraph, a production payment is defined to mean a right to oil, gas or other minerals in place or as produced that entitles its owner to a specified fraction of production until a specified sum of money, or a specified number of units of oil, gas or other minerals, has been received; a royalty and an overriding royalty are each defined to mean a right to oil, gas and other minerals in place or as produced that entitles the owner to a specified fraction of production without limitation to a specified sum of money, or a specified number of units of oil, gas or other minerals; "producing" is defined to mean producing oil, gas or other minerals in paying quantities, provided that it shall be deemed that oil, gas or other minerals are being produced in paying quantities if a well has been "shut in" and "shut in royalties" are being paid. In the event production in paying quantities should cease from any such royalty interest or overriding royalty interest held by any insurance company, such royalty or overriding royalty shall be sold and disposed of within two (2) years after such production shall have ceased, unless production in paying quantities shall have been resumed, or unless such Insurance Company shall have procured a certificate from the Board that its interests will suffer materially by the forced sale thereof; in which event the sale may be extended to such time as the Board shall direct in such certificate.

[Amended by Acts 1977, 65th Leg., p. 207, ch. 102, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 amendatory act provided:
"All laws or parts of laws in conflict with the provisions of this article are repealed to the extent of such conflict only."

SUBCHAPTER D. POLICIES AND BENEFICIARIES

Art. 3.42. Policy Form Approval

(a) No policy, contract or certificate of life, term or endowment insurance, group life or term insurance, industrial life insurance, accident or health insurance, group accident or health insurance, hospitalization insurance, group hospitalization insurance, medical or surgical insurance, group medical or surgical insurance, or fraternal benefit insurance, and

no annuity or pure endowment contract or group annuity contract, shall be delivered, issued or used in this state by a life, accident, health or casualty insurance company, a mutual life insurance company, mutual insurance company other than life, mutual or natural premium life insurance company, general casualty company, Lloyds, reciprocal or interinsurance exchange, fraternal benefit society, group hospitalization service or any other insurer, unless the form of said policy, contract or certificate has been filed with the State Board of Insurance and approved by said Board as provided in Paragraph (c) of this Article. Provided, however, that this Article shall not apply to any society, company or other insurer whose activities are by statute exempt from the control of the State Board of Insurance and which is entitled by statute to an exemption certificate from said Board in evidence of its exempt status; provided, further, that this Act shall not be construed to enlarge the powers of any of the insurers subject to this Article.

(b) No application form which is required to be or is attached to the policy, contract or certificate, and no rider or endorsement to be attached to, printed upon or used in connection with any policy, contract or certificate described in Paragraph (a) of this Article shall be delivered, issued or used in this state by any insurer described in Paragraph (a) of this Article unless the form of said application, rider or endorsement has been filed with the State Board of Insurance and approved by said Board as provided in Paragraph (c) of this Article. Each individual accident and sickness insurance policy application form, which is required to be or is attached to the policy, shall comply with the rules and regulations of the Board promulgated pursuant to Subchapter G of this chapter. Provided, however, that this Article shall not apply to riders or endorsements which relate to the manner of distribution of benefits or to the reservation of rights and benefits under such policies, contracts and certificates, and which are used at the request of the holder of the policy, contract or certificate.

(c) Every such filing hereby required shall be made not less than thirty days in advance of any such issuance, delivery or use. At the expiration of thirty days the form so filed shall be deemed approved by the State Board of Insurance unless prior thereto it has been affirmatively approved or disapproved by the written order of said Board. The State Board of Insurance may extend by not more than an additional thirty days the period within which it may so affirmatively approve or disapprove any such form, by giving notice of such extension before expiration of the initial fifteen day period and at the expiration of any such extended period, and in the absence of such prior affirmative approval or disapproval, any such form shall be deemed approved. The State Board of Insurance may with-

draw any such approval at any time. Approval of any such form by such Board shall constitute a waiver of any expired portion of the waiting period, or periods, herein provided.

(d) The order of the State Board of Insurance disapproving any such form or withdrawing a previous approval shall state the grounds for such disapproval or withdrawal.

(e) The State Board of Insurance may, by written order, exempt from the requirements of this Article for so long as it deems proper, any insurance document or form specified in such order, to which in its opinion this Article may not practicably be applied, or the filing and approval of which are, in its opinion, not desirable or necessary for the protection of the public.

(f) The State Board of Insurance shall forthwith disapprove any such form, or withdraw any previous approval thereto if, and only if,

(1) It is in any respect in violation of or does not comply with this Code.

(2) It contains provisions which encourage misrepresentation or are unjust, unfair, inequitable, misleading, deceptive or contrary to law or to the public policy of this state.

(3) It has any title, heading or other indication of its provisions which is misleading.

(g)(1) The Board may, after notice and hearing, withdraw any previous approval of an individual accident and sickness insurance policy form if, after consideration of all relevant facts, the Board finds that the benefits provided under such policy form are unreasonable in relation to the premium charged. The Board shall from time to time as conditions warrant, and after notice and hearing, promulgate such reasonable rules and regulations and amendments thereto as are necessary to establish the standard or standards by which any previous approval of a policy form may be withdrawn. Any such rule or regulation shall be promulgated in accordance with Article 3.70-10 of the Texas Insurance Code. Nothing in this section shall be construed as granting the State Board of Insurance any power or authority to determine, fix, prescribe, or promulgate the rates to be charged for any individual accident and sickness insurance policy or policies.

(2) The Board shall require the filing of all rates to be charged for individual accident and sickness policies and may adopt necessary forms to be filed by insurers in conjunction with the annual statement required under Articles 3.07 and 3.20 of this code for reporting the experience on all individual accident and sickness insurance policy forms issued by the insurer so as to determine compliance with Subsection (1).

(h) Appeals from any order of the State Board of Insurance issued under this Article may be taken to

the District Court of Travis County, Texas, in accordance with Article 21.44 of Sub-Chapter F of this Insurance Code, or any amendments thereof.

[Amended by Acts 1975, 64th Leg., p. 2208, ch. 703, § 4, eff. June 21, 1975.]

Art. 3.44a. Standard Non-forfeiture Law

[See Compact Edition, Volume 2 for text of 1 to 4]

Adjusted Premiums

Sec. 5. Except as provided in the third paragraph of this Section, the adjusted premiums for any policy shall be calculated on an annual basis, or at the option of the company on a fully continuous basis provided such basis is consistent with actual policy provisions and the use of such basis is specified therein, and shall be such uniform percentage of the respective premiums specified in the policy for each policy year, excluding any extra premiums charged because of impairments or special hazards, that the present value, at the date of issue of the policy, of all such adjusted premiums shall be equal to the sum of (i) the then present value of the future guaranteed benefits provided for by the policy; (ii) two per cent (2%) of the amount of insurance, if the insurance be uniform in amount, or of the equivalent uniform amount, as hereinafter defined, if the amount of insurance varies with duration of the policy; (iii) forty per cent (40%) of the adjusted premium for the first policy year; (iv) twenty-five per cent (25%) of either the adjusted premium for the first policy year or the adjusted premium for a whole life policy of the same uniform or equivalent uniform amount with uniform premiums for the whole of life issued at the same age for the same amount of insurance, whichever is less. Provided, however, that in applying the percentages specified in (iii) and (iv) above, no adjusted premium shall be deemed to exceed four per cent (4%) of the amount of insurance or uniform amount equivalent thereto. The date of issue of a policy for the purpose of this Section shall be the date as of which the rated age of the insured is determined.

In the case of a policy providing an amount of insurance varying with duration of the policy, the equivalent uniform amount thereof for the purpose of this Section shall be deemed to be the uniform amount of insurance provided by an otherwise similar policy, containing the same endowment benefit or benefits, if any, issued at the same age and for the same term, the amount of which does not vary with duration and the benefits under which have the same present value at the date of issue as the benefits under the policy; provided, however, that in the case of a policy providing a varying amount of insurance issued on the life of a child under age ten, the equivalent uniform amount may be computed as

though the amount of insurance provided by the policy prior to the attainment of age ten were the amount provided by such policy at age ten.

The adjusted premiums for any policy providing term insurance benefits by rider or supplemental policy provision shall be equal to (a) the adjusted premiums for an otherwise similar policy issued at the same age without such term insurance benefits, increased, during the period for which premiums for such term insurance benefits are payable, by (b) the adjusted premiums for such term insurance, the foregoing items (a) and (b) being calculated separately and as specified in the first two paragraphs of this Section.

Except as otherwise provided in Sections 6 and 7, all adjusted premiums and present values referred to in this Article shall for all policies of ordinary insurance be calculated on the basis of the Commissioners 1941 Standard Ordinary Mortality Table, provided that for any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to an age not more than three years younger than the actual age of the insured and such calculations for all policies of industrial insurance shall be made on the basis of the 1941 Standard Industrial Mortality Table. All calculations shall be made on the basis of the rate of interest, not exceeding three and one-half per cent (3½%) per annum, specified in the policy for calculating cash surrender values and paid-up non-forfeiture benefits. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a non-forfeiture benefit, the rates of mortality assumed may be not more than one hundred and thirty percent (130%) of the rates of mortality according to such applicable table. Provided further, that for insurance issued on a sub-standard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the State Board of Insurance.

Calculation of Adjusted Premiums and Present Values of Ordinary Policies Issued on or After Operative Date of This Section

Sec. 6. In the case of ordinary policies issued on or after the operative date of this Section as defined herein, all adjusted premiums and present values referred to in this Article shall be calculated on the basis of the Commissioners 1958 Standard Ordinary Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up non-forfeiture benefits provided that such rate of interest shall not exceed three and one-half per cent (3½%) per annum except that a rate of interest not exceeding four per cent (4%) per annum may be used for policies issued on or after June 14, 1973, and prior to the effective date of this amend-

tory Act of 1977. For policies issued on and after the effective date of this amendatory Act of 1977, a rate of interest not exceeding five and one-half per cent (5½%) per annum may be used, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half per cent (6½%) per annum may be used. For any category of ordinary insurance issued on female risks, adjusted premiums and present values may be calculated according to age not more than three years younger than the actual age of the insured for policies issued prior to the effective date of this amendatory Act of 1977 and for policies issued on and after such effective date adjusted premiums and present values may be calculated according to an age not more than six (6) years younger than the actual age of the insured. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a non-forfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1958 Extended Term Insurance Table. Provided further, that for insurance issued on a sub-standard basis, the calculation of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the State Board of Insurance.

On or after the operative date of this Article, any company may file with the State Board of Insurance a written notice of its election to comply with the provisions of this Section after a specified date before January 1, 1974. After the filing of such notice, then upon such specified date (which shall be the operative date of this Section for such company), this Section shall become operative with respect to the ordinary policies thereafter issued by such company. If a company makes no such election, the operative date of this Section for such company shall be January 1, 1974.

Industrial Policies; Adjusted Premiums and Present Values

Sec. 7. In the case of industrial policies issued on or after the operative date of this Section as defined herein, all adjusted premiums and present values referred to in this Article shall be calculated on the basis of the Commissioners 1961 Standard Industrial Mortality Table and the rate of interest specified in the policy for calculating cash surrender values and paid-up non-forfeiture benefits provided that such rate of interest shall not exceed three and one-half per cent (3½%) per annum, except that a rate of interest not exceeding four per cent (4%) per annum may be used for policies issued on or after June 14, 1973, and prior to the effective date of this amendatory Act of 1977. For policies issued on and after the effective date of this amendatory Act of 1977 a rate of interest not exceeding five and one-half per

cent (5½%) per annum may be used, except that for any single premium whole life or endowment insurance policy a rate of interest not exceeding six and one-half per cent (6½%) per annum may be used. Provided, however, that in calculating the present value of any paid-up term insurance with accompanying pure endowment, if any, offered as a non-forfeiture benefit, the rates of mortality assumed may be not more than those shown in the Commissioners 1961 Industrial Extended Term Insurance Table. Provided further, that for insurance issued on a sub-standard basis, the calculations of any such adjusted premiums and present values may be based on such other table of mortality as may be specified by the company and approved by the State Board of Insurance.

On or after the operative date of this Article, any company may file with the State Board of Insurance a written notice of its election to comply with the provisions of this Section after a specified date before January 1, 1974. After the filing of such notice, then upon such specified date (which shall be the operative date of this Section for such company), this Section shall become operative with respect to the industrial policies thereafter issued by such company. If a company makes no such election, the operative date of this Section for such company shall be January 1, 1974.

[See Compact Edition, Volume 2 for text of 8 to 10]

[Amended by Acts 1977, 65th Leg., p. 2095, ch. 841, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 3.44b. Standard Non-forfeiture Law for Individual Deferred Annuities

Contracts of Annuity to Contain Certain Provisions

Sec. 1. In the case of contracts issued on or after the operative date of this Article as defined in Section 11, no contract of annuity, except as stated in Section 10, shall be delivered or issued for delivery in this state unless it contains in substance the following provisions, or corresponding provisions which in the opinion of the State Board of Insurance are at least as favorable to the contract holder, on cessation of payment of considerations under the contract.

(a) That on cessation of payment of considerations under a contract, the company will grant a paid-up annuity benefit on a plan stipulated in the contract of such value as is specified in Sections 3, 4, 5, 6, and 8 of this Article.

(b) If a contract provides for a lump-sum settlement at maturity, or at any other time, that on surrender of the contract at or prior to the commencement of any annuity payments, the company will pay in lieu of any paid-up annuity benefit a cash

surrender benefit of such amount as is specified in Sections 3, 4, 6, and 8 of this Article. The company shall reserve the right to defer the payment of such cash surrender benefit for a period of six (6) months after demand therefor with surrender of the contract.

(c) A statement of the mortality table, if any, and interest rates used in calculating any minimum paid-up annuity, cash surrender or death benefits that are guaranteed under the contract, together with sufficient information to determine the amounts of such benefits.

(d) A statement that any paid-up annuity, cash surrender or death benefits that may be available under the contract are not less than the minimum benefits required by any statute of the state in which the contract is delivered and an explanation of the manner in which such benefits are altered by the existence of any additional amounts credited by the company to the contract, any indebtedness to the company on the contract or any prior withdrawals from or partial surrenders of the contract.

Notwithstanding the requirements of this Section, any deferred annuity contract may provide that if no considerations have been received under a contract for a period of two (2) full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in the contract arising from considerations paid prior to such period would be less than twenty dollars (\$20.00) monthly, the company may at its option terminate such contract by payment in cash of the then present value of such portion of the paid-up annuity benefit, calculated on the basis of the mortality table, if any, and interest rate specified in the contract for determining the paid-up annuity benefit, and by such payment shall be relieved of any further obligation under such contract.

Minimum Non-forfeiture Amounts

Sec. 2. The minimum values as specified in Sections 3, 4, 5, 6, and 8 of this Article of any paid-up annuity, cash surrender, or death benefits available under an annuity contract shall be based upon minimum non-forfeiture amounts as defined in this Section.

(a) With respect to contracts providing for flexible considerations, the minimum non-forfeiture amount at any time at or prior to the commencement of any annuity payments shall be equal to an accumulation up to such time at a rate of interest of three per cent (3%) per annum of percentages of the net considerations (as hereinafter defined) paid prior to such time, decreased by the sum of:

(1) any prior withdrawals from or partial surrenders of the contract accumulated at a rate of interest of three per cent (3%) per annum; and

(2) the amount of any indebtedness to the company on the contract, including interest due and accrued; and increased by any existing additional amounts credited by the company to the contract.

The net considerations for a given contract year used to define the minimum non-forfeiture amount shall be an amount not less than zero and shall be equal to the corresponding gross considerations credited to the contract during that contract year less an annual contract charge of thirty dollars (\$30.00) and less a collection charge of one dollar and twenty-five cents (\$1.25) per consideration credited to the contract during that contract year. The percentages of net considerations shall be sixty-five per cent (65%) of the net consideration for the first contract year and eighty-seven and one-half per cent (87½%) of the net considerations for the second and later contract years. Notwithstanding the provisions of the preceding sentence, the percentage shall be sixty-five per cent (65%) of the portion of the total net consideration for any renewal contract year which exceeds by not more than two times the sum of those portions of the net considerations in all prior contract years for which the percentage was sixty-five per cent (65%).

(b) With respect to contracts providing for fixed scheduled considerations, minimum non-forfeiture amounts shall be calculated on the assumption that considerations are paid annually in advance and shall be defined as for contracts with flexible considerations which are paid annually with two exceptions:

(1) the portion of the net consideration for the first contract year to be accumulated shall be the sum of sixty-five per cent (65%) of the net consideration for the first contract year plus twenty-two and one-half per cent (22½%) of the excess of the net consideration for the first contract year over the lesser of the net considerations for the second and third contract years; and

(2) the annual contract charge shall be the lesser of (i) thirty dollars (\$30.00) or (ii) ten per cent (10%) of the gross annual consideration.

(c) With respect to contracts providing for a single consideration, minimum non-forfeiture amounts shall be defined as for contracts with flexible considerations except that the percentage of net consideration used to determine the minimum non-forfeiture amount shall be equal to ninety per cent (90%) and the net consideration shall be the gross consideration less a contract charge of seventy-five dollars (\$75.00).

Present Value of Paid-up Annuity

Sec. 3. Any paid-up annuity benefit available under a contract shall be such that its present value on the date annuity payments are to commence is at

least equal to the minimum non-forfeiture amount on that date. Such present value shall be computed using the mortality table, if any, and the interest rate specified in the contract for determining the minimum paid-up annuity benefits guaranteed in the contract.

Contracts Which Provide Cash Surrender Benefits

Sec. 4. For contracts which provide cash surrender benefits, such cash surrender benefits available prior to maturity shall not be less than the present value as of the date of surrender of that portion of the maturity value of the paid-up annuity benefit which would be provided under the contract at maturity arising from considerations paid prior to the time of cash surrender reduced by the amount appropriate to reflect any prior withdrawals from or partial surrenders of the contract, such present value being calculated on the basis of an interest rate not more than one per cent (1%) higher than the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, decreased by the amount of any indebtedness to the company on the contract, including interest due and accrued, and increased by any existing additional amounts credited by the company to the contract. In no event shall any cash surrender benefit be less than the minimum non-forfeiture amount at that time. The death benefit under such contracts shall be at least equal to the cash surrender benefit.

Contracts Which Do Not Provide Cash Surrender Benefits

Sec. 5. For contracts which do not provide cash surrender benefits, the present value of any paid-up annuity benefit available as a non-forfeiture option at any time prior to maturity shall not be less than the present value of that portion of the maturity value of the paid-up annuity benefit provided under the contract arising from considerations paid prior to the time the contract is surrendered in exchange for, or changed to, a deferred paid-up annuity, such present value being calculated for the period prior to the maturity date on the basis of the interest rate specified in the contract for accumulating the net considerations to determine such maturity value, and increased by any existing additional amounts credited by the company to the contract. For contracts which do not provide any death benefits prior to the commencement of any annuity payments, such present values shall be calculated on the basis of the interest rate and the mortality table specified in the contract for determining the maturity value of the paid-up annuity benefit. However, in no event shall the present values of a paid-up annuity be less than the minimum non-forfeiture amount at that time.

Maturity Dates

Sec. 6. For the purpose of determining the benefits calculated under Sections 4 and 5 of this Article,

in the case of annuity contracts under which an election may be made to have annuity payments commence at optional maturity dates, the maturity date shall be deemed to be the latest date for which election shall be permitted by the contract, but shall not be deemed to be later than the anniversary of the contract next following the annuitant's 70th birthday or the 10th anniversary of the contract, whichever is later.

Statement Indicating No Benefits

Sec. 7. Any contract which does not provide cash surrender benefits or does not provide death benefits at least equal to the minimum non-forfeiture amount prior to the commencement of any annuity payments shall include a statement in a prominent place in the contract that such benefits are not provided.

Benefits Available Other Than On Contract Anniversary

Sec. 8. Any paid-up annuity, cash surrender or death benefits available at any time, other than on the contract anniversary under any contract with fixed scheduled considerations, shall be calculated with allowance for the lapse of time and the payment of any scheduled considerations beyond the beginning of the contract year in which cessation of payment of consideration under the contract occurs.

Contracts Which Provide Both Annuity Benefits and Life Insurance Benefits

Sec. 9. For any contract which provides, within the same contract by rider or supplemental contract provision, both annuity benefits and life insurance benefits that are in excess of the greater of cash surrender benefits or a return of the gross considerations with interest, the minimum non-forfeiture benefits shall be equal to the sum of the minimum non-forfeiture benefits for the annuity portion and the minimum non-forfeiture benefits, if any, for the life insurance portion computed as if each portion were a separate contract. Notwithstanding the provisions of Sections 3, 4, 5, 6, and 8 of this Article, additional benefits payable (a) in the event of total and permanent disability, (b) as reversionary annuity or deferred reversionary annuity benefits, or (c) as other policy benefits additional to life insurance, endowment and annuity benefits, and considerations for all such additional benefits, shall be disregarded in ascertaining the minimum non-forfeiture amounts, paid-up annuity, cash surrender and death benefits that may be required by this Article. The inclusion of such additional benefits shall not be required in any paid-up benefits, unless such additional benefits separately would require minimum non-forfeiture amounts, paid-up annuity, cash surrender and death benefits.

Inapplicability of Article

Sec. 10. This Article shall not apply to any reinsurance, group annuity purchased under a retire-

ment plan or plan of deferred compensation established or maintained by an employer (including a partnership or sole proprietorship), or by an employee organization, or by both, other than a plan providing individual retirement accounts or individual retirement annuities under Section 408 of the Internal Revenue Code of 1954, as amended (Title 26, United States Code, as amended), premium deposit fund, variable annuity, investment annuity, immediate annuity, any deferred annuity contract after annuity payments have commenced, or reversionary annuity, nor to any contract which shall be delivered outside this state through an agent or other representative of the company issuing the contract.

Operative Date of Article

Sec. 11. After the effective date of this Article, any company may file with the State Board of Insurance a written notice of its election to comply with the provisions of this Article after a specified date before the second anniversary of the effective date of this Article. After the filing of such notices, then upon such specified date, which shall be the operative date of this Article for such company, the Article shall become operative with respect to annuity contracts thereafter issued by such company. If a company makes no such election, the operative date of this Article for such company shall be the second anniversary of the effective date of this Article.

[Added by Acts 1977, 65th Leg., p. 2104, ch. 843, § 1, eff. Aug. 29, 1977.]

SUBCHAPTER E. GROUP; INDUSTRIAL AND CREDIT INSURANCE

Art. 3.50. Group Life Insurance

Definitions

Sec. 1. No policy of group life insurance shall be delivered in this state unless it conforms to one of the following descriptions:

(1) A policy issued to an employer, or to the trustees of a fund established by an employer, which employer or trustees shall be deemed the policyholder, to insure employees of the employer for the benefit of persons other than the employer, subject to the following requirements:

(a) The employees eligible for insurance under the policy shall be all of the employees of the employer, or all of any class or classes thereof determined by conditions pertaining to their employment. The policy may provide that the term "employees" shall include the employees of one or more subsidiary corporations, and the employees, individual proprietors, and partners of one or more affiliated corporations, proprietors

or partnerships if the business of the employer and of such affiliated corporations, proprietors or partnerships is under common control through stock ownership, contract, or otherwise. The policy may provide that the term "employees" shall include the individual proprietor or partners if the employer is an individual proprietor or a partnership. The policy may provide that the term "employees" shall include retired employees.

(b) The premium for the policy shall be paid by the policyholder, either wholly from the employer's fund or funds contributed by him, or partly from such funds and partly from funds contributed by the insured employees. No policy may be issued on which the entire premium is to be derived from funds contributed by the insured employees. A policy on which part of the premium is to be derived from funds contributed by the insured employees may be placed in force only if at least seventy-five percent (75%) of the then eligible employees, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured employees must insure all eligible employees, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at least ten (10) employees at date of issue.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the employees or by the employer or trustees. No policy may be issued which provides insurance on any employee which together with any other insurance under any group life insurance policies issued to the employer or to the trustees of a fund established by the employer exceeds Fifty Thousand Dollars (\$50,000.00), unless two hundred percent (200%) of the annual compensation of such employee from his employer or employers exceeds Fifty Thousand Dollars (\$50,000.00), in which event all such term insurance shall not exceed One Hundred Thousand Dollars (\$100,000.00), or two hundred percent (200%) of such annual compensation, whichever is the lesser, except that this limitation shall not apply to group insurance on other than the term plan where such insurance is to be used to fund the benefits under a pension or profit sharing

plan and the amount of such insurance does not exceed that required to provide at normal retirement date the pension specified by the plan, and except that a group policy which is issued by the same or another carrier to replace another group policy may provide term insurance not to exceed the amounts provided by the policy which it replaces, or the amounts provided above, whichever are greater.

(2) A policy issued to a labor union, which shall be deemed the employer and policyholder, to insure the members of such union who are actively engaged in the same occupation and who shall be deemed to be the employees of such union within the meaning of this Article.

(3) A policy issued to any association of employees of the United States Government or any subdivision thereof, provided the majority of the members of such association are residents of this state, an association of public employees, an incorporated city, town or village, an independent school district, common school district, state colleges or universities, any association of state employees, any association of state, county and city, town or village employees, and any association of any combination of state, county or city, town or village employees and any department of the state government which employer or association shall be deemed the policyholder to insure the employees of any such incorporated city, town or village, of any such independent school district, of any common school district, of any such state college or university, of any such department of the state government, members of any association of state, county or city, town or village or of the United States Government or any subdivision thereof, provided the majority of such employees reside in this state, employees for the benefit of persons other than the policyholder subject to the following requirements:

(a) The persons eligible for insurance under the policy shall be all of the employees of the employer or if the policyholder is an association, all of the members of the association.

(b) The premium for a policy issued to any policyholder authorized to be such policyholder under Subsection (3) of Section 1, Article 3.50, Texas Insurance Code, may be paid in whole or in part from funds contributed by the employer, or in whole or in part from funds contributed by the persons insured under said policy; or in whole or in part from funds contributed by the insured employees who are members of such association of employees; provided, however,

that any monies or credits received by or allowed to the policyholder pursuant to any participation agreement contained in or issued in connection with the policy shall be applied to the payment of future premiums and to the pro rata abatement of the insured employees' contribution therefor; and provided further, that the employer may deduct from the employees' salaries the employees' contributions for the premiums when authorized in writing by the respective employees so to do. Such policy may be placed in force only if at least 75% of the eligible employees or if an association of employees is the policyholder, 75% of the eligible members of said association, excluding any as to whom evidence of individual insurability is not satisfactory to the insurer, elect to make the required premium contributions and become insured thereunder. Any group policies heretofore issued to any of the groups named in Section 1(3) above and in existence on the effective date of this Act shall continue in force even though the number of employees or members insured thereunder is less than 75% of the eligible employees or members on the effective date of this Act.

(c) The policy must cover at least ten (10) employees at date of issue, or if an association of employees is the policyholder, ten (10) members of said association at date of issue.

(d) The term employees as used herein in addition to its usual meaning shall include elective and appointive officials of the state.

(4) A policy issued to a creditor, who shall be deemed the policyholder, to insure debtors of the creditor, subject to the following requirements:

(a) The debtors eligible for insurance under the policy shall all be members of a group of persons numbering not less than fifty (50) at all times, who become borrowers, or purchasers of securities, merchandise or other property, under agreement to repay the sum borrowed or to pay the balance of the price of the securities, merchandise or other property purchase, to the extent of their respective indebtedness, but not to exceed Twenty Thousand Dollars (\$20,000.00) on any one life; provided, however, the face amount of any loan or loan commitment, totally or partially executed, made to a debtor for educational purposes or to a debtor with seasonal income by a creditor in good faith for general agricul-

tural or horticultural purposes, secured or unsecured, where the debtor becomes personally liable for the payment of such loan, may be so insured in an initial amount of such insurance not to exceed the total amount repayable under the contract of indebtedness and, when such indebtedness is repayable in substantially equal installments, the amount of insurance shall at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater, and such insurance on such credit commitments not exceeding one year in duration may be written up to the amount of the loan commitment on a nondecreasing or level term plan, but such insurance shall not exceed Fifty Thousand Dollars (\$50,000.00) on any one life.

(b) The premium for the policy shall be paid by the policyholder, either from the creditor's funds or from charges collected from the insured debtors, or both.

(c) The insurance issued shall not include annuities or endowment insurance.

(d) The insurance shall be payable to the policyholder. Such payment shall reduce or extinguish the unpaid indebtedness of the debtor to the extent of such payment; provided that in the case of a debtor for educational purposes or of a debtor with seasonal income, under a loan or loan commitment for general agricultural or horticultural purposes of the type described in paragraph (a), the insurance in excess of the indebtedness to the creditor, if any, shall be payable to the estate of the debtor or under the provision of a facility of payment clause.

(5) A policy issued to the trustees of a fund established by two or more employers in the same industry or by one or more labor unions, or to the trustees of a fund established by one or more employers in the same industry and one or more labor unions, or by one or more employers and one or more labor unions whose members are in the same or related occupations or trades, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions for the benefit of persons other than the employers or the union, subject to the following requirements:

(a) The persons eligible for insurance shall be all of the employees of the employers and the employees of the trade association of such employers or all of the members of the union, or all of any class or classes thereof determined by conditions pertaining to their employment, or to membership in the unions, or both. The policy

may provide that the term "employees" shall include retired employees, and the individual proprietor or partners if an employer is an individual proprietor or a partnership. No director of a corporate employer shall be eligible for insurance under the policy unless such person is otherwise eligible as a bona fide employee of the corporation by performing services other than the usual duties of a director. No individual proprietor or partner shall be eligible for insurance under the policy unless he is actively engaged in and devotes a substantial part of his time to the conduct of the business of the proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship.

(b) The premium for the policy shall be paid by the trustees wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions, or by both, or, partly from such funds and partly from funds contributed by the insured persons, except that in no event shall the contribution by an insured person toward the cost of his insurance exceed forty cents per thousand per month. A policy on which part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance may be placed in force only if at least seventy-five percent (75%) of the then eligible persons of each participating employer unit, excluding any as to whom evidence of insurability is not satisfactory to the insurer, elect to make the required contributions. A policy on which no part of the premium is to be derived from funds contributed by the insured persons specifically for their insurance must insure all eligible persons, or all except any as to whom evidence of individual insurability is not satisfactory to the insurer.

(c) The policy must cover at date of issue at least one hundred (100) persons; unless the policy is issued to the trustees of a fund established by employers which have assumed obligations through a collective bargaining agreement and are participating in the fund either pursuant to those obligations with regard to one or more classes of their employees which are encompassed in the collective bargaining agreement or as a method of providing insurance benefits for other classes of their employees, or unless the policy is issued to the trustees of a fund established by one or more labor unions.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured persons or by the policyholder or employer. No policy may be issued which provides term insurance on any person which together with any other term insurance under any group life insurance policy or policies issued to trustees or employers exceeds Fifty Thousand Dollars (\$50,000.00), unless two hundred percent (200%) of the annual compensation of such employee from his employer or employers exceeds Fifty Thousand Dollars (\$50,000.00), in which event all such term insurance shall not exceed One Hundred Thousand Dollars (\$100,000.00) or two hundred percent (200%) of such annual compensation, whichever is the lesser.

(e) The limitation as to amount of group insurance on any person shall not apply to group insurance on other than the term plan where such insurance is to be used to fund the benefits under a pension plan and the amount of such insurance does not exceed that required to provide at normal retirement date the pension specified by the plan, and except that a group policy which is issued by the same or another carrier to replace another group policy may provide term insurance not to exceed the amount provided by the policy which it replaces, or the amounts provided above whichever is greater.

(f) No policy may be issued (i) to insure employees of any employer whose eligibility to participate in the fund as an employer arises out of considerations directly related to the employer being a commercial correspondent or business client or patron of another employer (regardless of whether such other employer is or is not participating in the fund); or (ii) to insure employees of any employer which is not located in this state, unless the majority of the employers whose employees are to be insured are located in this state, or unless the policy is issued to the trustees of a fund established by one or more labor unions.

(6) A policy issued to cover any other substantially similar group which, in the discretion of the commissioner of insurance, may be subject to the issuance of a group life insurance policy or contract.

(7) No policy of wholesale, franchise or employee life insurance, as hereinafter defined, shall be issued or delivered in this state unless it conforms to the following requirements:

(a) Wholesale, franchise or employee life insurance is hereby defined as: a term life insurance plan under which a number of individual term life insurance policies are issued at special rates to a selected group. A special rate is any rate lower than the rate shown in the issuing insurance company's manual for individually issued policies of the same type and to insureds of the same class.

(b) Wholesale, franchise or employee life insurance may be issued to (1) the employees of a common employer or employers, covering at date of issue not less than five employees; or (2) the members of a labor union or unions covering at date of issue not less than five members; or (3) the members of a credit union or credit unions covering at date of issue not less than five (5) members.

(c) The premium for the policy shall be paid either wholly from funds contributed by the employer or employers of the insured persons, or by the union or unions or by both, or partly from such funds and partly from funds contributed by the insured person, except that in no event shall the contribution by an insured person toward the cost of his insurance exceed forty cents per thousand per month.

(d) No policy may be issued on a wholesale, franchise or employee life insurance basis which, together with any other term life insurance policy or policies issued on a wholesale, franchise, employee life insurance or group basis, provides term life insurance coverage for an amount in excess of Fifty Thousand Dollars (\$50,000.00), unless two hundred percent (200%) of the annual compensation of such employee from his employer or employers exceeds Fifty Thousand Dollars (\$50,000.00), in which event all such term insurance shall not exceed One Hundred Thousand Dollars (\$100,000.00), or two hundred percent (200%) of such annual compensation, whichever is the lesser. An individual application shall be taken for each such policy and the insurer shall be entitled to rely upon the applicant's statements as to applicant's other similar coverage upon his life.

(e) Each such policy of insurance shall contain a provision substantially as follows:

A provision that if the insurance on an insured person ceases because of termination of employment or of membership in the union, such person shall be entitled to have issued to him by the insurer, without evi-

dence of insurability an individual policy of life insurance without disability or other supplementary benefits, provided application for the individual policy shall be made, and the first premium paid to the insurer, within thirty-one (31) days after such termination.

(f) Each such policy may contain any provision substantially as follows:

(1) A provision that the policy is renewable at the option of the insurer only;

(2) A provision for termination of coverage by the insurer upon termination of employment by the insured employee;

(3) A provision requiring a person eligible for insurance to furnish evidence of individual insurability satisfactory to the insurer as condition to coverage.

(g) The limitation as to amount of group and wholesale, franchise or employee life insurance on any person shall not apply to group insurance on other than the term plan where such insurance is to be used to fund benefits under a pension plan and the amount of such insurance does not exceed that required to provide at normal retirement date the pension specified by the plan, and except that a group policy which is issued by the same or another carrier to replace another group policy may provide term insurance not to exceed the amounts provided by the policy which it replaces, or the amounts provided above, whichever are greater.

(h) Nothing contained in this Subsection (6) shall in any manner alter, impair or invalidate (1) any policy heretofore issued prior to the effective date of this Act; nor (2) any such plan heretofore placed in force and effect provided such prior plan was at date of issue legal and valid; nor (3) any policy issued on a salary savings franchise plan, bank deduction plan, pre-authorized check plan or similar plan of premium collection.

(7A) A policy may be issued to a principal, or if such principal is a life or life and accident or life, accident and health insurer, by or to such principal, covering when issued not less than ten (10) agents of the principal, subject to the following requirements:

(a) As used in this section, the term "agents" shall be deemed to include general agents, subagents and salesmen.

(b) The agents eligible for insurance under the policy shall be those who are under contract to render personal services for the

principal for a commission or other fixed or ascertainable compensation.

(c) The premium for the policy shall be paid either wholly by the principal or partly from funds contributed by the principal and partly from funds contributed by the insured agents. A policy on which no part of the premium is to be derived from funds contributed by the insured agents must insure all of the eligible agents or all of any class or classes thereof determined by conditions pertaining to the services to be rendered by the agents to the principal. A policy on which part of the premium is to be derived from funds contributed by the insured agents must cover at issue at least seventy-five percent (75%) of the eligible agents or at least seventy-five percent (75%) of any class or classes thereof determined by conditions pertaining to the services to be rendered by the agents; provided, however, that the benefits may be extended to other classes of agents as seventy-five percent (75%) thereof express the desire to be covered.

(d) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the principal or by the agents. No policy may be issued which provides term insurance on any agent which together with any other term insurance under any group life insurance policy or policies issued to the principal exceeds Fifty Thousand Dollars (\$50,000.00), unless two hundred percent (200%) of the annual commissions or other fixed or ascertainable compensation of such agent from the principal exceeds Fifty Thousand Dollars (\$50,000.00), in which event all such term insurance shall not exceed One Hundred Thousand Dollars (\$100,000.00), or two hundred percent (200%) of such annual commissions or other fixed or ascertainable compensation, whichever is the lesser.

(e) The insurance shall be for the benefit of persons other than the principal.

(8) A policy issued to the Veterans Land Board of the State of Texas, who shall be deemed the policyholder to insure persons purchasing land under the Texas Veterans Land Program as provided in Section 16(B) of Article 5421m, Vernon's Texas Civil Statutes (Chapter 318, Acts of the 51st Legislature, Regular Session, 1949, as amended).

(9) Any policy of group term life insurance may be extended, in the form of group term life insurance only, to insure the spouse and minor children, natural or adopted, of an insured em-

ployee, provided the policy constitutes a part of the employee benefit program established for the benefit of employees of the United States government or any subdivision thereof, and provided further, that the spouse or children of other employees covered by the same employee benefit program in other states of the United States are or may be covered by group term life insurance, subject to the following requirements:

(a) The premiums for the group term life insurance shall be paid by the policyholder from funds solely contributed by the insured employee.

(b) The amounts of insurance under the policy must be based upon some plan precluding individual selection either by the insured employee or by the policyholder, provided that group term life insurance upon the life of a spouse shall not exceed the lesser of (1) Ten Thousand Dollars (\$10,000.00) or (2) one-half of the amount of insurance on the life of the insured employee under the group policy; and provided that group term life insurance on the life of any minor child shall not exceed Two Thousand Dollars (\$2,000.00).

(c) Upon termination of the group term life insurance with respect to the spouse of any insured employee by reason of such person's termination of employment or death, or termination of the group contract, the spouse insured pursuant to this section shall have the same conversion rights as to the group term life insurance on his or her life as is provided for the insured employee.

(d) Only one certificate need be issued for delivery to an insured employee if a statement concerning any dependent's coverage is included in such certificate.

(10)¹ A policy of group life insurance may be issued to a nonprofit service, civic, fraternal, or community organization or association which has had an active existence for at least two years, has a constitution or bylaws, was formed for purposes other than obtaining insurance, and which association shall be deemed the policyholder to insure members and employees of such association for the benefit of persons other than the association or any of its officers, subject to the following requirements:

(a) The persons eligible for insurance shall be all the members of the association, or all of any class thereof determined by conditions pertaining to membership in the association.

(b) The amounts of insurance under the policy shall be based upon some plan pre-

cluding individual selection either by the insured members or by the association.

(c) The premium for the policy shall be paid by the policyholder from the policyholder's own funds or from funds contributed by the employees or members specifically for their insurance, or from both.

(d) The policy shall cover at least twenty-five (25) persons at date of issue.

[See Compact Edition, Volume 2 for text of 2 to 5]

Dependents: Continuation of Benefits After Death of Insured

Sec. 6. Any group life insurance policy which contains provisions for the payment by the insurer of benefits for members of the family or dependents of a person in the insured group may provide for a continuation of such benefits or any part or parts thereof after the death of the person in the insured group, and provided further that any amounts of insurance so provided by such benefits shall not be construed as life insurance for the purpose of determining the maximum amount of term insurance that may be issued on any one life.

[Amended by Acts 1975, 64th Leg., p. 766, ch. 299, § 1, eff. May 27, 1975; Acts 1975, 64th Leg., p. 2171, ch. 698, § 1, eff. June 21, 1975, Acts 1977, 65th Leg., p. 1512, ch. 612, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2194, ch. 867, § 1, eff. Aug. 29, 1977.]

¹ Added as subsec. (9) by Acts 1977, 65th Leg., ch. 867 and editorially redesignated as subsec. (10).

Art. 3.50-2. Employees Uniform Group Insurance Benefits Act

Citation

Sec. 1. This Act shall be known and may be cited as the "Texas Employees Uniform Group Insurance Benefits Act."

Purposes

Sec. 2. It is hereby declared that the purposes of this Act are:

(a) to provide uniformity in life, accident, and health insurance and benefits coverages on all employees of the State of Texas;

(b) to enable the State of Texas to attract and retain competent and able employees by providing them with life, accident, and health insurance and benefits coverages at least equal to those commonly provided in private industry;

(c) to foster, promote, and encourage employment by and service to the State of Texas as a career profession for persons of high standards of competence and ability;

(d) to recognize and protect the state's investment in each permanent employee by promoting and preserving economic security and good health among state employees;

(e) to foster and develop high standards of employer-employee relationships between the State of Texas and its employees;

(f) to recognize the service to the state by elected state officials by extending to them the same life, accident, and health insurance and benefits coverages as are provided herein for state employees; and

(g) to recognize the long and faithful service and dedication of employees of the State of Texas and to encourage them to remain in state service until eligible for retirement by providing health insurance benefits for such employees.

Definitions

Sec. 3. (a) Unless a different meaning is plainly required by the context, the following words and phrases as used in this Act shall have the following meanings:

(1) "Administering carrier" shall mean any carrier designated by the trustee to administer any insurance coverages, services, benefits, or requirements in accordance with this Act and the trustee's regulations promulgated pursuant thereto.

(2) "Annuitant" shall mean an officer or employee who retires under the jurisdiction of the Employees Retirement System of Texas and either receives an annuity or is eligible to receive an annuity, pursuant to Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), Chapter 99, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 6228b, Vernon's Texas Civil Statutes), and Chapter 573, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6228i, Vernon's Texas Civil Statutes), and an employee who retires under the jurisdiction of the Teacher Retirement System of Texas and either receives an annuity or is eligible to receive an annuity, pursuant to Chapter 3, Title I, Texas Education Code,¹ whose last state employment prior to retirement is as an employee of the Teacher Retirement System of Texas, school districts established within state eleemosynary institutions, the Texas Rehabilitation Commission, the Central Education Agency, or the Coordinating Board, Texas College and University System.

(3) "Carrier" shall mean a qualified carrier as defined in this Act.

(4) "Department" shall mean commission, board, agency, division, or department of the State of Texas created as such by the constitution or statutes of this state.

(5)(A) "Employee" shall mean any appointive or elective state officer or employee in the service of the State of Texas, except employees of

any university, senior or community/junior college, or any other agency of higher education within the meaning and jurisdiction of Chapter 61, Title 3, Texas Education Code:²

(i) who is retired or retires and is an annuitant under the jurisdiction of the Employees Retirement System of Texas, pursuant to Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), Chapter 99, Acts of the 51st Legislature, Regular Session, 1949, as amended (Article 6228b, Vernon's Texas Civil Statutes), and Chapter 573, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6228i, Vernon's Texas Civil Statutes), and an employee who is retired or retires and is an annuitant under the jurisdiction of the Teacher Retirement System of Texas, pursuant to Chapter 3, Title I, Texas Education Code, whose last employment with the state prior to retirement was or is as an employee of the Teacher Retirement System of Texas, school districts established within state eleemosynary institutions, the Texas Rehabilitation Commission, the Central Education Agency, or the Coordinating Board, Texas College and University System; or

(ii) who receives his compensation for services rendered to the State of Texas on a warrant issued pursuant to a payroll certified by a department or by an elected or duly appointed officer of this state; or

(iii) who receives payment for the performance of personal services on a warrant issued pursuant to a payroll certified by a department and drawn by the State Comptroller of Public Accounts upon the State Treasurer against appropriations made by the Texas Legislature from any state funds or against any trust funds held by the State Treasurer or who is paid from funds of an official budget of a state department, rather than from funds of the General Appropriations Act; or

(iv) who is appointed, subject to confirmation of the senate, as a member of a board or commission with administrative responsibility over a statutory agency having statewide jurisdiction whose employees are covered by this Act.

(B) Persons performing personal services for the State of Texas as independent contractors shall never be considered employees of the state for purposes of this Act.

(C) Repealed by Acts 1977, 65th Leg., p. 55, ch. 31, § 1, eff. March 29, 1977.

(6) "Employer" shall mean the State of Texas and all its departments.

(7) "Health benefits plan" shall mean any group insurance policy or contract, medical, dental, or hospital service agreement, membership or subscription contract, salary continuation plan, or similar group arrangement provided by a carrier for the purpose of providing, paying for, or reimbursing expenses for health care services, including comparable health care services for employees who rely solely on spiritual means through prayer for healing in accordance with the teachings of a well recognized church or denomination.

(8) "Dependent" shall mean the spouse of an employee or retired employee and an unmarried child under 25 years of age, including: (A) an adopted child and (B) a stepchild, foster child, or other child who is in a regular parent-child relationship and (C) any such child, regardless of age, who lives with or whose care is provided by an employee or annuitant on a regular basis if such child is mentally retarded or physically incapacitated to such an extent as to be dependent upon the employee or retired employee for care or support, as the trustee shall determine.

(9) "Qualified carrier" shall mean: (A) any insurance company authorized to do business in this state by the State Board of Insurance to provide any of the types of insurance coverages, benefits, or services provided for in this Act under any of the insurance laws of the State of Texas, which has a surplus of \$1 million, a successful operating history, and which has had successful experience in providing and servicing any of the types of group coverage provided for in this Act as determined by the State Board of Insurance; (B) any corporation operating under Chapter 20 of the Insurance Code³ which provides any of the types of coverage, benefits, or services provided for in this Act, a successful operating history, and which has had successful experience in providing and servicing any of the types of group coverage provided for in this Act as determined by the State Board of Insurance; or (C) any combination or carriers as herein defined, upon such terms and conditions as may be prescribed by the trustee, providing, however, that for purposes of this Act carriers combining for the purpose of bidding and/or underwriting this program shall not be considered in violation of Sections 15.01 through 15.34, Chapter 15, Title 2, Competition and Trade Practices, Texas Business & Commerce Code.

(10) "Service" shall mean any personal service of an employee creditable in accordance with rules and regulations promulgated by the trustee.

(11) "Trustee" shall mean the State Board of Trustees, provided for in Section 6, Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), to administer the Employees Retirement System of Texas.

(12) "Active employee plan" shall mean a plan or program of group insurance as determined by the trustee as defined in Paragraph (11) above for the benefit of employees of the State of Texas as defined in this Act who are not retired.

(13) "Retired employees plan" shall mean a plan or program of group insurance as determined by the trustee for all retired employees as defined in this Act. This plan may be separate or a part of the active employee plan at the discretion of the trustee, and, if separate, shall include both full benefits and supplemental coverage options.

(14) "Part-time employee" shall mean, for purposes of this Act, an employee designated by his employing agency as working less than 20 hours per week. A part-time employee shall receive the benefits of one-half the amount of the state's contribution received by full-time employees.

(15) "Full-time employee" shall mean, for purposes of this Act, an employee designated by his employing agency as working 20 or more hours per week. A full-time employee shall receive the benefits of a full state contribution for coverage under this Act.

(16) "Basic plan for active full-time employees" shall mean the program of group insurance determined by the trustee in which every full-time employee participates automatically unless participation is specifically waived, the premium for which is paid wholly by the state or the employing department.

(17) "Basic plan for retired employee-annuitants" shall mean the program of group insurance determined by the trustee in which every retired employee-annuitant participates automatically unless participation is specifically waived, the premium for which is paid wholly by the state.

(b) In addition to the foregoing definitions, the trustee shall have authority to define by rule any words in terms necessary in the administration of this Act.

¹ Education Code, § 3.01 et seq.

² Education Code, § 61.001 et seq.

³ Article 20.01 et seq.

Administration

Sec. 4. The administration and implementation of this Act are vested solely in the trustee. As it shall deem necessary to insure the proper adminis-

tration of this Act and the insurance coverages, services, and benefits provided for or authorized by this Act, the trustee, as an agency of the State of Texas, shall have full power and authority to hire employees. The duties of such employees and their compensation shall be determined and assigned by the trustee. The trustee may, on a competitive bid basis, contract with a qualified, experienced firm of group insurance specialists who shall act for the trustee in a capacity as independent administrators and managers of the programs authorized under this Act. The independent administrator so selected by the trustee shall assist the trustee to insure the proper administration of the Act and the insurance coverages, services, and benefits provided for or authorized by the Act and shall be paid by the trustee. Compensation of all persons employed by the trustee and their expenses shall be paid at such rates and in such amounts as the trustee shall approve, providing that in no case shall they be greater than those expenses paid for like or similar services. Also, as an agency of the State of Texas, the trustee shall have full power and authority to enter into interagency contracts with any department of the State of Texas. The interagency contracts shall provide for reimbursement to the state departments and shall define the services to be performed by the departments for the trustee. The trustee shall have full power and authority to promulgate all rules, regulations, plans, procedures, and orders reasonably necessary to implement and carry out the purposes and provisions of this Act in all its particulars, including but not limited to the following:

- (a) preparation of specifications for all insurance provided by authority of this Act;
- (b) prescribing the time at which and the conditions under which an employee is eligible for all coverages provided under this Act;
- (c) determination of the methods and procedures of claims administration;
- (d) determination of the amount of employee payroll deductions and the responsibility of establishing procedures by which such deductions shall be made;
- (e) establishment of grievance procedures by which the trustee shall act as an appeals body for complaints by insured employees regarding the allowance and payment of claims, eligibility, and other matters;
- (f) continuing study of the operation of all insurance coverages provided under this Act, including such matters as gross and net cost, administration costs, benefits, utilization of benefits, and claims administration;
- (g) administration of the Employees Life, Accident, and Health Insurance and Benefits Fund, providing for the beginning and ending

dates of coverages of employees and annuitants and their dependents under health benefit plans;

(h) adoption of all rules and regulations consistent with the provisions of this Act and its purpose as it deems necessary to carry out its statutory duties and responsibilities;

(i) development of basic plans of group insurance coverages and benefits applicable to all state employees. The trustee also may provide for optional group insurance coverages and benefits in addition to the basic plan; and

(j) to provide either additional statewide optional programs or individual agency optional programs as the trustee may determine is appropriate.

Authority to Purchase Group Insurance

Sec. 5. (a) The trustee shall establish a plan or plans for active employees and retired employees, and is hereby authorized, empowered, and directed to contract with one or more qualified carriers or a combination of qualified carriers for the establishment of such plans. The trustee is further authorized, empowered, and directed to establish the above referenced plans of group insurance which in the trustee's discretion may include but are not necessarily limited to the following: group life insurance, accidental death and dismemberment, health benefits plans, including but not limited to hospital care and benefits, surgical care and treatment, medical care and treatment, dental care, obstetrical benefits, prescribed drugs, medicines, and prosthetic devices and supplement benefits, supplies, and services in conformity with the provisions of this Act, insurance protection against either long or short term loss of salary and any other coverages of group insurance which in the discretion of the trustee with consultation from the advisory committee shall be deemed advisable. All rules and regulations shall be promulgated pursuant thereto upon such terms and conditions as shall be agreed upon between the trustee and the carrier or carriers selected to provide such insurance coverages and benefits. The trustee shall determine the insurance coverages desired for state employees and will submit this information to the State Board of Insurance for any recommendations as to the types and sufficiency of such coverages. The State Board of Insurance will notify the board of trustees within 15 days as to any such recommendations and will furnish the board of trustees with a list of all carriers authorized to do business in the State of Texas who would be eligible to bid on the insurance coverage proposed. The trustee will notify those carriers that competitive bidding will be conducted and that they are to submit their bids to the State Board of Insurance by a specified date if they wish to bid on the contract. The State Board of Insurance will, after the designated closing date

for receiving bids, examine and evaluate the bidding contracts and certify their actuarial soundness to the trustee within 15 days from the closing date. The trustee shall select the desired carrier or carriers and will notify the bidding eligible carriers as to the results of the bidding. The trustee shall select the desired carrier or carriers to provide services which shall be in the best interest of the employees covered by this Act. The trustee is not required to select the lowest bid but shall take into consideration other factors such as ability to service contracts, past experience, financial ability, and other relevant criteria. Should the trustee select a carrier whose bid differs from that advertised, such deviation shall be recorded and the reasons for such deviation shall be fully justified and explained in the minutes of the next meeting of the trustee.

(b) In the event the trustee shall select as the carrier one whose bid was not the lowest of all bids submitted, such selection shall be submitted together with justifications and reasons therefor to the State Board of Insurance. Such deviating selection shall not be deemed final and binding unless and until a majority of the State Board of Insurance has certified its approval in writing to the trustee, or upon the expiration of 30 days after receipt thereof by the State Board of Insurance such deviating selection shall be deemed approved.

(c) The trustee will be required to submit for competitive bidding the coverages provided by the group plan as follows:

(1) at least every three years;

(2) whenever a change in the types and amounts of coverage occurs, provided that submission for competitive bidding shall not be required more than once within a year from the last submission.

(d) No department shall establish, continue, or authorize payroll deductions for any benefits or coverage as provided in this section without the express approval of the trustee, except for benefits from the deferred compensation program established pursuant to Chapter 197, Acts of the 63rd Legislature, Regular Session, 1973 (Article 6252-3b, Vernon's Texas Civil Statutes).

(e) The trustee is authorized to select and contract for services performed by health maintenance organizations which are approved by the federal government or the State of Texas to offer health care services to eligible employees and annuitants in a specific area of the state. Eligible employees and annuitants may participate in a selected health maintenance organization in lieu of participation in the health insurance benefits in the Employees Uniform Group Insurance Program, and the employer contributions provided by Subsection (a), Section 15 of this Act for health care coverage shall be paid to

the selected health maintenance organizations on behalf of the participants.

Benefit Certificates

Sec. 6. The trustees shall provide for the issuance to each employee insured under this Act a certificate of insurance setting forth the benefits to which the employee is entitled, to whom the benefits are payable, to whom the claims shall be submitted, and summarizing the provisions of the policy principally affecting the employee.

Annual Report

Sec. 7. As soon as practicable after the end of each calendar year but not later than 90 days thereafter, the trustee shall make a written report to the State Board of Insurance concerning the insurance coverages provided and the benefits and services being received by all state employees insured under the provisions of this Act. It shall be the duty of the State Board of Insurance to review such report and advise the trustee in regard to the insurance features of the coverages provided for all state employees and cooperate fully with the trustee in carrying out the purposes of this Act.

Reinsurance

Sec. 8. (a) The trustee shall arrange with any carrier or carriers issuing any policy or policies under this Act for the reinsurance, under conditions approved by the trustee, of portions of the total amount of insurance under such policy or policies, with other qualified carriers which elect to participate in the reinsurance.

(b) The trustee shall determine for and in advance of a policy year which qualified carriers are eligible to participate as reinsurers and the amount of insurance under a policy or policies which is to be allocated to the issuing company and reinsurers. The trustee shall make this determination at least every three years and when a participating company withdraws.

Annual Accounting; Special Contingency Reserve

Sec. 9. (a) Carriers providing any policy purchased under this Act shall provide an accounting to the trustee not later than 90 days after the end of each policy year. The accounting shall set forth, in a form approved by the trustee:

(1) the amounts of premiums actually accrued under the policy from its date of issue to the end of the policy year;

(2) the total of all mortality and other claims, charges, losses, costs, and expenses incurred for that period; and

(3) the amounts of the insurers' allowance for a reasonable profit and contingencies for that period.

(b) An excess of the total of Subdivision (a)(1) of this section over the sum of Subdivisions (a)(2) and (a)(3) of this section shall be held by the carrier issuing the policy as a special contingency reserve to be used by the carrier only for charges, claims, costs, and expenses under the policy. The reserve shall bear interest at a rate determined in advance of each policy year by the carrier and approved by the trustee as being consistent with the rates generally used by the carrier for similar funds held under other group insurance policies. When the trustee determines that the special contingency reserve has attained an amount estimated by it to make satisfactory provision for adverse fluctuations in future charges, claims, costs, or expenses under the policy, any further excess shall be deposited in the State Treasury to the credit of the Employees Life, Accident, and Health Insurance and Benefits Fund. When a policy is discontinued, any balance remaining in the special contingency reserve after all charges have been made shall be deposited in the State Treasury to the credit of the fund. The carrier may make the deposit in equal monthly installments over a period of not more than two years.

Exemption from Execution and Taxes on Premiums

Sec. 10. (a) Exemption from Execution. All insurance benefit payments, employee contributions, optional benefits payments, and any and all rights, benefits, or payments accruing to any person under the provisions of this Act, as well as all money in any fund created by this Act, shall be and the same are hereby exempt from execution, attachment, garnishment, or any other process whatsoever and shall be unassigned except for direct payment which the employee may assign to providers of health care services and as specifically provided in this Act.

(b) Exemption from Taxes on Premiums. Premiums on policies, insurance contracts, or agreements with health maintenance organizations established under this Act shall not be subject to any state tax.

Group Life Insurance

Sec. 11. (a) The trustee is authorized and directed to establish a group life insurance program for all employees, including retired employees, of this state as herein provided, which, subject to the conditions and limitations contained in this Act and the trustee's rules and regulations promulgated pursuant thereto, will provide for each employee group life insurance in such an amount as shall be determined by the trustee. In addition to the benefits hereinabove provided and subject to the conditions and limitations of the policy or policies purchased by the trustee, such policy or policies shall provide such payments and benefits for employees and retired employees as shall be determined by the trustee. The trustee is also authorized to include the depend-

ents of employees in the group life insurance program.

(b) The trustee shall prescribe regulations providing for the conversion of other than annual rates of pay to annual rates of pay, and specify the types of pay included in annual pay and all other matters necessary to implement this section.

Death Claims; Order of Precedence; Escheat

Sec. 12. (a) The amount of group life insurance and group accidental death and dismemberment insurance in force on an employee at the date of his death shall be paid, on the establishment of a valid claim, to the person or persons surviving at the date of his death, in the following order of precedence:

First, to the beneficiary or beneficiaries designated by the employee in a signed and witnessed writing received before death in the employing office. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

Second, if there is no designated beneficiary, to the widow or widower of the employee.

Third, if none of the above, to the child or children of the employee and descendants of deceased children by representation.

Fourth, if none of the above, to the parents of the employee or the survivor of them.

Fifth, if none of the above, to the duly appointed executor or administrator of the estate of the employee.

Sixth, if none of the above, to other kin of the employee entitled under the laws of the domicile of the employee at the date of his death.

(b) If, within one year after the death of the employee, no claim for payment has been filed by a person entitled under the order of precedence named by Subsection (a) of this section, or if payment to the person within that period is prohibited by any statute or regulation, payment may be made in the order of precedence as if the person had predeceased the employee, and the payment bars recovery by any other person.

(c) If, within two years after the death of the employee, no claim for payment has been filed by a person entitled under the order of precedence named in Subsection (a) of this section, and neither the trustee nor the office established by the administering carrier has received notice that such a claim will be made, payment may be to the claimant who in the judgment of the trustee is equitably entitled thereto, and the payment bars recovery by any other person.

(d) If, within four years after the death of the employee, payment has not been made under this

section and no claim for payment by a person entitled under this section is pending, the amount payable escheats to the credit of the fund.

Automatic Coverage

Sec. 13. (a) No employee of the State of Texas shall be denied any of the group insurance coverage provided under this Act.

(b) Unless participation is waived specifically, every full-time employee shall be covered automatically by the basic plan for active full-time employees and every employee-annuitant shall be covered by the basic plan for retired employee-annuitants. Coverage shall begin on the date he becomes eligible for insurance, and each policy of insurance purchased by the trustee providing such insurance shall provide for such automatic coverage.

(c) Every part-time employee is eligible for participation in the group insurance programs provided under this Act upon execution of appropriate payroll deduction authorization for the required payment of premiums.

Payment of Premiums

Sec. 14. (a) The State of Texas shall contribute monthly to the cost of each insured employee's group insurance such amount as shall be appropriated therefor by the legislature in the General Appropriations Act. A like amount for each employee shall be appropriated by the governing board of state departments in their respective official operating budgets if their employees are compensated from funds appropriated by such budgets rather than by the General Appropriations Act.

(b) If an employee or annuitant refuses in writing the coverages, benefits, or services provided by this Act by a statement in writing satisfactory to the trustee, then in no event shall the State of Texas or the employee's department make any contribution to the cost of any other insurance coverages, services, or benefits on such employee or annuitant.

(c) If any insured employee or annuitant applies for coverage for which the premium exceeds the state's or the employing department's contribution under this Act, he shall authorize in writing and in a form satisfactory to the trustee a deduction from his monthly compensation or annuity the difference between the cost of premiums under said group policies and the amount contributed therefor by the State of Texas or the employing department.

Employer Contributions

Sec. 15. (a) On or before the first day of November next preceding each regular session of the legislature, the trustee shall certify to the Legislative Budget Board and budget division of the governor's office for information and review the amount necessary to pay the contributions of the State of Texas

to the trustee for insurance premiums on the coverages provided under this Act during the ensuing biennium. This amount shall be included in the budget of the state which the governor submits to the legislature. The trustee shall certify on or before August 31 of each year to the state comptroller of public accounts and the State Treasurer the estimated amount of state contributions to be received for employees covered by this Act during the ensuing year.

(b) From and after the effective date of this Act, there is hereby allocated and appropriated to the trustee, in accordance with the provisions of this Act, from the several funds from which state employees receive their respective salaries, a sum equal to the total of all employer contributions computed in accordance with the provisions of this Act and the rules and regulations of the trustee promulgated pursuant thereto.

(c) All money hereby allocated and appropriated by the state to the trustee under this Act shall be paid to the trustee in monthly installments based on the annual estimate by the trustee of the contributions to be received for all state employees during said year; provided, however, that in the event said estimate of the contributions of the state employees shall vary from the actual amount of the employer contributions during the year, such adjustments shall be made at the close of each fiscal year as may be required. Each of said monthly installments shall be paid into the appropriate fund created by this Act in the amount certified by the trustee.

(d) The trustee shall certify to the governing boards of those state departments who provide contributions for their employees from operating budgets provided from sources other than the General Appropriations Act the proportionate amounts needed to pay their respective contributions. Such certifications shall be made at least 30 days prior to the meeting at which the governing board adopts its operating budget.

Employees Life, Accident, and Health Insurance and Benefits Fund

Sec. 16. (a) There is hereby created with the treasury of the State of Texas an Employees Life, Accident, and Health Insurance and Benefits Fund which shall be administered by the trustee. The contributions of employees, annuitants, and the state provided for under this Act shall be paid into the fund. The fund is available:

(1) without fiscal year limitation for all payments for any insurance coverages provided for under this Act; and

(2) to pay expenses for administering this Act within the limitations that may be specified annually by the legislature.

(b) Portions of the contributions made by employees, annuitants, and the state shall be regularly set aside in the fund as follows: a percentage, not to exceed one percent of all contributions, determined by the trustee to be reasonably adequate to pay the administrative expenses made available by Subsection (a) of this section. The trustee, from time to time and in amounts it considers appropriate, may transfer unused funds for administrative expenses to the contingency reserves of the plans then under contract with the trustee. When funds are so transferred, each contingency reserve shall be credited in proportion to the total amount of the subscription charges paid and accrued to the plan for the contract term immediately before the contract term in which the transfer is made. The income derived from dividends, rate adjustments, or other refunds made by a plan shall be credited to its contingency reserve. The contingency reserves may be used to defray increases in future rates, or may be applied to reduce the contributions of employees and the state to, or to increase the benefits provided by, the plan from which the reserves are derived, as the trustee from time to time shall determine.

(c) The trustee shall have full power to invest and reinvest any of the money in the fund subject only to the restrictions contained in Section 7, Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes). The interest on and the proceeds from the sale of these obligations become a part of the fund.

(d) When insurance coverages or benefits provided for under this Act are discontinued, the contingency reserve of that plan shall be credited to the contingency reserves of such insurance continuing under this Act for the contract term following that in which termination occurs, each reserve to be credited in proportion to the amount of the subscription charges paid and accrued to the plan for the year of termination.

Studies, Reports, Records, and Audits

Sec. 17. (a) The trustee shall make a continuing study of the operation and administration of this Act, including surveys and reports on group insurance coverages and benefits available to employees and on the experience thereof.

(b) Each contract entered into under this Act shall contain provisions requiring carriers to

(1) furnish such reasonable reports as the trustee determines to be necessary to enable it to carry out its functions under this Act; and

(2) permit the trustee and representatives of the state auditor to examine records of the carriers as may be necessary to carry out the purposes of this Act.

(c) Each state department shall keep such records, make such certifications, and furnish the trustee with such information and reports as may be necessary to enable the trustee to carry out its functions under this Act.

Group Insurance Advisory Committee

Sec. 18. (a) There is created and established hereby the Group Insurance Advisory Committee, which shall consist of 23 members who shall be active or retired employees of the State of Texas. One classified employee shall be appointed from each of the 10 largest state agencies or departments by the chief administrative officer of those agencies or departments. One nonvoting member shall be the executive director of the Employees Retirement System of Texas. One member shall be a classified employee of the governor's office, appointed by the governor. One member shall be a retired state employee appointed by the trustee for a three-year term. The remaining members shall be elected by and from the classified employees of the other state departments and agencies in a manner consonant with the election for membership to the board of the Employees Retirement System of Texas, but not more than one employee shall be from any one agency or department.

(b) All members of the committee shall be appointed or elected for three-year terms; provided, however, that in the initial appointments and election, the trustee shall designate seven members to serve for one year, seven to serve for two years, and seven to serve for three years. Subsequent appointments or elections shall be for three-year terms. During a term of appointment or election, vacancies shall be filled by an employee of the same agency from which the vacancy occurred, being appointed by the trustees for the balance of the vacated term.

(c) The Group Insurance Advisory Committee shall advise and consult with the trustee on matters concerning all insurance coverages provided under this Act. The committee shall cooperate and work with the trustee in coordinating and correlating the administration of the Employees Uniform Group Insurance Program among the various state departments and agencies. The duties of each member of the Group Insurance Advisory Committee shall be to secure input from fellow employees and shall be considered additional duties required of his or her other state office or employment and all expenses incurred by any such member in performing his or her duties as a member of the committee shall be paid out of funds made available for those purposes to the agency or department of which he or she is an employee or officer.

Coverage for Dependents

Sec. 19. (a) Any employee or annuitant shall be entitled to secure for his dependents any uniform

group insurance coverages provided for employees under this Act, as shall be determined by the trustee. Premium payments required of the employee in excess of employer contributions shall be deducted from the monthly pay of the employee or from his retirement benefits in such manner and form as the trustee shall determine.

(b) A surviving spouse of an employee or a retiree who is entitled to monthly benefits paid by a retirement system named in this Act may, following the death of the employee or retiree, elect to retain the spouse's authorized insurance coverage and also retain authorized insurance coverage for any dependent of the spouse, at the group rate for employees, provided such coverage was previously secured by the employee or retiree for the spouse or dependent, and the spouse directs the applicable retirement system to deduct required premiums from the monthly benefits paid the surviving spouse by the retirement system.

(c) The surviving spouse of an employee or a retiree who designated or selected a time certain annuity option, upon expiration of the annuity option, may retain authorized insurance coverage by advance payment of premiums to the Employees Retirement System of Texas under rules and regulations adopted by the trustee.

Effective Date

Sec. 20. This Act shall become effective September 1, 1975, but no insurance coverages shall be provided hereunder until such time as the trustee shall have made a study of the coverages and benefits authorized by this Act and gathered the necessary statistical data and information to secure such group insurance and the Texas Legislature has appropriated the funds necessary to provide the insurance coverages and benefits provided for in this Act; provided, however, that subject only to the legislature's appropriating the necessary funds, group insurance coverages for state employees contemplated by this Act shall be provided beginning not later than September 1, 1976. Departments are specifically authorized to continue or initiate state employee insurance plans and policies with state financial participation until the date and time this Act is implemented; provided, however, that any experience rating refunds becoming payable to such department under any such plans or policies on or after the date and time this Act is implemented shall be paid to the Employees Life, Accident, and Health Insurance and Benefits Fund, and such payment shall be deemed payment to such department.

Affect of Section Headings

Sec. 21. Section headings contained in this Act shall not be deemed to govern, limit, expand, modify, or in any manner affect the scope, meaning, or intent of the provisions of any section hereof.

Severability

Sec. 22. If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act in all its particulars and as to all other persons and circumstances shall be valid and of full force and effect, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion, or provision; and to this end the provisions of this Act are declared to be severable.

Repeal

Sec. 23. All laws or parts of laws in conflict with this Act are hereby repealed to the extent of such conflict only.

[Acts 1975, 64th Leg., p. 208, ch. 79, §§ 1 to 23, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 55, ch. 31, § 1, eff. March 29, 1977; Acts 1977, 65th Leg., p. 1995, ch. 797, §§ 1 to 10, eff. Sept. 1, 1977.]

[Article 3.50-2 was not enacted as part of the Insurance Code of 1951.]

Section 11 of Acts 1977, 65th Leg., p. 2000, ch. 797, provided a September 1, 1977 effective date.

Art. 3.50-3. Texas State College and University Employees Uniform Insurance Benefits Act

Citation

Sec. 1. This Act shall be known and may be cited as the "Texas State College and University Employees Uniform Insurance Benefits Act."

Purposes

Sec. 2. It is hereby declared that the policy and purposes of this Act are:

(a) to provide uniformity in the basic group life, accident, and health insurance coverages for all employees of Texas state colleges and universities;

(b) to enable Texas state colleges and universities to attract and retain competent and able employees by providing them with basic life, accident, and health insurance coverages at least equal to those commonly provided in private industry and those provided employees of other agencies of the State of Texas under the Texas Employees Uniform Group Insurance Benefits Act;¹

(c) to foster, promote, and encourage employment by and service to the state colleges and universities of Texas as a career profession for persons of high standards of competence and ability;

(d) to recognize and protect the investment of the Texas state colleges and universities in each employee by promoting and preserving economic security and good health among employees of the Texas state colleges and universities;

(e) to foster and develop high standards of employer-employee relationships between the Texas state colleges and universities and their employees;

(f) to recognize the long and faithful service and dedication of employees of the Texas state colleges and universities and to encourage them to remain in service until eligible for retirement by providing health insurance and other group insurance benefits for such employees;

(g) to provide for greater uniformity of procedures for administration of retirement annuity insurance programs available to employees of Texas state colleges and universities through the optional retirement programs and tax sheltered annuity programs.

¹ Article 3.50-2.

Definitions

Sec. 3. (a) Unless a different meaning is plainly required by the context, the following words and phrases as used in this Act shall have the following meanings:

(1) "Administering carrier" shall mean any carrier or organization, qualified to do business in Texas, designated by the administrative council to administer any services, benefits, insurance coverages, or requirements in accordance with this Act and the council's regulations thereunder.

(2) "Retired employee" shall mean an employee as defined in this Act who retires or has retired under a retirement provision under the jurisdiction of:

(A) the Teachers Retirement System of Texas, pursuant to Chapter 3, Title 1, Texas Education Code, as amended;¹

(B) the Optional Retirement Program, Articles 51.351 et seq., Texas Education Code, as amended; provided, however, that the employee has met service requirements, age requirements, and other applicable requirements as may be promulgated by the administrative council comparable to the requirements for retirement under the Teachers Retirement System of Texas;

(C) the Employees Retirement System of Texas, Chapter 352, Acts of the 50th Legislature, 1947, as amended (Article 6228a, Vernon's Texas Civil Statutes), as authorized by Chapter 75, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 6228a-2, Vernon's Texas Civil Statutes);

(D) any other federal or state statutory retirement program to which the institution has made employer contributions; provided, however, that the employee has met service requirements, age requirements, and other

applicable requirements as may be promulgated by the administrative council comparable to the requirements for retirement under the Teachers Retirement System of Texas.

(3) "Carrier" shall mean a qualified carrier as defined in this Act.

(4) (A) "Employee" shall mean any person employed by a governing board of a state university, senior or community/junior college, or any other agency of higher education within the meaning and jurisdiction of Chapter 61, Title 3, Texas Education Code:²

(i) who retires under the provisions cited in subsection (a)(2) of this section;

(ii) who receives his compensation for services rendered to a public community/junior college or a senior college, university, or other agency of education within the meaning and jurisdiction of Chapter 61, Title 3, Texas Education Code, on a warrant or check issued pursuant to a payroll certified by an institution or by an elected or duly appointed officer of this state, and who is eligible for participation in the Teacher Retirement System of Texas.

(B) Persons performing personal services for such public community/junior colleges or senior colleges, universities, or other agencies of higher education within the meaning and jurisdiction of Chapter 61, Title 3, Texas Education Code, as independent contractors shall never be considered employees for purposes of this Act.

(5) "Employer" shall mean the institutions defined elsewhere in Subsection (8) of this section.

(6) "Group life, accident, or health insurance plan" shall mean any group insurance policy or contract, life, accident, medical, dental, or hospital service agreement, membership or subscription contract, or similar group arrangement provided by an administering carrier.

(7) "Retirement annuity insurance" shall mean policies or contracts provided by an administering carrier or carriers to provide optional retirement and/or tax sheltered annuity benefits as authorized by applicable state and federal statutes.

(8) "Institution" shall mean each association of one or more public community/junior colleges or senior colleges or universities, medical or dental units, technical institutes, or other agencies of higher education under the policy direction of a single governing board.

(9) "Dependent" shall mean the spouse, as defined in the Texas Family Code, of an employee or retired employee, and an unmarried child under 25 years of age including: (A) an adopted

child, (B) a stepchild, foster child, or other child who is in a regular parent-child relationship, (C) any such child, regardless of age, who lives with or whose care is provided by an employee or retired employee on a regular basis, if such child is mentally retarded or physically incapacitated to such an extent as to be dependent upon the employee or retired employee for care or support, as the administrative council shall determine.

(10) "President" shall mean the duly authorized chief official of any institution covered under the provisions of this Act or such other official as may be designated by a governing board to carry out the provisions of this Act.

(11) "Qualified carrier" shall mean:

(A) any insurance company authorized to do business in this state by the State Board of Insurance to provide any of the types of insurance coverages, benefits, or services provided for in this Act under any of the insurance laws of the State of Texas, which has an adequate surplus, a successful operating history, and which has had successful experience in providing and servicing any of the types of group coverage provided for in this Act as determined by the State Board of Insurance;

(B) any corporation operating under Chapter 20 of the Texas Insurance Code³ which provides any of the types of coverage, benefits, or services provided for in this Act, which has a successful operating history, and which has had successful experience in providing and servicing any of the types of group coverage provided for in this Act as determined by the State Board of Insurance; or

(C) any combination of carriers as herein defined, upon such terms and conditions as may be prescribed by the administrative council; provided, however, that for purposes of this Act carriers combining for the purpose of bidding and/or underwriting this program shall not be considered in violation of Sections 15.01 through 15.34, Chapter 15, Title 2, Competition and Trade Practices, Texas Business & Commerce Code.

(12) "Service" shall mean any personal services of an employee creditable in accordance with rules and regulations promulgated by the administrative council.

(13) "Active employee plan" shall mean a plan or program of group life, accident, or health insurance for active employees as determined by the administrative council as provided in this Act.

(14) "Retired employee plan" shall mean a plan or program of group insurance as determined by the administrative council as defined in this Act for all retired employees as defined in this Act.

(b) In addition to the foregoing definitions, the administrative council shall have authority to define by rule any words and terms necessary in the administration of this Act.

¹ Education Code, § 3.01 et seq.
² Education Code, § 61.001 et seq.
³ Article 20.01 et seq.

Authority

Sec. 4. (a) A Texas State College and University Employees Uniform Insurance Benefits Program is hereby created. The uniform insurance benefits program shall be established within the authority of the Coordinating Board, Texas College and University System. The commissioner of higher education, acting under the direction and established policies of the coordinating board, shall appoint a coordinating board staff member who shall serve as executive secretary for the program, and shall provide from appropriated funds such additional staff and other resources necessary to provide technical consulting and administrative and clerical support for the effective administration of this Act by the administrative council and the advisory committee as hereinafter provided.

(b) The administrative council shall be selected, serve, and perform duties as hereinafter described:

(1) Selection. (A) Acting as a group, the presidents of the six senior level institutions having the highest number of employees as defined in this Act, based on the most current statistical reports of the Coordinating Board, Texas College and University System, shall with prior consultation with all other presidents of all senior level institutions covered by this Act, designate three representatives to serve as members of the council. The persons so designated shall be employees as defined in this Act and may be from any of the senior level institutions.

(B) Acting as a group, the presidents of the three junior level institutions or technical institutions having the highest number of employees as defined in this Act, based on the most current statistical reports of the Coordinating Board, Texas College and University System, shall with prior consultation with all other presidents of all junior level institutions covered by this Act, designate three representatives to serve as members of the council. The persons so designated shall be employees as defined in this Act and may be from any of the junior level institutions or technical institutions.

(C) The commissioner of higher education shall appoint three members of the council, which members shall not be subject to the restrictions in Section 4(b)(2).

(2) Qualifications of members. The persons designated as members of the administrative council, in addition to being employees as defined in this Act, shall have demonstrable qualifications for the administration of the program established by this Act.

(3) Terms of membership. (A) Except for initial appointments, all appointments shall serve for a period of six years each except for appointments to fill vacancies occurring in cases of incompleting terms, in which case the appointment shall be for the remainder of the unexpired term.

(B) The administrative council initially shall be established as follows:

(i) Of the three appointments made by the presidents of senior level institutions as described in Subsection (b)(1)(A) of this section, one of the members so appointed shall serve for a period of six years, one shall serve for a period of four years, and one shall serve for a period of two years from the effective date of this Act. Thereafter terms of all appointees shall be for six years.

(ii) Of the three appointments made by the presidents of the junior level institutions or technical institutions as described in this Act, one of these appointments shall be for a period of six years, one shall be for a period of four years, and one shall be for a period of two years from the effective date of this Act. Thereafter terms of all appointees shall be for six years.

(iii) The members thus appointed shall, at the first organizational meeting of the administrative council, draw lots for terms of office as described above in this Act and shall elect a chairman and other such officers as may be necessary. Thereafter, elections shall be held annually for the chairmanship and other such offices.

(4) Duties. The administrative council shall:

(A) determine basic coverage standards which shall be at least equal to those commonly provided in private industry and those provided employees of other agencies of the State of Texas under the Texas Employees Uniform Group Insurance Benefits Act,¹ after considering recommendations of the advisory committee.

(B) determine maximum costs for administration of the plans by the administering carriers.

(C) determine basic procedural and administrative practices for insurance coverages to be provided employees covered under the provisions of this Act, after considering recommendations of the advisory committee.

(D) determine if existing institutional programs meet, equate to, or exceed standards for such basic coverages. If so, such programs may be continued in accordance with existing contractual arrangements between those institutions and their carrier or carriers, provided, however, that each program so continued shall be submitted by the institution for competitive bidding within standards established by the administrative council at least once during each four-year period following the effective date of coverage under this Act. It is further provided that:

(i) The State Board of Insurance shall provide, by request of the institution a list of all carriers authorized to do business in the State of Texas and who will be eligible to bid on the insurance coverage or coverages provided in this Act.

(ii) The State Board of Insurance shall, upon request by the institution, examine and evaluate the bidding contracts and certify their actuarial soundness to the institution within 15 days from the date of request.

(iii) The institution is not required to select the lowest bid, but shall take into consideration other factors such as ability to service contracts, past experience, financial stability, and other relevant criteria. Should the institution select a carrier whose bid differs from that advertised, such deviation shall be reported to the administrative council and the reasons for such deviation shall be fully justified and recorded in the minutes of the next meeting of the administrative council.

(E) determine those institutions whose programs contain deficiencies with regard to the basic standards, administrative costs, and practices provided for under this Act. Where such program deficiencies occur, the president of each institution found to be deficient shall be notified of such program deficiencies by the administrative council, which shall also report its action to the commissioner of higher education, and the institution shall be provided a reasonable deadline not to exceed two years for cor-

recting said deficiencies. The affected institution may appeal this determination of deficiency to the Coordinating Board, Texas College and University System. The board shall within 90 days from receipt of the appeal either affirm or reverse the decision of the administrative council. In case of reversal the board shall return the appeal to the administrative council with written instructions for disposition. Where institutions do not correct said deficiencies as directed by the administrative council, the council is hereby authorized and empowered to direct the institution to establish such plans as determined by the council, and to report its action to the commissioner of higher education. If such plans are not established within a reasonable time period not to exceed six months from date of notification, the council shall notify the state comptroller of public accounts, who shall withhold state insurance premium matching funds from the affected institutions until notified by the administrative council that the deficiencies have been corrected. These notifications to the state comptroller shall be reported to the commissioner of higher education.

(F) provide that the governing boards of two or more institutions of higher education may procure one or more group contracts with any insurance company or companies authorized to do business in this state, insuring the employees of each participating institution. The purpose of such authorization shall be to provide institutions of higher education with the ability to obtain the benefits of economy and/or improved coverages for their employees which may occur through increased purchasing economies for larger groups of employees. All contracts for basic coverages negotiated from the effective date of this Act shall be in compliance with basic coverage standards, rules, and regulations of the administrative council promulgated pursuant to this Act. Each governing board may provide such additional or optional insurance programs and coverages as it deems desirable for its employees.

(G) adopt rules and regulations consistent with the provisions of this Act and its purpose as it deems necessary to carry out the statutory responsibilities.

(H) require that procedures be established by each institution to allow each covered employee to obtain prompt action regarding claims pertaining to insurance provided under this Act.

(I) publish such additional goals, guidelines, and surveys as are necessary to assist covered institutions in providing their employees with effective benefits programs.

(J) develop policies, practices, and procedures as necessary in accordance with provisions of applicable statutes to provide for greater uniformity in the administration of retirement annuity insurance programs available to employees of Texas state colleges and universities through the Optional Retirement Program, Article 51.351 et seq., Texas Education Code, as amended, and tax sheltered annuity programs as provided in Chapter 22, Acts of the 57th Legislature, 3rd Called Session, 1962, as amended (Article 6228a-5, Vernon's Texas Civil Statutes).

(K) establish rules, regulations, and procedures for preparation and review of the annual reports of the institutions as further provided for under Section 6 of the Act.

(c) The advisory committee shall be selected, serve, and perform duties as hereinafter described:

(1) Selection. One member of the advisory committee shall be elected from each of the institutional components, units, or agencies under the policy direction of a single governing board at such times as designated by the administrative council and in accordance with general guidelines for such elections provided by the administrative council.

(2) Qualifications of members. The members of the advisory committee shall be chosen from among employees as defined in this Act. The persons so elected shall demonstrate mature judgment, special abilities, and sincere interests in employee insurance programs and be able to represent the needs of all employees of the institution represented with regard to advisory committee actions.

(3) Terms of membership. Members of the advisory committee elected under the terms of this Act shall serve for a period of two years, subject to reelection. At the initial meeting of the advisory committee, and subsequently each year, the members who are elected shall elect a chairman and other such officers as may be necessary. A vacancy shall be filled by an employee of the same institution from which the vacancy occurred, being appointed by the president of said institution for the balance of the vacated term.

(4) Duties. (A) The advisory committee shall cooperate and work with the administrative council in coordinating and correlating the administration of the group insurance program among the various institutions. Members of the

advisory committee shall cooperate and work with the administrative council as advisors in development, implementation, coordination, and administration of the group insurance programs among the various institutions.

(B) The advisory committee shall provide a channel for open communication of ideas and suggestions regarding coverages, eligibility, claims, procedures, bidding, administration, and all other aspects of employee insurance benefits.

¹ Article 3.50-2.

Benefit Certificates

Sec. 5. The administrative council shall assure that each employee insured under this Act is issued a certificate of insurance setting forth the benefits to which the employee is entitled, to whom the benefits are payable, to whom the claims shall be submitted, and summarizing the provisions of the policy principally affecting the employee.

Annual Report

Sec. 6. As soon as practicable after the end of each contract year, but not later than 180 days thereafter, each institution covered under the provisions of this Act shall submit an annual report to the administrative council, comparing the insurance coverages provided and the benefits and services received by its employees insured under the provisions of this Act. The administrative council shall, within 30 days of receipt of the institutional annual reports, submit the annual reports together with a summary and commentary to the commissioner of higher education for submission to the Coordinating Board, Texas College and University System.

Reinsurance

Sec. 7. (a) The institutions may arrange with any administering carrier or carriers issuing any policy or policies under this Act for the reinsurance of portions of the total amount of insurance under such policy or policies with other qualified carriers which elect to participate in the reinsurance.

(b) The administrative council may determine all rules, regulations, and actions necessary for the providing of such reinsurance through qualified carriers.

Annual Accounting

Sec. 8. (a) Carriers providing any policy purchased under this Act shall provide an accounting to the institution not later than 120 days after the end of each policy year. The accounting for each line of coverage shall set forth, in a form acceptable to the administrative council:

(1) the cumulative amount of premiums actually remitted to the carrier under the policy from its date of issue to the end of the policy year, the amount of premiums actually remitted

under the policy for each year from the anniversary date to the end of that policy year;

(2) the total of all mortality and other claims, charges, losses, costs, contingency reserve for pending and unreported claims and expenses incurred for each of the periods corresponding to each of the periods heretofore described in Subsection (a)(1) of this section;

(3) the amounts of the allowance for a reasonable profit, contingency reserves, and all other administrative charges corresponding to each of the periods as heretofore described in Subsection (a)(1) of this section.

(b) Any excess of the total of Subsection (a)(1) of this section over the corresponding sum of Subsections (a)(2) and (a)(3) of this section may be held by the carrier issuing the policy as a special reserve. Such reserve may be used at the discretion of the institution with prior approval of the administrative council for, but not limited to, providing additional coverage for participating employees, offsetting necessary employee premium rate increases, or to reduce participating employee premium contributions to the coverage. Any reserve held by the carrier would bear interest at a rate determined each policy year by the carrier and approved by the institution as being consistent with the rate generally used by the carrier for similar funds held under other group insurance policies. Alternative report requirements or arrangements may be approved by the administrative council.

Exemption from Execution

Sec. 9. All insurance benefits and other payments and transactions made pursuant to the provisions of this Act to any employee covered under the provisions of this Act shall be exempt from execution, attachment, garnishment, or any other process whatsoever.

Death Claims

Sec. 10. The amount of group life insurance and group accidental death and dismemberment insurance in force on an employee at the date of his death shall be paid, on the establishment of a valid claim, to the person or persons surviving at the date of his death, in the following order:

(a) to the beneficiary or beneficiaries designated by the employee in a signed and witnessed writing received before death in the employing office. For this purpose, a designation, change, or cancellation of beneficiary in a will or other document not so executed and filed has no force or effect.

(b) if no beneficiary is designated in accordance with Subsection (a) of this section, payment shall be made in accordance with the death benefit provisions of the Teacher Retirement

ment System of Texas, Chapter 3, Title 1, Texas Education Code, as amended.¹

¹ See Education Code, § 3.33.

Automatic Coverage

Sec. 11. No eligible employee shall be denied enrollment in any of the coverages provided by this Act; provided, however, that the employee may waive in writing any or all such coverages. Each policy of insurance shall provide for automatic coverage on the date the employee becomes eligible for insurance. From the first day of employment, each active full-time employee who has not waived basic coverage or selected optional coverages shall be protected by a basic plan of insurance coverage automatically. The premium for such coverage shall not exceed the amount of the employer contribution. Each employee who is automatically covered under this section may subsequently retain or waive the basic plan and may make application for any other coverages provided under this Act within institutional and administrative council standards.

Payment of Premiums

Sec. 12. Each institution and agency covered under the provisions of this Act shall contribute monthly to the cost of each insured employee's coverage no less than the amount appropriated therefor by the legislature in the General Appropriations Act or as determined by the governing board of the institution in its respective official operating budget, if the employees are compensated from funds appropriated by such budgets rather than by the General Appropriations Act. The employees shall authorize in writing and in a form satisfactory to the institution a deduction from his monthly compensation of the difference between the total cost of benefits and the amount contributed therefor by the institution or agency.

Employer Contributions

Sec. 13. Certification shall be submitted on or before the first day of November next preceding each regular session of the legislature; the institutions and agencies covered under the provisions of this Act shall certify to the Legislative Budget Board and budget division of the Governor's Budget and Planning Office the amount necessary to pay employer contributions for each active and retired employee from the effective date of this Act. The Legislative Budget Board and the Governor's Budget and Planning Office will establish procedures to insure that eligible institutions request appropriate funds to support this program and shall present appropriate budget recommendations to the legislature. The Teacher Retirement System of Texas, Optional Retirement Program carriers, and Employees Retirement System of Texas shall furnish each institution such information as may be deemed necessary by the administrative council to provide

retired employees with the coverages and employer contributions provided under the Act.

Administrative Costs

Sec. 14. No employee covered under the provisions of this Act shall be required to pay out of the amount of employer contributions due him or out of the amount of his additional premiums due for selected coverages, any administrative costs, fees, or tax whatsoever to pay expenses of a state institution, the coordinating board, or committees as herein established for administering this Act. The duties of each member of the administrative council and the advisory committee shall be considered additional duties to those required of his other state office or employment, and all expenses incurred by any such member in performing his duties as a member of the council or committee shall be paid out of funds made available for those purposes to the institution of which he is an employee or officer.

Studies, Reports, Records, and Audits

Sec. 15. (a) The administrative council shall cause to be established a continuing study of the operation and administration of this Act, including surveys and reports on group insurance coverages and benefits.

(b) Each contract entered into under this Act shall contain provisions requiring administering carriers to

(1) furnish such reasonable reports as the administrative council determines to be necessary to enable it to carry out its functions under this Act; and

(2) permit the administrative council and representatives of the state auditor to examine records of the carriers as may be necessary to carry out the purpose of this Act.

(c) Each institution shall keep such records, make such certifications, and furnish the administrative council with such information and reports as may be necessary to enable the administrative council to carry out its functions under this Act.

Applicability of State Open-Meetings and Open-Records Statutes and Federal and State Privacy Statutes

Sec. 16. Any reports which shall be required by action of the administrative council and advisory committee which have been established under the Act shall be a matter of open record, available for review under the provisions of applicable open-record statutes of the State of Texas. This shall not be interpreted to require the release of any records pertaining to individuals insured under the provisions of this Act, the release of which would be in conflict with the rights of these individuals under federal and state privacy statutes. Meetings which are necessary for the administration of the Act shall be subject to applicable provisions of state open-meetings statutes.

Coverage for Dependents

Sec. 17. Any employee or retired employee shall be entitled to secure for his dependents any uniform group insurance coverages provided for such dependents under the rules and regulations to be promulgated by the administrative council. Such payments for such coverages for dependents shall be deducted from the monthly pay of the employee or paid in such manner and form as the administrative council shall determine.

Effective Date

Sec. 18. This Act shall become effective September 1, 1977, and basic coverages shall be provided by each institution covered under this Act beginning no later than September 1, 1979.

Severability

Sec. 19. If any word, phrase, clause, paragraph, sentence, part, portion, or provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act in all its particulars and as to all other persons and circumstances shall be valid and of full force and effect, and the legislature hereby declares that this Act would have been enacted without such invalid or unconstitutional word, phrase, clause, paragraph, sentence, part, portion, or provision, and to this end the provisions of this Act are declared to be severable.

Repeal

Sec. 20. All laws or parts of laws in conflict with this Act are hereby repealed to the extent of such conflict only.

[Acts 1977, 65th Leg., p. 56, ch. 32, §§ 1 to 20, eff. Sept. 1, 1977.]

Article 3.50-3 was not enacted as part of the Insurance Code of 1951.

Art. 3.51-2. County and Political Subdivision of the State of Texas—Officials, Employees, and Retirees

(a) Each county or political subdivision of the State of Texas is authorized to procure contracts insuring its officials, employees, and retirees or any class or classes thereof under a policy or policies of group life, group health, accident, accidental death and dismemberment, and hospital, surgical, and/or medical expense insurance. The dependents of any such officials, employees, and retirees may be insured under group policies which provide hospital, surgical and/or medical expense insurance. The employees' contributions to the premiums for such insurance issued to the employer as the policyholder may be deducted by the employer from the employees' salaries when authorized in writing by the respective employees so to do; provided, however, no state funds shall be used to procure such contracts, nor shall any state funds be used to pay premiums under said contracts of insurance.

(b) Any county or political subdivision of the State of Texas which is authorized by law to procure a contract insuring its respective officials, employees, and retirees or any class or classes thereof under a policy or policies of group insurance covering one or more risks may pay all or any portion of the premiums on such policy or policies from the local funds of such county or political subdivision of the State of Texas; provided that the amount of group life insurance on any one official, employee, or retiree shall not exceed \$25,000.

[Amended by Acts 1975, 64th Leg., p. 278, ch. 120, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 amendatory act provided:

"Sec. 2. The provisions of this Act are severable. If any provision of this Act or the application thereof to any person or circumstance shall be held to be invalid or unconstitutional, the remainder of the Act and the application of such provision to other persons or circumstances shall not thereby be rendered invalid or unconstitutional, nor be affected thereby."

Art. 3.51-4. Payment of Premiums of Group Life and Health Insurance Policies for Retirees of the Central Education Agency, the Texas Rehabilitation Commission, the Coordinating Board, Texas College and University System, Retired Employees of the Texas Department of Mental Health and Mental Retardation Who Accepted Retirement Under the Teacher Retirement System of Texas, Retired Employees of the Texas Youth Council Who Accepted Retirement Under the Teacher Retirement System of Texas, and Retired Employees of the Teacher Retirement System of Texas Who Accepted Retirement Under the Teacher Retirement System of Texas

The premium cost of group life, health, accident, hospital, surgical and/or medical expense insurance for retirees of the Central Education Agency, the Texas Rehabilitation Commission, the Coordinating Board, Texas College and University System, for retired employees of the Texas Department of Mental Health and Mental Retardation, the Texas Youth Council, and the Teacher Retirement System of Texas who accepted retirement under the Teacher Retirement System of Texas pursuant to Chapter 3, Texas Education Code,¹ shall be paid by the State of Texas, subject to the following limitations and conditions:

(a) Payment shall be from the funds of the agency, commission, board or department from which the officer or employee retired, shall be limited to the same amount allowed active employees under current group life and health insurance programs of the agency, commission, board or department, and shall be made in accordance with rules and regulations to be established no later than September 1, 1973, by the Central Education Agency, the Texas Rehabilitation Commission, and the Coordinating Board,

Texas College and University System for its respective retirees and no later than September 1, 1975, by the Texas Department of Mental Health and Mental Retardation, the Texas Youth Council, and the Teacher Retirement System of Texas for their retired employees who accepted retirement under the Teacher Retirement System of Texas pursuant to Chapter 3, Texas Education Code.

(b) The agency, commission, board and department shall certify to the state comptroller of public accounts and to the state treasurer each month the amount required each month to pay the insurance premiums of the said retirees, and the State of Texas shall pay the amount so ascertained each month, beginning September 1, 1973, to the Central Education Agency, the Texas Rehabilitation Commission, and the Coordinating Board, Texas College and University System, and beginning September 1, 1975, to the Texas Department of Mental Health and Mental Retardation and the Texas Youth Council.

[Amended by Acts 1975, 64th Leg., p. 1027, ch. 394, § 1, eff. June 19, 1975.]

¹ Education Code, § 3.01 et seq.

Art. 3.51-4A. Extension of Term Life Insurance to Spouses and Children

Sec. 1. Insurance under any group term life insurance policy issued and delivered pursuant to the laws of the State of Texas, except a policy issued and delivered to a creditor pursuant to Section 1(4) of Article 3.50 of the Texas Insurance Code or pursuant to any other law of the State of Texas providing for credit life insurance, may be extended to cover the spouse, the children under 21 years of age, natural or adopted, and the children over 21 years of age, natural or adopted, who are enrolled as full-time students at an educational institution or are physically or mentally disabled and who are under the supervision of the parents, of each insured thereunder, provided that the amounts of insurance under the policy are based on some plan precluding individual selection either by the insured or the policyholder, and provided further that the amount of such insurance on the life of the spouse shall not exceed \$10,000 or one-half of the amount of insurance on the life of the aforesaid insured under said policy, whichever is less, nor shall the amount of such insurance on the life of a child exceed \$2,000.

[See Compact Edition, Volume 2 for text of 2 to 4]

[Amended by Acts 1975, 64th Leg., p. 766, ch. 299, § 2, eff. May 27, 1975.]

Art. 3.51-5. Payments of Group Life and Health Insurance Premiums for Retired Employees of the Texas Central Education Agency, the Texas Rehabilitation Commission, the Texas Department of Mental Health and Mental Retardation, the Texas Youth Council, a Texas Senior College or University, and the Coordinating Board, Texas College and University System.

(a) The costs of group life and health insurance premiums to persons retired under the Teacher Retirement Act, who at the time of their retirement were employed by the Texas Central Education Agency, the Texas Rehabilitation Commission, the Texas Department of Mental Health and Mental Retardation, the Texas Youth Council, a Texas senior college or university, and the Coordinating Board, Texas College and University System, shall be fully paid from the funds of such agency, commission, institution, or board under the following provisions and conditions:

(1) The coverage of this Act shall extend to all such retired persons within the limits of eligibility under state contracts in force on the effective date of this Act or as may be otherwise provided by law;

(2) such payment shall be in accordance with rules and regulations established by such agency, commission, institution, or board;

(3) such agency, commission, institution, and board shall certify to the Comptroller of Public Accounts and the State Treasurer each month the amount so ascertained each month to such agency, commission, institution, and board;

(4) payments shall begin on the first day of the month following the month in which this Act takes effect and shall continue to be paid until otherwise provided by law.

(b) There are hereby authorized to be paid out of the funds of each agency, commission, institution, or board named in the Act the sums necessary to fund the payments of premiums provided in this Act. [Added by Acts 1975, 64th Leg., p. 1062, ch. 408, § 1, eff. Sept. 1, 1975.]

Art. 3.51-6. Group and Blanket Accident and Health Insurance

Group Insurance Defined; Coverage, Certificate, Fees or Allowances

Sec. 1. (a) Group accident and health insurance is hereby defined to be that form of accident, sickness, or accident and sickness insurance covering groups of persons as provided in Subdivisions (1) through (5) below:

(1) under a policy issued to an employer or trustees of a fund established by an employer,

who shall be deemed the policyholder, insuring employees of such employer for the benefit of persons other than the employer. The term "employees" as used herein shall be deemed to include the officers, managers, and employees of the employer, the individual proprietor, or partner if the employer is an individual proprietor or partnership, the officers, managers, and employees of subsidiary or affiliated corporations, the individual proprietors, partners, and employees of individuals and firms, if the business of the employer and such individual or firm is under common control through stock ownership, contract, or otherwise, and retired employees. A policy issued to insure employees of a public body may provide that the term "employees" shall include elected or appointed officials. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship;

(2) under a policy issued to an association, including but not limited to a labor union or organizations of such unions, membership corporations organized or holding a certificate of authority under the Texas Non-Profit Corporation Act,¹ and cooperatives and corporations subject to the supervision and control of the Farm Credit Administration of the United States of America, and which association shall have a constitution and bylaws, and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, to insure members, employees, or employees of members (active and retired for the benefit of persons other than the association or its officers or trustees);

(3) under a policy issued to the trustees of a fund established by two or more employers in the same or related industry or by one or more labor unions or by one or more employers and one or more labor unions or by an association as defined in (2) above, which trustees shall be deemed the policyholder, to insure employees of the employers or members of the unions or such association, or employees of members of such association for the benefit of persons other than the employers or the unions or such association. The term "employees" as used herein may include the officers, managers, and employees of the employer, retired employees, and the individual proprietor or partners if the employer is an individual proprietor or partnership. The policy may provide that the term "employees" shall include the trustees or their employees, or both, if their duties are principally connected with such trusteeship;

(4) under a policy issued to any person or organization to which a policy of group life insurance may be issued or delivered in this state to insure any class or classes of individuals that could be insured under such group life policy;

(5) under a policy issued to cover any other substantially similar group which, in the discretion of the commissioner of insurance, may be subject to the issuance of a group accident and sickness policy or contract.

(b) The spouse and dependents of employees or members referred to in Subdivisions (a)(1) through (a)(5) of this section may be included within the coverage provided in a group policy.

(c) An insurer issuing a group policy under this article shall furnish to the policyholder for delivery to each employee or member of the insured group a certificate of insurance which shall contain a statement, in summary form, of the essential features of the insurance coverage of such employee or member and to whom benefits are payable. If dependents are included in the coverage, only one certificate need be issued for each family unit.

(d) No group policy of accident, health, or accident and health insurance shall be delivered or issued for delivery in this state which does not conform to the requirements and definitions set forth in Subdivisions (a)(1) through (a)(5) of this section.

(e) No insurer shall pay to any individual, firm, corporation, or group entity any fees or allowances for services related to group policies except as reimbursement for the cost of such services which would otherwise have been provided by the insurer, provided that this provision shall not limit the right of the insurer to pay dividends or make returns of premium to any group or to any combination of groups or make provision for rate stabilization funds with combinations of groups, nor shall it prohibit payment of commissions or compensation to a duly licensed agent.

¹ Civil Statutes, Art. 1396-1.01 et seq.

Blanket Insurance Defined; Application or Certificate; Liability for Death or Injury of Member; Fees or Allowances

Sec. 2. (a) Blanket accident and health insurance is hereby defined to be that form of accident, health, or accident and health insurance covering groups of persons as provided in (1) through (9) below:

(1) under a policy issued to any common carrier or to any operator, owner, or lessor of a means of transportation, who or which shall be deemed the policyholder, covering a group of persons who may become passengers defined by reference to their travel status on such common carrier or such means of transportation; or, under a policy issued to any automobile and/or truck leasing company, which shall be deemed

the policyholder, covering a group of persons who may become either renters, lessees, or passengers defined by their travel status on such rented or leased vehicles;

(2) under a policy issued to an employer, who shall be deemed the policyholder, covering any group of employees, dependents, or guests, defined by reference to specified hazards incident to an activity or activities or operations of the policyholder;

(3) under a policy issued to a college, school, or other institution of learning, a school district or districts, or school jurisdictional unit, or to the head, principal, or governing board of any such education unit, who or which shall be deemed the policyholder, covering students, teachers, or employees;

(4) under a policy issued to any religious, charitable, recreational, educational, or civic organization, or branch thereof, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to any activity or activities or operations sponsored or supervised by such policyholder;

(5) under a policy issued to a sports team, camp, or sponsor thereof, which shall be deemed the policyholder, covering members, campers, employees, officials, or supervisors;

(6) under a policy issued to any governmental or volunteer fire department or fire company, first aid, civil defense, or other such governmental or volunteer organization, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by such policyholder;

(7) under a policy issued to a newspaper or other publisher, which shall be deemed the policyholder, covering its carriers;

(8) under a policy issued to an association, including a labor union, which shall have a constitution and bylaws and which has been organized and is maintained in good faith for purposes other than that of obtaining insurance, which shall be deemed the policyholder, covering any group of members or participants defined by reference to specified hazards incident to an activity or activities or operations sponsored or supervised by such policyholder;

(9) under a policy issued to cover any other risk or class of risks which, in the discretion of the commissioner of insurance, may be properly eligible for blanket accident and sickness insurance. The discretion of the commissioner of insurance may be exercised on an individual risk basis or class of risks, or both.

(b) An individual application need not be required from a person covered under a blanket accident and sickness policy or contract, nor shall it be necessary for the insurer to furnish each person a certificate.

(c) Nothing in this section shall be deemed to affect the legal liability of any policyholder for the death of or injury to any member of a group.

(d) No blanket policy shall be delivered or issued for delivery in this state which does not conform to the requirements and definitions set forth in Subdivisions (a)(1) through (a)(9) of this section.

(e) No insurer shall pay to any individual, firm, or corporation any fees or allowances for services related to blanket policies except as reimbursement for the cost of such services which would otherwise have been provided by the insurer provided that this provision shall not limit the right of the insurer to pay dividends or make return of premium to any group or any combination of groups or make provision for rate stabilization funds with combinations of groups, nor shall it prohibit the payment of commissions or compensation to a duly licensed agent.

Payment of Benefits

Sec. 3. All benefits under any group or blanket accident and sickness policy shall be payable to the person insured, or to his designated beneficiary or beneficiaries, or to his estate, except that if the person insured be a minor or otherwise not competent to give a valid release, such benefits may be made payable to his parent, guardian, or other person actually supporting him. The policy may provide that all or a portion of any indemnities provided by any such policy on account of hospital, nursing, medical, or surgical services may, at the option of the insurer and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but the policy may not require that the service be rendered by a particular hospital or person. Payment so made shall discharge the obligation of the insurer with respect to the amount of insurance so paid.

Exemptions

Sec. 4. The provisions of this article shall not be applicable to:

(1) credit accident and health insurance policies subject to Article 3.53 of the Insurance Code, as amended;

(2) any group specifically provided for or authorized by law in existence and covered under a policy filed with the State Board of Insurance prior to April 1, 1975;

(3) accident and health coverages that are incidental to any form of group automobile, casualty, property, or workmen's compensation—employers' liability policies promulgated or approved by the State Board of Insurance;

(4) any policy or contract of insurance with a state agency, department, or board providing health services to all eligible persons under Section 6, The Medical Assistance Act of 1967, as amended (Article 695j-1, Vernon's Texas Civil Statutes), 343-353¹ (42 U.S.C.A. 1396-1396g), providing health care and services under a state plan.

¹ So in enrolled bill; probably should read "79 Stat. 343-353".

Rules and Regulations

Sec. 5. The State Board of Insurance is authorized to issue such rules and regulations as may be necessary to carry out the various provisions of this article. Rules and regulations promulgated pursuant to this article shall be subject to notice and hearing pursuant to Section 10, Chapter 397, Acts of the 54th Legislature, Regular Session, 1955 (Article 3.70-10, Vernon's Texas Insurance Code).

[Added by Acts 1975, 64th Leg., p. 1112, ch. 419, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 Act provided:

"This Act shall apply to all group accident, health, or accident and health insurance policies and all blanket accident, health, or accident and health insurance policies, delivered or issued for delivery in the State of Texas on and after January 1, 1976."

Art. 3.51-7. Payments of Additional Death Benefits for Retired Appointed Officers and Employees of the Teacher Retirement System of Texas, and the Texas Central Education Agency, and the Texas Schools for the Blind and Deaf

[Text as added by Acts 1977, 65th Leg., p. 1272, ch. 494, § 1]

(a) This article shall apply only to persons retired as annuitants under the provisions of the Teacher Retirement System of Texas who were immediately prior to retirement appointed officers or employees of the Central Education Agency, the Teacher Retirement System of Texas, and the Texas Schools for the Blind and Deaf.

(b) There shall be paid from the funds of the Central Education Agency, the Teacher Retirement System of Texas or the Texas Schools for the Blind and Deaf an additional lump-sum death benefit in such amount as, when added to any lump-sum death benefit payable under the provisions of the Teacher Retirement System of Texas, shall equal \$5,000 upon satisfactory proof of the death, occurring on or after September 1, 1977, of any person defined in Part (a) of this article. Each such additional lump-sum death benefit shall be paid from the funds of the agency or school from which such person retired.

(c) Such benefit shall be paid as provided by the laws of descent and distribution unless the retiree has directed in writing that it be paid otherwise.

(d) Such payment shall be made in accordance with rules and regulations established by the Central Education Agency, the Teacher Retirement System

of Texas, and the Texas Schools for the Blind and Deaf, and each shall certify to the Comptroller of Public Accounts of Texas and the State Treasurer each month the amounts of all such payments made in the preceding month.

(e) There are hereby authorized to be paid out of the funds of the Central Education Agency, the Teacher Retirement System of Texas, and the Texas Schools for the Blind and Deaf the sums necessary to pay such additional lump-sum death benefits. [Added by Acts 1977, 65th Leg., p. 1272, ch. 494, § 1, eff. June 15, 1977.]

For text added by Act 1977, 65th Leg., p. 1948, ch. 774, § 1, see art. 3.51-7, post

Art. 3.51-7. Continuation of Group Life and Group Accident and Health Insurance During Labor Dispute

[Text as added by Acts 1977, 65th Leg., p. 1948, ch. 774, § 1]

No group life insurance policy or group accident and health insurance policy shall be delivered or issued for delivery in this state where the premiums or any part thereof is paid or is to be paid in whole or in part by an employer pursuant to the terms of a collective bargaining agreement unless the policy provides that in the event of a cessation of work by the employees covered by the policy as the result of a labor dispute, the policy upon timely payment of the premium shall continue in effect with respect to all employees insured by the policy on the date of the cessation of work who continue to pay their individual contribution and who assume and pay the contribution due from the employer for the period of cessation of work, under the following conditions:

(a) If the policyholder is not a trustee or the trustees of a fund established or maintained in whole or in part by the employer, the policy shall provide that the employee's individual contribution shall be the rate in the policy, on the date cessation of work occurs, applicable to an individual in the class to which the employee belongs as set forth in the policy. If the policy does not provide for a rate applicable to individuals, the policy shall provide that the employee's individual contribution shall be an amount equal to the amount determined by dividing (1) the total monthly premium in effect under the policy at the date of cessation of work by (2) the total number of persons insured under the policy at such date.

(b) If the policyholder is a trustee or the trustees of a fund established or maintained in whole or in part by the employer, the employee's contribution shall be the amount which he and his employer would have been required to contribute to the trust for such employee if (1)

the cessation of work had not occurred and (2) the agreement requiring the employer to make contributions to the trust were in full force.

(c) The policy may provide that the continuation of insurance is contingent upon the collection of individual contributions by the union or unions representing the employees for policies referred to in Subdivision (a) above and by the policyholder or the policyholder's agent with respect to policies referred to in Subdivision (b) above.

(d) The policy may provide that the continuation of insurance on each employee is contingent upon timely payment of contributions by the individual and timely payment of the premium by the entity responsible for collecting the individual contributions.

(e) The policy may provide that each individual premium rate shall be increased by any amount up to 20 percent, or any higher percent which may be approved by the commissioner, of that otherwise shown in the policy during the period of cessation of work in order to provide sufficient compensation to the insurer to cover increased administrative costs and increased mortality and morbidity. If the policy does provide for such an increase, this shall have the effect of increasing the employee's contribution by a like percent.

(f) Nothing in this article shall be deemed to limit any right which the insurer may have in accordance with the terms of the policy to increase or decrease the premium rates before, during, or after such cessation of work if in fact the insurer would have had the right to increase the premium rate had the cessation of work not occurred. If such a premium rate change is made, it shall be effective, notwithstanding any other provisions of this article, on such date as the insurer shall determine in accordance with the terms of the policy.

(g) The policy may contain such other provisions with respect to such continuation of insurance as the Commissioner of Insurance may approve.

(h) The policy may provide that, if a premium is unpaid at the date of cessation of work and such premium became due prior to such cessation of work, the continuation of insurance is contingent upon payment of such premium prior to the date the next premium becomes due under the terms of the policy.

(i) Nothing herein shall be deemed to require the continuation of any loss of time payments included in any such group accident and health insurance policy, nor of any other coverages beyond the time that 75 percent of the employees continue such coverage or as to any individ-

ual employee beyond the time that he takes full-time employment with another employer; nor shall anything herein be deemed to require continuation of coverage more than six months after the cessation of work.

[Added by Acts 1977, 65th Leg., p. 1948, ch. 774, § 1, eff. Aug. 29, 1977.]

For text as added by Acts 1977, 65th Leg., p. 1272, ch. 494, § 1, see art. 3.51-7, ante

SUBCHAPTER G. ACCIDENT AND SICKNESS INSURANCE

Art. 3.70-1. Purpose; Definitions; Scope of Act; Rules and Regulations; Standards for Policy Provisions; Minimum Standards; Outline of Coverage; Pre-Existing Conditions; Administrative Procedures

(A) Purpose. The purpose of this Act shall be to provide for reasonable standardization, readability, and simplification of terms and coverages contained in individual accident and sickness insurance policies; to facilitate public understanding of coverages; to eliminate provisions contained in individual accident and sickness insurance policies which may be unjust, unfair, misleading, or unreasonably confusing in connection either with the purchase of such coverages or with the settlement of claims; and to provide for full and fair disclosure in the sale of accident and sickness coverages.

(B) Definitions. As used in this Act,

(1) "Board" shall mean the State Board of Insurance of the State of Texas.

(2) "Commissioner" shall mean the Commissioner of Insurance of the State of Texas.

(3) "Policy of accident and sickness insurance" as used herein, includes any policy or contract providing insurance against loss resulting from sickness or from bodily injury or death by accident or both.

(4) "Policy" means the entire contract between the insurer and the insured, including the policy, riders, endorsements, and the application, if attached.

(C) Scope of Act. This Act shall apply to and govern individual accident and sickness insurance policies delivered, or issued for delivery, in the State of Texas by life, health and accident companies, mutual life insurance companies, mutual assessment life insurance companies, mutual insurance companies, local mutual aid associations, mutual or natural premium life or casualty insurance companies, general casualty companies, Lloyds, reciprocal or inter-insurance exchanges, nonprofit hospital, medical, or dental service corporations including but not limited

to companies subject to Chapter 20 of this code, as amended, stipulated premium insurance companies, or any other insurer which by law is required to be licensed by the Board; provided, however, this Act shall not apply to any society, company or other insurer whose activities are by statute exempt from the control of the Board and which are entitled by statute to an exemption certificate from the Board in evidence of their exempt status, nor to fraternal benefit societies; nor to credit accident and sickness insurance policies written under Article 3.53 of this code, as amended; provided further, that this Act shall not be construed to enlarge the powers of any of the enumerated companies. Conversion policies issued pursuant to a contractual conversion privilege under a group accident and sickness insurance policy shall not be subject to Subsections (D) through (H) of this article.

(D) Rules and Regulations. The Board is authorized to issue such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of this article.

(E) Standards for Policy Provisions.

(1) The Board shall issue reasonable rules and regulations to establish specific standards including standards for readability of policies and for full and fair disclosure, that set forth the manner, content, and required disclosure for the sale of individual policies of accident and sickness insurance which shall be in addition to and in accordance with applicable laws of this state which may cover but shall not be limited to:

- (a) terms of renewability;
- (b) initial and subsequent conditions of eligibility;
- (c) nonduplication of coverage provisions;
- (d) coverage of dependents;
- (e) pre-existing conditions;
- (f) termination of insurance;
- (g) probationary periods;
- (h) limitations;
- (i) exceptions;
- (j) reductions;
- (k) elimination periods;
- (l) requirements for replacement;
- (m) recurrent conditions; and
- (n) the definition of terms including but not limited to the following: hospital, accident, sickness, injury, physician, accidental means, total disability, partial disability, nervous disorder, guaranteed renewable and noncancellable; provided that any definition of hospital so developed shall not be applicable to companies organized under Chapter 20 of this code, as amended.

(2) The Board may issue rules and regulations that specify prohibited policy provisions, not otherwise specifically authorized by statute, which in the opinion of the Board are unjust, unfair, or unfairly discriminatory to the policyholder, any person insured under the policy, or beneficiary.

(F) Minimum Standards for Benefits.

(1) The Board shall issue rules and regulations to establish minimum standards for benefits under each of the following categories of coverage in individual policies of accident and sickness insurance:

- (a) basic hospital expense coverage;
- (b) basic medical-surgical expense coverage;
- (c) hospital confinement indemnity coverage;
- (d) major medical expense coverage;
- (e) disability income protection coverage;
- (f) accident only coverage;
- (g) specified disease or specified accident coverage; and
- (h) limited benefit coverage.

(2) Nothing in this section shall preclude the issuance of any policy which combines two or more of the categories of coverage enumerated in Paragraphs (a) through (h) of Subsection (1) of this section.

(3) No policy shall be issued, or issued for delivery, in the State of Texas which does not meet the prescribed minimum standards for the categories of coverage listed in Paragraphs (a) through (h) of Subsection (1) of this section which are contained within the policy unless the Board finds such policy to be a supplemental policy, a policy experimental in nature or finds such policy will fulfill a reasonable public need and such policy meets the requirements set forth in Article 3.42 of the Insurance Code.

(4) The Board shall prescribe the method of identification of policies based on coverages provided.

(G) Outline of Coverage.

(1) In order to provide for full and fair disclosure in the sale of individual accident and sickness insurance policies, no such policy shall be delivered, or issued for delivery, in the State of Texas unless: (i) in the case of a direct response insurance product, the outline of coverage described in Subsection (2) of this section accompanies the policy; (ii) in all other cases, the outline of coverage described in Subsection (2) of this section is delivered to the applicant at the time application is made and an acknowledgement of receipt or certificate of delivery of

such outline is provided the insurer with the application. In the event the policy is issued on a basis other than that applied for, the outline of coverage properly describing the policy must accompany the policy when it is delivered and clearly state that it is not the policy for which application was made.

(2) The Board shall prescribe the format and content of the outline of coverage required by Subsection (1) of this section. "Format" means style, arrangement, and overall appearance, including such items as the size, color, and prominence of type and the arrangement of text and captions. Such outline of coverage shall include:

(a) a statement identifying the applicable category or categories of coverage provided by the policy as prescribed in Section (F) of this article;

(b) a description of the principal benefits and coverage provided in the policy;

(c) a statement of the exceptions, reductions, and limitations contained in the policy;

(d) a statement of the renewal provision including any reservation by the insurer of a right to change premiums;

(e) a statement that the outline is a summary of the policy issued or applied for and that the policy should be consulted to determine governing contractual provisions;

(f) a summary of such provisions required to be in the policy by Section 3, Chapter 397, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 3.70-3, Vernon's Texas Insurance Code), as the Board may determine to be necessary to carry out the purposes of this Act.

(g) Any other statements, descriptions, or outlines that the Board may determine to be reasonably necessary to carry out the purposes of this Act.

(H) Pre-existing Conditions. (1) Notwithstanding the provisions of Section 3(A)(2)(b), Chapter 397, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 3.70-3, Vernon's Texas Insurance Code), if an insurer elects to use a simplified application form, with or without a question as to the applicant's health at the time of application, but without any questions concerning the insured's health history or medical treatment history, the policy must cover any loss occurring after 12 months from any pre-existing condition not specifically excluded from coverage by terms of the policy. (2) Notwithstanding the provisions of Section 3(A)(2)(b), Chapter 397, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 3.70-3, Vernon's

Texas Insurance Code), or of Paragraph (1) of this subsection, no individual policy of accident and sickness insurance delivered or issued for delivery in this state to a person age 65 or over may contain a provision excluding from coverage any loss due to a pre-existing condition, not specifically excluded from coverage by name or specific description in an exclusion endorsement or rider effective on the date of the loss, for a period in excess of six months from the effective date of coverage under the policy; provided, however, that if the Board finds that the public interest would be served thereby, it may authorize a policy provision excluding coverage for pre-existing conditions for a period in excess of six months but in no event shall such period exceed one year. (3) Except as so provided, a policy issued under the provisions of this section may not include wording that would permit a defense based on pre-existing conditions.

(I) Administrative Procedures. Rules and regulations promulgated pursuant to this Article shall be subject to notice and hearing pursuant to Section 10, Chapter 397, Acts of the 54th Legislature, Regular Session, 1955 (Article 3.70-10, Vernon's Texas Insurance Code).

[Amended by Acts 1975, 64th Leg., p. 2199, ch. 703, § 1, eff. June 21, 1975; Acts 1977, 65th Leg., p. 1285, ch. 505, § 1, eff. June 15, 1977.]

Sections 2 and 3 of the 1975 amendatory act amended subsecs. (A) and (B) of art. 3.70-3; § 4 amended art. 3.42; § 5 amended art. 3.70-9; and § 6 thereof provided:

"This Act shall apply to all policies of accident and sickness insurance issued, or issued for delivery, in the State of Texas after June 1, 1976. This Act shall not apply to policies issued, or issued for delivery, in the State of Texas prior to such date."

Art. 3.70-3. Accident and Sickness Policy Provisions

(A) Required Provisions. Except as provided in paragraph (C) of this section each such policy delivered or issued for delivery to any person in this state shall contain the provisions specified in this subsection in the words in which the same appear in this section; provided, however, that the insurer may, at its option, substitute for one or more of such provisions, provisions of different wording approved by the Board, in accordance with reasonable rules and regulations promulgated by the Board, which are in each instance not less favorable in any respect to the insured or the beneficiary; and provided further that Provisions 6, 8, and 9 shall not be required provisions under this Subsection A for companies organized under Chapter 20 of this code, as amended. Such provisions shall be preceded individually by the caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Board may approve.

(1) A provision as follows:

Entire Contract; Changes: This policy, including the endorsements and the attached pa-

pers, if any, constitutes the entire contract of insurance. No change in this policy shall be valid until approved by an executive officer of the insurer and unless such approval be endorsed hereon or attached hereto. No agent has authority to change this policy or to waive any of its provisions.

(2) A provision as follows:

Time Limit on Certain Defenses: (a) After two years from the date of issue of this policy no misstatements, except fraudulent misstatements, made by the applicant in the application for such policy shall be used to void the policy or to deny a claim for loss incurred or disability (as defined in the policy) commencing after the expiration of such two-year period.

(The foregoing policy provision shall not be so construed as to affect any legal requirement for avoidance of a policy or denial of a claim during such initial two-year period, nor to limit the application of Section 3(B), (1), (2), (3), (4), and (5) in the event of misstatement with respect to age or occupation or other insurance.)

(A policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue, may contain in lieu of the foregoing the following provision (from which the clause in parentheses may be omitted at the insurer's option) under the caption "incontestible":

After this policy has been in force for a period of two years during the lifetime of the insured (excluding any period during which the insured is disabled), it shall become incontestible as to the statements contained in the application.)

(b) No claim for loss incurred or disability (as defined in the policy) commencing after two years from the date of issue of this policy shall be reduced or denied on the ground that a disease or physical condition not excluded from coverage by name or specific description effective on the date of loss had existed prior to the effective date of coverage of this policy.

(3) A provision as follows:

Grace Period: A grace period of (insert a number not less than "7" for weekly premium policies, "10" for monthly premium policies, and "31" for all other policies) days will be granted for the payment of each premium falling due after the first premium, during which grace period the policy shall continue in force.

(A policy which contains a cancellation provision may add, at the end of the above provision, subject to the right of the insurer to cancel in

accordance with the cancellation provision hereof.

A policy in which the insurer reserves the right to refuse any renewal shall have, at the beginning of the above provision:

Unless not less than five days prior to the premium due date the insurer has delivered to the insured or has mailed to his last address as shown by the records of the insurer written notice of its intention not to renew this policy beyond the period for which the premium has been accepted.)

(4) A provision as follows:

Reinstatement: If any renewal premium be not paid within the time granted the insured for payment, a subsequent acceptance of premium by the insurer or by any agent duly authorized by the insurer to accept such premium, without requiring in connection therewith an application for reinstatement, shall reinstate the policy; provided, however, that if the insurer or such agent requires an application for reinstatement and issues a conditional receipt for the premium tendered, the policy will be reinstated upon approval of such application by the insurer or, lacking such approval, upon the forty-fifth day following the date of such conditional receipt unless the insurer has previously notified the insured in writing of its disapproval of such application. The reinstated policy shall cover only loss resulting from such accidental injury as may be sustained after the date of reinstatement and loss due to such sickness as may begin more than ten days after such date. In all other respects the insured and insurer shall have the same rights thereunder as they had under the policy immediately before the due date of the defaulted premium, subject to any provisions endorsed hereon or attached hereto in connection with the reinstatement. Any premium accepted in connection with a reinstatement shall be applied to a period for which premium has not been previously paid, but not to any period more than sixty days prior to the date of reinstatement.

(The last sentence of the above provision may be omitted from any policy which the insured has the right to continue in force subject to its terms by the timely payment of premium (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue.)

(5) A provision as follows:

Notice of Claim: Written notice of claim must be given to the insurer within twenty days after the occurrence or commencement of any loss covered by the policy, or as soon thereafter as is reasonably possible. Notice given by or on

behalf of the insured or the beneficiary to the insurer at (insert the location of such office as the insurer may designate for the purpose), or to any authorized agent of the insurer, with information sufficient to identify the insured, shall be deemed notice to the insurer.

(In a policy providing a loss-of-time benefit which may be payable for at least two years, an insurer may at its option insert the following between the first and second sentences of the above provision:

Subject to the qualifications set forth below, if the insured suffers loss of time on account of disability for which indemnity may be payable for at least two years, he shall, at least once in every (insert a number not less than one nor more than six) months after having given notice of claim, give to the insurer notice of continuance of said disability, except in the event of legal incapacity. The period of (insert a number not less than one nor more than six) months following any filing of proof by the insured or any payment by the insurer on account of such claim or any denial of liability in whole or in part by the insurer shall be excluded in applying this provision. Delay in the giving of such notice shall not impair the insured's right to any indemnity which would otherwise have accrued during the period of (insert a number not less than one nor more than six) months preceding the date on which such notice is actually given.)

(6) A provision as follows:

Claim Forms: The insurer, upon receipt of a notice of claim, will furnish to the claimant such forms as are usually furnished by it for filing proofs of loss. If such forms are not furnished within fifteen days after the giving of such notice the claimant shall be deemed to have complied with the requirements of this policy as to proof of loss upon submitting, within the time fixed in the policy for filing proofs of loss, written proof covering the occurrence, the character and the extent of the loss for which claim is made.

(7) A provision as follows:

Proofs of Loss: Written proof of loss must be furnished to the insurer at its said office in case of claim for loss for which this policy provides any periodic payment contingent upon continuing loss within ninety days after the termination of the period for which the insurer is liable and in case of claim for any other loss within ninety days after the date of such loss. Failure to furnish such proof within the time required shall not invalidate nor reduce any claim if it was not reasonably possible to give proof within

such time, provided such proof is furnished as soon as reasonably possible; and in no event, except in the absence of legal capacity, later than one year from the time proof is otherwise required.

(8) A provision as follows:

Time of Payment of Claims: Indemnities payable under this policy for any loss other than loss for which this policy provides any periodic payment will be paid immediately upon receipt of due written proof of such loss. Subject to due written proof of loss, all accrued indemnities for loss for which this policy provides periodic payment will be paid (insert period for payment which must not be less frequently than monthly) and any balance remaining unpaid upon the termination of liability will be paid immediately upon receipt of due written proof.

(9) A provision as follows:

Payment of Claims: Indemnity for loss of life will be payable in accordance with the beneficiary designation and the provisions respecting such payment which may be prescribed herein and effective at the time of payment. If no such designation or provision is then effective, such indemnity shall be payable to the estate of the insured. Any other accrued indemnities unpaid at the insured's death may, at the option of the insurer, be paid either to such beneficiary or to such estate. All other indemnities will be payable to the insured.

(The following provisions, or either of them, may be included with the foregoing provision at the option of the insurer:

If any indemnity of this policy shall be payable to the estate of the insured, or to an insured or beneficiary who is a minor or otherwise not competent to give a valid release, the insurer may pay such indemnity, up to an amount not exceeding \$. (insert an amount which shall not exceed \$1,000), to any relative by blood or connection by marriage of the insured or beneficiary who is deemed by the insurer to be equitably entitled thereto. Any payment made by the insurer in good faith pursuant to this provision shall fully discharge the insurer to the extent of such payment.

Subject to any written direction of the insured in the application or otherwise all or a portion of any indemnities provided by this policy on account of hospital, nursing, medical or surgical services may, at the insurer's option and unless the insured requests otherwise in writing not later than the time of filing proofs of such loss, be paid directly to the hospital or person rendering such services; but it is not

required that the service be rendered by a particular hospital or person.)

(10) A provision as follows:

Physical Examinations and Autopsy: The insurer at its own expense shall have the right and opportunity to examine the person of the insured when and as often as it may reasonably require during the pendency of a claim hereunder and to make an autopsy in case of death where it is not forbidden by law.

(11) A provision as follows:

Legal Actions: No action at law or in equity shall be brought to recover on this policy prior to the expiration of sixty days after written proof of loss has been furnished in accordance with the requirements of this policy. No such action shall be brought after the expiration of three years after the time written proof of loss is required to be furnished.

(12) A provision as follows:

Change of Beneficiary: Unless the insured makes an irrevocable designation of beneficiary, the right to change of beneficiary is reserved to the insured and the consent of the beneficiary or beneficiaries shall not be requisite to surrender or assignment of this policy or to any change of beneficiary or beneficiaries, or to any other changes in this policy.

(The first clause of this provision, relating to the irrevocable designation of beneficiary, may be omitted at the insurer's option.)

(B) **Other Provisions.** Except as provided in paragraph (C) of this section, no such policy delivered or issued for delivery to any person in this state shall contain provisions respecting the matters set forth below unless such provisions are in the words in which the same appear in this section; provided, however, that the insurer may, at its option, use in lieu of any such provision a provision of different wording approved by the Board, in accordance with reasonable rules and regulations promulgated by the Board, which is not less favorable in any respect to the insured or the beneficiary. Any such provision contained in the policy shall be preceded individually by the appropriate caption appearing in this subsection or, at the option of the insurer, by such appropriate individual or group captions or subcaptions as the Board may approve.

(1) A provision as follows:

Change of Occupation: If the insured be injured or contract sickness after having changed his occupation to one classified by the insurer as more hazardous than that stated in this policy or while doing for compensation anything pertaining to an occupation so classified, the insurer will pay only such portion of the indemnities provid-

ed in this policy as the premium paid would have purchased at the rates and within the limits fixed by the insurer for such more hazardous occupation. If the insured changes his occupation to one classified by the insurer as less hazardous than that stated in this policy, the insurer, upon receipt of proof of such change of occupation, will reduce the premium rate accordingly, and will return the excess pro-rata unearned premium from the date of change of occupation or from the policy anniversary date immediately preceding receipt of such proof, whichever is the more recent. In applying this provision, the classification of occupational risk and the premium rates shall be such as have been last filed by the insurer prior to the occurrence of the loss for which the insurer is liable or prior to date of proof of change in occupation with the state official having supervision of insurance in the state where the insured resided at the time this policy was issued; but if such filing was not required, then the classification of occupational risk and the premium rates shall be those last made effective by the insurer in such state prior to the occurrence of the loss or prior to the date of proof of change in occupation.

(2) A provision as follows:

Misstatement of Age: If the age of the insured has been misstated, all amounts payable under this policy shall be such as the premium paid would have purchased at the correct age.

(3) A provision as follows:

Other Insurance in This Insurer: If an accident or sickness or accident and sickness policy or policies previously issued by the insurer to the insured be in force concurrently herewith, making the aggregate indemnity for (insert type of coverage or coverages) in excess of \$ (insert maximum limit of indemnity or indemnities) the excess insurance shall be void and all premiums paid for such excess shall be returned to the insured or to his estate; or, in lieu thereof:

Insurance effective at any one time on the insured under a like policy or policies in this insurer is limited to the one such policy elected by the insured, his beneficiary or his estate, as the case may be, and the insurer will return all premiums paid for all other such policies.

(4) A provision as follows:

Relation of Earnings to Insurance: If the total monthly amount of loss of time benefits promised for the same loss under all valid loss of time coverage upon the in-

sured, whether payable on a weekly or monthly basis, shall exceed the monthly earnings of the insured at the time disability commenced or his average monthly earnings for the period of two years immediately preceding a disability for which claim is made, whichever is the greater, the insurer will be liable only for such proportionate amount of such benefits under this policy as the amount of such monthly earnings or such average monthly earnings of the insured bears to the total amount of monthly benefits for the same loss under all such coverage upon the insured at the time such disability commences and for the return of such part of the premiums paid during such two years as shall exceed the pro-rata amount of the premiums for the benefits actually paid hereunder; but this shall not operate to reduce the total monthly amount of benefits payable under all such coverage upon the insured below the sum of Two Hundred Dollars (\$200.00) or the sum of the monthly benefits specified in such coverages, whichever is the lesser, nor shall it operate to reduce benefits other than those payable for loss of time.

(The foregoing policy provision may be inserted only in a policy which the insured has the right to continue in force subject to its terms by the timely payment of premiums (1) until at least age 50 or, (2) in the case of a policy issued after age 44, for at least five years from its date of issue. The insurer may, at its option, include in this provision a definition of "valid loss of time coverage," approved as to form by the Board, which definition shall be limited in subject matter to coverage provided by governmental agencies or by organizations subject to regulation by insurance law or by insurance authorities of this or any other state of the United States or any province of Canada, or to any other coverage the inclusion of which may be approved by the Board or any combination of such coverages. In the absence of such definition such term shall not include any coverage provided for such insured pursuant to any compulsory benefit statute (including any workmen's compensation or employer's liability statute), or benefits provided by union welfare plans or by employer or employee benefit organizations.)

(5) A provision as follows:

Unpaid Premium: Upon the payment of a claim under this policy, any premium then

due and unpaid or covered by any note or written order may be deducted therefrom.

(6) A provision as follows:

Cancellation: The insurer may cancel this policy at any time by written notice delivered to the insured, or mailed to his last address as shown by the records of the insurer, stating when, not less than five days thereafter, such cancellation shall be effective; and after the policy has been continued beyond its original term the insured may cancel this policy at any time by written notice delivered or mailed to the insurer, effective upon receipt or on such later date as may be specified in such notice. In the event of cancellation, the insurer will return promptly the unearned portion of any premium paid. If the insured cancels, the earned premium shall be computed by the use of the short-rate table last filed with the state official having supervision of insurance in the state where the insured resided when the policy was issued. If the insurer cancels, the earned premium shall be computed pro-rata. Cancellation shall be without prejudice to any claim originating prior to the effective date of cancellation.

(7) A provision as follows:

Conformity With State Statutes: Any provision of this policy which, on its effective date, is in conflict with the statutes of the state in which the insured resides on such date is hereby amended to conform to the minimum requirements of such statutes.

(8) A provision as follows:

Illegal Occupation: The insurer shall not be liable for any loss to which a contributing cause was the insured's commission of or attempt to commit a felony or to which a contributing cause was the insured's being engaged in an illegal occupation.

(9) A provision as follows:

Intoxicants and Narcotics: The insurer shall not be liable for any loss sustained or contracted in consequence of the insured's being intoxicated or under the influence of any narcotic unless administered on the advice of a physician.

[See Compact Edition, Volume 2 for text of (C) to (G)]

[Amended by Acts 1975, 64th Leg., p. 2202, ch. 703, §§ 2 and 3, eff. June 21, 1975.]

Art. 3.70-9. Violation

Any person, partnership, or corporation wilfully violating any provision of this Act or order of the

Board made in accordance with this Act, shall forfeit to the people of the state a sum not to exceed Five Thousand Dollars (\$5,000.00) for each such violation, which may be recovered by a civil action. The Board may also suspend or revoke the license of an insurer or agent for any such wilful violation. [Amended by Acts 1975, 64th Leg., p. 2210, ch. 703, § 5, eff. June 21, 1975.]

Art. 3.72. Variable Annuity Contracts

[See Compact Edition, Volume 2 for text of 1 to 7]

Investment of Separate Account Funds

Sec. 8. Any domestic insurance company which has established one or more separate variable annuity accounts pursuant to this article may invest and reinvest all or any part of the assets allocated to any such account in and only in the securities and investments authorized by Article 3.39 of this Insurance Code for any of the funds of a domestic life insurance company, free and clear of any and all limitations and restrictions in such Article 3.39, and in addition thereto in common capital stocks or other equities which are listed on or admitted to trading in a securities exchange located in the United States of America, or which are publicly held and traded in the "over-the-counter market" as defined by the State Board of Insurance and as to which market quotations have been available. None of the assets allocated to any such variable annuity account shall be invested in common stocks of corporations which shall have defaulted in the payment of any debt within five years next preceding such investment. No such company shall invest in excess of the greater of (a) Twenty-Five Thousand Dollars (\$25,000) or (b) five percent (5%) of the assets of any such separate variable annuity account in any one corporation issuing such common capital stock, except that subject to the approval of the State Board of Insurance all of the assets of a separate account may be invested in the shares of one or more open-end management companies registered under the Federal Investment Company Act of 1940¹ and qualifying as a diversified company thereunder. The assets and investments of such separate variable annuity accounts shall not be taken into account in applying the quantitative investment limitations applicable to other investments of the company. In the purchase of common capital stock or other equities, the insurer shall designate to the broker, or to the seller if the purchase is not made through broker, the specific variable annuity account for which the investment is made.

[See Compact Edition, Volume 2 for text of 9 to 16]

[Amended by Acts 1975, 64th Leg., p. 1379, ch. 528, § 1, eff. Sept. 1, 1975.]

¹ 15 U.S.C.A. § 80a-1 et seq.

CHAPTER FIVE. RATING AND POLICY FORMS

SUBCHAPTER B. CASUALTY INSURANCE AND FIDELITY, GUARANTY AND SURETY BONDS

Article

- 5.13-1. Legal Service Contracts [NEW].
- 5.15-1. Professional Liability Insurance for Physicians and Health Care Providers [NEW].
- 5.15-2. Accident Prevention Services [NEW].

SUBCHAPTER C. FIRE INSURANCE AND ALLIED LINES

- 5.43-2. Fire Detection and Alarm Devices and Systems; Regulation of Sales, Service, Installation and Maintenance [NEW].

- 5.53-A. Home Warranty Insurance [NEW].

SUBCHAPTER J. PROFESSIONAL LIABILITY INSURANCE FOR PHYSICIANS, PODIATRISTS, AND HOSPITALS [NEW].

- 5.82. Rating Procedures.

SUBCHAPTER K. POLICY FORMS AND ENDORSEMENTS FOR CERTAIN AIRCRAFT [NEW]

- 5.90. Policy Forms and Endorsements.
- 5.91. Maintenance Tax.
- 5.92. Rules.

SUBCHAPTER A. MOTOR VEHICLE OR AUTOMOBILE INSURANCE

Art. 5.03. Promulgated Rates as Controlling

(a) On and after the filing and effective date of such classification of such risks and rates, no such insurer, except as otherwise provided herein, shall issue or renew any such insurance at premium rates which are greater or lesser than those promulgated by the Board as just, reasonable, adequate and not excessive for the risks to which they respectively apply, and not confiscatory as to any class of insurance carriers authorized by law to write such insurance after taking into consideration the deviation provisions of this Article. Any insurer desiring to write insurance at rates different from those promulgated by the Board shall make a written application to the Board for permission to file a uniform percentage deviation for a lesser or greater rate, on a statewide basis unless otherwise ordered by the Board, from the class rates or classes of rates promulgated by the Board. Any insurer desiring to write insurance under a classification plan different from that promulgated by the Board shall make written application to the Board for permission to do so; provided, however, the Board shall approve the use of only such additions or refinements in its classification plan as will produce subclassifications which, when combined, will enable consideration of the insurer's experience under both the Board classification plan and its own classification plan. Such application shall be approved in whole or in part by the Board, provided the Board finds that the resulting premiums will be just, adequate, reasonable, not excessive and not unfairly discriminatory, taking into consideration the following:

- (1) the financial condition of the insurer;
- (2) the method of operation and expenses of such insurer;

(3) the actual paid and incurred loss experience of the insurer;

(4) earnings of the insurer from investments together with a projection of prospective earnings from investments during the period for which the application is made; and

(5) such application meets the reasonable conditions, limitations, and restrictions deemed necessary by the Board.

In considering all matters set forth in such application the Board shall give consideration to the composite effect of items (2), (3), and (4) above and the Board shall deny such application if it finds that the resulting premiums would be inadequate, excessive, or unfairly discriminatory. Any original or renewal policy of insurance issued pursuant to an approved plan of deviation shall have attached to or imprinted on the face of such policy the following notice: "The premium charged for this policy is greater than the premium rates promulgated by the State Board of Insurance." The notice shall be in 10-point or larger prominent type-size.

Except as the Board may authorize, the deviation provisions in this Article shall not apply to insurance written pursuant to other provisions of this Chapter in which a deviation from standard rates is authorized, including, but not limited to, automobile liability experience rating and fleet rating plans.

[See Compact Edition, Volume 2 for text of (b) to (f)]

[Amended by Acts 1977, 65th Leg., p. 1981, ch. 792, § 1, eff. Aug. 29, 1977.]

Art. 5.06-1. Uninsured or Underinsured Motorist Coverage

(1) No automobile liability insurance (including insurance issued pursuant to an Assigned Risk Plan established under authority of Section 35 of the Texas Motor Vehicle Safety-Responsibility Act),¹ covering liability arising out of the ownership, maintenance, or use of any motor vehicle shall be delivered or issued for delivery in this state unless coverage is provided therein or supplemental thereto, in at least the limits described in the Texas Motor Vehicle Safety-Responsibility Act, under provisions prescribed by the Board, for the protection of persons insured thereunder who are legally entitled to recover damages from owners or operators of uninsured or underinsured motor vehicles because of bodily injury, sickness, or disease, including death, or property damage resulting therefrom. The coverages required under this Article shall not be applicable where any insured named in the policy shall reject the coverage; provided that unless the named insured thereafter requests such coverage in writing, such coverage need not be provided in or supplemental to a renewal policy where the named insured has rejected the coverage in connection with a policy previously issued to him by the same insurer.

(2) For the purpose of these coverages: (a) the term "uninsured motor vehicle" shall, subject to the terms and conditions of such coverage, be deemed to include an insured motor vehicle where the liability insurer thereof is unable to make payment with respect to the legal liability of its insured within the limits specified therein because of insolvency.

(b) The term "underinsured motor vehicle" means an insured motor vehicle on which there is valid and collectible liability insurance coverage with limits of liability for the owner or operator which were originally lower than, or have been reduced by payment of claims arising from the same accident to, an amount less than the limit of liability stated in the underinsured coverage of the insured's policy.

(c) The State Board of Insurance is hereby authorized to promulgate the forms of the uninsured and underinsured motorist coverages. The Board may also, in such forms, define "uninsured motor vehicle" to exclude certain motor vehicles whose operators are in fact uninsured.

(d) The forms promulgated under the authority of this section shall include provisions that, regardless of the number of persons insured, policies or bonds applicable, vehicles involved, or claims made, the total aggregate limit of liability to any one person who sustains bodily injury or property damage as the result of any one occurrence shall not exceed the limit of liability for these coverages as stated in the policy and the total aggregate limit of liability to all claimants, if more than one, shall not exceed the total limit of liability per occurrence as stated in the policy; and shall provide for the exclusion of the recovery of damages for bodily injury or property damage or both resulting from the intentional acts of the insured. The forms promulgated under the authority of this section shall require that in order for the insured to recover under the uninsured motorist coverages where the owner or operator of any motor vehicle which causes bodily injury or property damage to the insured is unknown, actual physical contact must have occurred between the motor vehicle owned or operated by such unknown person and the person or property of the insured.

(3) The limits of liability for bodily injury, sickness, or disease, including death, shall be offered to the insured in amounts not less than those prescribed in the Texas Motor Vehicle Safety-Responsibility Act and such higher available limits as may be desired by the insured, but not greater than the limits of liability specified in the bodily injury liability provisions of the insured's policy.

(4) (a) Coverage for property damage shall be offered to the insured in amounts not less than those prescribed in the Texas Motor Vehicle Safety-Responsibility Act and such higher available limits as may be desired by the insured, but not greater than limits of liability specified in the property damage

liability provisions of the insured's policy, subject to a deductible amount of \$250.

(b) If the insured has collision coverage and uninsured or underinsured property damage liability coverage, the insured may recover only under the coverage which is subject to the lower deductible amount.

(5) The underinsured motorist coverage shall provide for payment to the insured of all sums which he shall be legally entitled to recover as damages from owners or operators of underinsured motor vehicles because of bodily injury or property damage in an amount up to the limit specified in the policy, reduced by the amount recovered or recoverable from the insurer of the underinsured motor vehicle.

(6) In the event of payment to any person under any coverage required by this Section and subject to the terms and conditions of such coverage, the insurer making such payment shall, to the extent thereof, be entitled to the proceeds of any settlement or judgment resulting from the exercise of any rights of recovery of such person against any person or organization legally responsible for the bodily injury, sickness or disease, or death for which such payment is made, including the proceeds recoverable from the assets of the insolvent insurer; provided, however, whenever an insurer shall make payment under a policy of insurance issued pursuant to this Act, which payment is occasioned by the insolvency of an insurer, the insured of said insolvent insurer shall be given credit in any judgment obtained against him, with respect to his legal liability for such damages, to the extent of such payment, but such paying insurer shall have the right to proceed directly against the insolvent insurer or its receiver, and in pursuance of such right such paying insurer shall possess any rights which the insured of the insolvent company might otherwise have had if the insured of the insolvent insurer had made the payment.

(7) If a dispute exists as to whether a motor vehicle is uninsured, the burden of proof as to that issue shall be upon the insurer.

[Amended by Acts 1977, 65th Leg., p. 370, ch. 182, § 1, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 6701h, § 35.

SUBCHAPTER B. CASUALTY INSURANCE AND FIDELITY, GUARANTY AND SURETY BONDS

Art. 5.13-1. Legal Service Contracts

(a) Every insurer governed by Subchapter B of Chapter 5 of the Insurance Code, as amended,¹ and every life, health, and accident insurer governed by Chapter 3 of the Insurance Code, as amended,² is authorized to issue prepaid legal services contracts. Every such insurer or rating organization authorized under Article 5.16 of the Insurance Code shall file with the State Board of Insurance all rules and forms applicable to prepaid legal service contracts in a manner to be established by the State Board of

Insurance. All rates, rating plans, and charges shall be established in accordance with actuarial principles for various categories of insureds. Rates, rating plans, and charges shall not be excessive, inadequate, unfairly discriminatory, and the benefits shall be reasonable with respect to the rates charged. Certification, by a qualified actuary, to the appropriateness of the charges, rates, or rating plans, based upon reasonable assumptions, shall accompany the filing along with adequate supporting information.

(b) The State Board of Insurance shall, within a reasonable period, approve any form if the requirements of this section are met. It shall be unlawful to issue such forms until approved or to use such schedules of charges, rates, or rating plans until filed and approved. If the State Board of Insurance has good cause to believe such rates and rating plans do not comply with the standards of this article, it shall give notice in writing to every insurer or rating organization which filed such rates or rating plans, stating therein in what manner and to what extent such noncompliance is alleged to exist and specifying therein a reasonable time, not less than 30 days thereafter, in which such noncompliance may be corrected. If the board has not acted on any form, rate, rating plan, or charges within 30 days after the filing of same, they shall be deemed approved. The board may require the submission of whatever relevant information is deemed necessary in determining whether to approve or disapprove a filing made pursuant to this section.

(c) The right of such insurers to issue prepaid legal services contracts on individual, group, or franchise bases is hereby recognized, and qualified agents of such insurers who are licensed under Articles 21.07 and 21.14 of the Insurance Code, as amended, and Chapter 213, Acts of the 54th Legislature, 1955, as amended (Article 21.07-1, Vernon's Texas Insurance Code), shall be authorized to write such coverages under such rules and regulations as the State Board of Insurance may prescribe.

(d) The State Board of Insurance is hereby vested with power and authority under this article to promulgate, after notice of hearing, and to enforce, rules and regulations concerning the application to the designated insurers of this article and for such clarification, amplification, and augmentation as in the discretion of the State Board of Insurance are deemed necessary to accomplish the purposes of this article.

(e) This article shall be construed as a specific exception to Article 3.54 of the Texas Insurance Code.

(f) Nothing in this Act shall be construed as compelling the State Board of Insurance to establish standard or absolute rates and the board is specifically authorized, in its discretion, to approve different rates for different insurers for the same risk or

risks on the types of insurance covered by this article; nor shall this article be construed as to require the State Board of Insurance to establish a single or uniform rate for each risk or risks or to compel all insurers to adhere to such rates previously filed by other insurers; and the board is empowered to approve such different rates for different insurers, and is required to approve such rates as filed by any insurer unless it finds that such filing does not meet the requirements of this article.

[Added by Acts 1975, 64th Leg., p. 126, ch. 60, § 2, eff. Sept. 1, 1975.]

¹ Article 5.13 et seq.

² Article 3.01 et seq.

Limitations. Section 3 of the 1975 Act provided:

"An insurer operating under the requirements of Section 2 shall not contract itself to practice law in any manner, nor shall it control or attempt to control the relations existing between an insured and his or her attorney. These attorneys shall never be employees of the insurer but shall at all times be independent contractors maintaining a direct lawyer and client relationship with the insured. Such insurer must agree to pay any attorney licensed by the Supreme Court to practice law in Texas for such services rendered."

Art. 5.15. Filing of Rates and Rating Information; Approval

[See Compact Edition, Volume 2 for text of (a) to (c)]

(d) It is expressly provided, however, that notwithstanding any other provision of this subchapter to the contrary, a rate or premium for such insurance greater than the standard rate or premium that has been approved by the Board may be used on any specific risk if:

(1) a written application is made to the Board naming the insurer and stating the coverage and rate proposed;

(2) the person to be insured or person authorized to act in relation to the risk to be insured consents to such rate;

(3) the reasons for requiring such greater rate or premium are stated in or attached to the application;

(4) the person to be insured or person authorized to act for such person signs the application; and

(5) the Board approves the application by order or by stamping.

(e) Any filing for which there is no approved rate shall be deemed approved from the date of filing to the date of such formal approval or disapproval.

(f) If at any time the Board finds that a filing so approved no longer meets the requirements of this subchapter, it may, after a hearing held on not less than twenty (20) days' notice specifying the matters to be considered at such hearing, to every insurer and rating organization which made such filing, issue an order withdrawing its approval thereof. Said order shall specify in what respects the Board finds that such filing no longer meets the requirements of this subchapter and shall be effective not less than thirty (30) days after its issuance. Copies

of such order shall be sent to every such insurer and rating organization.

(g) Any person or organization aggrieved by the action of the Board with respect to any filing may, within thirty (30) days after such action, make written request to the Board for a hearing thereon. The Board shall hear such aggrieved party within thirty (30) days after receipt of such request and shall give not less than ten days' written notice of the time and place of the hearing to the insurer or rating organization which made the filing and to any other aggrieved party. Within thirty (30) days after such hearings the Board shall affirm, reverse or modify its previous action. Pending such hearing and decision thereon the Board may suspend or postpone the effective date of its previous action.

[Amended by Acts 1977, 65th Leg., p. 225, ch. 108, § 1, eff. May 4, 1977.]

Art. 5.15-1. Professional Liability Insurance for Physicians and Health Care Providers

Scope of Article

Sec. 1. This article shall apply to the making and use of insurance rates by every insurer licensed to write or engaged in writing professional liability insurance for any physician or any health care provider including rating organizations, acting on behalf of insurers.

Definitions

Sec. 2. In this article:

(1) "Physician" means a person licensed to practice medicine in this state.

(2) "Health care provider" means any person, partnership, professional association, corporation, facility, or institution licensed or chartered by the State of Texas to provide health care as a registered nurse, hospital, dentist, podiatrist, chiropractor, optometrist, blood bank that is a nonprofit corporation chartered to operate a blood bank and which is accredited by the American Association of Blood Banks, or not-for-profit nursing home, or an officer, employee, or agent of any of them acting in the course and scope of his employment.

(3) "Hospital" means a licensed public or private institution as defined in Chapter 223, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4437f, Vernon's Texas Civil Statutes), or in Section 88, Chapter 243, Acts of the 55th Legislature, Regular Session, 1957 (Article 5547-88, Vernon's Texas Civil Statutes).

Rate Standards

Sec. 3. Rates shall be made in accordance with the following provisions:

(a) Consideration shall be given to past and prospective loss and expense experience inside this state, unless the State Board of Insurance shall find that the group or risk to be insured is not of sufficient size to be deemed credible, in which event, past and prospective loss and expense experience outside this state shall also be considered, to a reasonable margin for underwriting profit and contingencies, to investment income, to dividends or savings allowed or returned by insurers to their policyholders or members.

(b) For the establishment of rates, risks may be grouped by classifications, by rating schedules, or by any other reasonable methods. Classification rates may be modified to produce rates for individual risks in accordance with rating plans which establish standards for measuring variations in hazards or expense provisions, or both. Those standards may measure any difference among risks that can be demonstrated to have a probable effect upon losses or expenses.

(c) Rates shall be reasonable and shall not be excessive or inadequate, as defined in this subsection, nor shall they be unfairly discriminatory. No rate shall be held to be excessive unless the rate is unreasonably high for the insurance coverage provided and a reasonable degree of competition does not exist in the area with respect to the classification to which the rate is applicable. No rate shall be held to be inadequate unless the rate is unreasonably low for the insurance coverage provided and is insufficient to sustain projected losses and expenses; or unless the rate is unreasonably low for the insurance coverage provided and the use of the rate has or, if continued, will have the effect of destroying competition or creating a monopoly.

Filing Rates

Sec. 4. (a) The provisions of Article 5.15, Insurance Code, shall apply to the filing of rates and rating information required under this article.

(b) Nothing contained in this article or other provisions of this subchapter concerning the regulation of rates, rating plans, and rating classifications shall, as applies to the writing of professional liability insurance for health care providers and physicians, give the board the power to prescribe uniform or absolute rates; nor shall anything therein be construed as preventing the filing of different rates for risks in a given classification or modified rates for individual risks made in accordance with rating plans, as filed by different insurers or organizations authorized to file such rates. As used in this subsection, "absolute rates" means rates, rating classifications, or rating plans filed by an insurer or authoriz-

ed rating organization in accordance with this subchapter and the rates, rating classifications, or rating plans so filed are required to be used, to the exclusion of all others, by each insurer lawfully engaged in writing policies.

(c) The State Board of Insurance shall prescribe standardized policy forms for occurrence, claims-made and claims-paid policies of professional liability insurance covering health care providers and physicians, and no insurer may use any other forms in writing professional liability insurance for health care providers and physicians without the prior approval of the State Board of Insurance. However, an insurer writing professional liability insurance for health care providers and physicians may use any form of endorsement if the endorsement is first submitted to and approved by the board.

Reporting of Claims and Claims Information

Sec. 5. Each insurer who issues policies of professional liability insurance covering physicians and health care providers shall file annually with the State Board of Insurance a report of all claims and amount of claims, amounts of claims reserves, investment income of the company derived from medical professional liability premiums, information relating to amounts of judgments and settlements paid on claims, and other information required by the board. The board may formulate and promulgate a form on which this information shall be reported. The form shall be so devised as to require the information to be reported in an accurate manner, reasonably calculated to facilitate interpretation and to protect the confidentiality of the health care provider or physician.

Annual Premiums

Sec. 6. Policies of professional liability insurance under this article shall be written on not less than an annual premium basis.

Notice of Cancellation or Nonrenewal

Sec. 7. An insurer who issues a policy of professional liability insurance covered by this article shall give at least 90 days' written notice to an insured if premiums on the insurance are to be increased or the policy is to be cancelled or is not to be renewed other than for nonpayment of premiums or because the insured is no longer licensed. If the premiums are to be increased, the notice shall state the amount of the increase, and if the policy is to be cancelled or is not to be renewed, the insurer shall state in the notice the reason for cancellation or nonrenewal. Notice of cancellation under this section may only be given within the first 90 days from the effective date of the policy.

Punitive Damages under Medical Professional Liability Insurance

Sec. 8. No policy of medical professional liability insurance issued to or renewed for a health care

provider or physician in this state may include coverage for punitive damages that may be assessed against the health care provider or physician.

Claim Surcharges

Sec. 9. A claim surcharge assessed by an insurer against a health care provider or physician under a professional liability insurance policy may be based only on claims actually paid by an insurer as a result of a settlement or an adverse judgment or an adverse decision of a court.

[Added by Acts 1977, 65th Leg., p. 2054, ch. 817, § 31.01, eff. Aug. 29, 1977.]

Art. 5.15-2. Accident Prevention Services

(a) Any insurer desiring to write professional liability insurance for hospitals in Texas shall maintain or provide accident prevention facilities as a prerequisite for a license to write such insurance. Such facilities shall be adequate to furnish accident prevention services required by the nature of its policyholder's operations and shall include surveys, recommendations, training programs, consultations, analyses of accident causes and hospital risk control management, to implement the program of accident prevention services. Each field safety representative shall be either a college graduate who shall have a bachelor's degree in science or engineering, a registered professional engineer, a certified safety professional, or an individual who shall have completed a course of training in accident prevention services approved by the State Board of Insurance.

(b) The insurer shall render accident prevention services to its policyholders reasonably commensurate with the risks and exposures and experience of the subscriber's business. To provide such facilities, the insurer may employ qualified personnel, retain qualified independent contractors, contract with the policyholder to provide qualified accident prevention personnel and services, or use a combination of the methods enumerated in this subsection. Such personnel shall have the qualification required for field safety representatives as provided in Subsection (a) of this article.

(c) If the Commissioner of Insurance shall determine that reasonable accident prevention services are not being maintained or provided by the insurer or are not being used by the insurer in a reasonable manner to prevent injury to patients of its policyholders, the fact shall be reported to the State Board of Insurance, and the board shall order a hearing to determine if the insurer is not in compliance with this article. If it is determined that the insurer is not in compliance, its authority to write professional liability insurance for hospitals in Texas shall be revoked.

(d) The State Board of Insurance may promulgate reasonable rules and regulations for the enforcement of this article after holding a public hearing on the proposed rules and regulations.

(e) In this article, "hospital" means a licensed public or private institution as defined in Chapter 223, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 4437f, Vernon's Texas Civil Statutes), or in Section 88, Chapter 243, Acts of the 55th Legislature, Regular Session, 1957 (Article 5547-88, Vernon's Texas Civil Statutes).

(f) The provisions of this section shall become effective on January 1, 1978.

[Added by Acts 1977, 65th Leg., p. 2057, ch. 817, § 31.02, eff. Aug. 29, 1977.]

SUBCHAPTER C. FIRE INSURANCE AND ALLIED LINES

Art. 5.43-1. Fire Extinguishers; Installation and Servicing; Penalties

[See Compact Edition, Volume 2 for text of 1 to 3]

Registration and Licensing

Sec. 4. (a) Each firm engaged in the business of servicing portable fire extinguishers or installing or servicing fixed fire extinguisher systems must have a certificate of registration issued by the State Board of Insurance. The initial fee for the certificate of registration is \$75 and the renewal fee for each year thereafter is \$75.

(b) Each employee, other than an apprentice, of firms engaged in the business of servicing portable fire extinguishers or installing or servicing fixed fire extinguisher systems who services extinguishers or fixed systems, must have a license issued by the State Board of Insurance. The initial fee for the license is \$5 and the renewal fee for each year thereafter is \$5.

[See Compact Edition, Volume 2 for text of 4(c) and (d), 5 to 12]

[Amended by Acts 1975, 64th Leg., p. 899, ch. 335, § 1, eff. June 19, 1975.]

Art. 5.43-2. Fire Detection and Alarm Devices and Systems; Regulation of Sales, Service, Installation and Maintenance

Purpose

Sec. 1. The purpose of this Act is to regulate the sales, servicing, installation, and maintenance of fire detection and fire alarm devices and systems in the interest of safeguarding lives and property.

Definitions

Sec. 2. As used in this Act:

(1) "Person" means a natural person, including an owner, manager, officer, employee, occupant, or individual.

(2) "Organization" means a corporation, government, or governmental subdivision or

agency, business trust, estate, trust, partnership, firm or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

(3) "Advisory council" means a group of five individuals experienced and knowledgeable in one or more of the following areas: sale, installation, maintenance, or manufacturing of fire alarm or detection systems, electrical engineering, fire services or be a member of a fire protection association which is to be appointed by the State Board of Insurance.

(4) "Board" means the State Board of Insurance.

(5) "Sale" means sale or offering for sale, lease, or rent any merchandise, equipment, or service at wholesale or retail, to the public or any person, for an agreed sum of money or other consideration.

(6) "Installation" means the initial placement of equipment and/or the extension, modification, or alteration of equipment already in place.

(7) "Approval, approved" means that equipment which has been tested or listed by a nationally recognized fire testing laboratory such as but not limited to Underwriters' Laboratories, Incorporated, or Factory Mutual Research Corporation, or has gained specific written approval for the use intended by the state marshal.

(8) "Maintenance" means to maintain in a condition of repair that will allow performance as originally designed or intended.

(9) "Service, servicing" means any charging, recharging, maintaining, repairing, testing, or installing.

(10) "Fire detection device" means any arrangement of materials, the sole function of which is to provide indication of fire, smoke, or combustion in its incipient stages.

(11) "Fire alarm device" means any device capable, through audible and/or visible means, of sounding a warning that fire or combustion has taken or is taking place.

(12) "Fire alarm installation superintendent" means an individual or individuals who shall be designated by each company that sells, services, installs, or maintains a fire alarm or detection system to inspect and certify that each fire alarm or detection system as installed meets the standards as provided for by law.

Exceptions

Sec. 3. The provisions of this Act and the rules and regulations promulgated under this Act shall have uniform force and effect throughout the state and no municipality or county shall hereinafter en-

act any ordinances, rules, or regulations inconsistent with the provisions of this Act or rules and regulations promulgated pursuant to this Act. Provided, however, that any municipality or county ordinances, rules, or regulations in force or effect on the effective date of this Act shall not be invalidated because of any provision of this Act. Provided further that the provisions of this Act shall not apply to the sale, offer for sale, or installation of approved fire detection devices or approved fire alarm devices designed for and installed in other than commercial, business, or public buildings.

Administration

Sec. 4. The board shall administer the Act and it may issue rules and regulations which it considers necessary to its administration through the state fire marshal. The board, in promulgating necessary rules and regulations, may utilize recognized standards such as, but not limited to, those of the National Fire Protection Association, the National Electrical Code, those recognized by federal law or regulation, those published by any nationally recognized standards-making organization, or any information furnished by individual manufacturers. Also, the board may issue necessary rules and regulations for protection of life and property, after due notice and hearing.

Registration and Licensing

Sec. 5. (a) Each organization engaged in the business of selling, servicing, installing, or maintaining fire alarm or fire detection devices shall have a certificate of registration issued by the board. The initial fee for the certificate of registration is \$250 and the renewal fee for each year thereafter is \$150.

(b) Each separate office location of an organization engaged in the act of selling, leasing, servicing, maintaining, or installing fire detection or fire alarm devices or systems, other than the location identified on the certificate of registration, shall have a branch office registration certificate, issued by the board. The initial fee for this branch office registration certificate is \$50 and the renewal fee for each year thereafter is \$50. The board shall identify each branch office location as a part of a registered organization before a branch office registration certificate may be issued.

(c) Each fire alarm installation superintendent must obtain a license issued by the board. The initial fee for the license is \$25 and the renewal fee for each year thereafter is \$15.

(d) No person may inspect with the intention of certifying any fire alarm or fire detection system or device unless he is the holder of a valid and current license issued pursuant to this Act.

(e) A person licensed pursuant to this Act to inspect and certify a fire alarm or fire detection

system or device shall be an employee or agent of an organization that holds a valid and current certificate of registration issued pursuant to this Act.

(f) A person who sells, services, installs, or maintains fire alarm systems or fire detection devices shall be an employee or agent of an organization that holds a valid certificate of registration issued pursuant to this Act.

Powers and Duties of the State Board of Insurance

Sec. 6. The board shall delegate authority to exercise all or part of its functions, powers, and duties under this Act, including the issuance of certificates, to the state fire marshal, and the state fire marshal along with assistance of a nonbinding advisory council to be appointed by the board shall implement such rules and regulations as may be determined by the board to be essentially necessary for the protection and preservation of life and property in controlling:

(1) the registration of organizations engaging in the business of selling, servicing, installing, or maintaining fire alarm or fire detection devices and systems;

(2) the requirements for the sale, service, installation, or maintenance of fire alarm or fire detection devices or systems by:

(A) conducting examinations and evaluating the qualifications of applicants for a certificate of registration to engage in the business of selling, servicing, installing, or maintaining fire alarm or fire detection devices and systems;

(B) evaluating and determining which organizations shall be approved as testing laboratories for fire alarm and fire detection devices and systems; and

(C) evaluating and approving a required training program for all persons who engage in the business of selling, servicing, installing, or maintaining fire alarm or fire detection devices and systems.

Certain Acts Prohibited

Sec. 7. No organization pursuant to this Act may do any of the following:

(1) sell, service, install, or maintain fire alarm or fire detection devices and systems without a valid and current certificate of registration;

(2) obtain or attempt to obtain a certificate of registration by fraudulent representation; or

(3) sell, service, install, or maintain fire alarm or fire detection devices or systems contrary to the provisions of this Act or the rules and regulations formulated by the board under the authority of this Act.

Fees Collected

Sec. 8. The fees herein provided for, when collected, shall be placed with the State Treasurer in a separate fund, which shall be known as the fire alarm and detection systems fund, and expenditures shall be made from said fund as set forth in the General Appropriations Act.

Selling or Leasing Fire Alarm or Fire Detection Devices

Sec. 9. (a) No device or alarm, the sole intended purpose of which is to detect and/or give alarm of fire, may be sold, offered for sale, leased, or installed in this state unless it carries a label of approval of a nationally recognized testing laboratory or a laboratory approved by the fire marshal.

(b) No fire detection or alarm device may be sold or installed in this state unless accompanied by printed information supplied to the owner by the supplier or installing contractor concerning:

(1) instructions describing the installation, operation, testing, and proper maintenance of the device;

(2) information which will aid in establishing an emergency evacuation plan for the protected premises; and

(3) the telephone number and location, including notification procedures, of the nearest fire department.

Applications and Hearings on Licenses and Certificates

Sec. 10. (a) Applications and qualifications for certificates issued hereunder shall be made pursuant to rules and regulations adopted by the board.

(b) The board may, through the State Fire Marshal, conduct hearings or proceedings concerning the suspension, revocation, or refusal of the issuance or renewal of certificates of registration or approvals of testing laboratories issued under this Act or the application to suspend, revoke, refuse to renew, or refuse to issue the same.

(c) A certificate of registration or testing laboratory approval may be denied, or same duly issued may be suspended or revoked, or the renewal thereof refused, if after notice and public hearing, the board, through the State Fire Marshal, finds from the evidence presented at said hearing that one or more provisions of this Act or of any rule or regulation promulgated under this Act has been violated.

Penalties

Sec. 11. (a) Any person who individually, or as an employee or agent of an organization, violates any of the provisions of this Act or order of the board made in accordance with this Act, shall forfeit to the people of the state a sum not to exceed \$500 for each such violation, which may be recovered by a civil action.

(b) In addition to any other penalties, any person of an organization who performs a function that requires a certificate of registration as described herein without first obtaining such certificate of registration commits a Class B misdemeanor.

[Added by Acts 1975, 64th Leg., p. 853, ch. 326, § 1, eff. May 30, 1975. Amended by Acts 1977, 65th Leg., p. 363, ch. 178, § 1, eff. Aug. 29, 1977.]

Art. 5.45. Acting Fire Marshal

If for any reason the State Fire Marshal is unable to make any required investigation in person, he may designate the fire marshal of such city or town or some other suitable person to act for him; and such person so designated shall have the same authority as is herein given the State Fire Marshal with reference to the particular matter to be investigated by him, and shall receive such compensation for his services as the Board may allow.

[Amended by Acts, 1977, 65th Leg., p. 2002, ch. 800, § 1, eff. Aug. 29, 1977.]

Art. 5.46. Report of Information

(A) The State Fire Marshal, any fire marshal of a political subdivision in Texas, or the chief of any established fire department in Texas may request any insurance company investigating a fire loss of real or personal property in which damages or losses exceed \$1,000 to release information in its possession relative to that loss. The company shall release the information and cooperate with any official authorized to request such information pursuant to this section. The information may include but not exceed:

- (1) any insurance policy relevant to a fire loss under investigation and any application for such a policy;
- (2) policy premium payment records;
- (3) history of previous claims made by the insured for fire loss;
- (4) material relating to the investigation of the loss, including statements of any person, proof of loss, or other relevant evidence.
- (5) The provisions of this section shall not be construed to authorize a public official or agency to promulgate or require any type or form of periodic report by an insurer.

(B) If an insurance company has reason to suspect that a fire loss to its insured's real or personal property was caused by incendiary means and if it receives a request for information pursuant to Section (A) of this article, the company shall notify the requesting official and furnish him with all relevant material acquired during its investigation of the fire loss, cooperate with and take such action as may be requested of it by any law enforcement agency, and permit any person ordered by a court to inspect any of its records pertaining to the policy and the loss.

(C) In the absence of fraud or malice no insurance company or person who furnished information on its behalf is liable for damages in a civil action or subject to criminal prosecution for oral or written statement made or any other action taken that is necessary to supply information required pursuant to this section.

(D) The officials and departmental and agency personnel receiving any information furnished pursuant to this section shall hold the information in confidence until such time as its release is required pursuant to a criminal or civil proceeding.

(E) Any official referred to in Section (A) of this article may be required to testify as to any information in his possession regarding the fire loss of real or personal property in any civil action in which any person seeks recovery under a policy against an insurance company for the fire loss.

(F) (1) No person shall purposely refuse to release any information requested pursuant to Section (A) of this article.

(2) No person shall purposely refuse to notify the fire marshal of a fire loss required to be reported pursuant to Section (B) of this article.

(3) No person shall purposely refuse to supply the fire marshal with pertinent information required to be furnished pursuant to Section (B) of this article.

(4) No person shall purposely fail to hold in confidence information required to be held in confidence by Section (D) of this article.

[Amended by Acts 1977, 65th Leg., p. 2003, ch. 800, § 2, eff. Aug. 29, 1977.]

Section 3 of the 1977 Act provides as follows:

"For the purpose of paying the expenditures authorized for the enforcement and administration of this Act, the state comptroller shall place in the Insurance Board Operating Fund from current revenues and balances on hand the amounts designated by the Commissioner of Insurance from the following sources:

"Fireworks License Fund 119;

"Fire Extinguisher Fund 110;

"Fire Alarms and Detection System Fund 181."

Art. 5.53-A. Home Warranty Insurance

Sec. 1. Any company licensed to engage in the business of fire insurance and its allied lines, or marine insurance, or both, is authorized to write home warranty insurance in Texas. Home warranty insurance is not inland marine insurance, but shall be governed in the same manner and to the same extent as inland marine insurance.

Sec. 2. As used in this Code, the term "home warranty insurance" means insurance assuring either

- (1) performance by builders of residential property of their warranty obligations to purchasers of such property; or
- (2) against named defects arising from failure of the builder to construct residential property in accordance with specified construction standards.

[Added by Acts 1975, 64th Leg., p. 56, ch. 32, § 1, eff. April 3, 1975.]

SUBCHAPTER G. WORKERS' COMPENSATION
AND LONGSHOREMEN'S AND HARBOR WORKERS'
COMPENSATION INSURANCE

**Art. 5.76. Prevention of Injuries and Assignment
of Rejected Risks**

(a) The words "company" and "association" used in this Subchapter shall mean the Texas Employers' Insurance Association, or any stock company, or any mutual company, or any reciprocal, or any inter-insurance exchange, or Lloyds association authorized to write Workers' Compensation and/or Longshoremen's and Harbor Workers' Compensation Insurance in this State. The word "Board" shall mean the Board of Insurance Commissioners of this State.

(b) For the purpose of carrying into effect the provisions of this Article, and with the approval of the Board, there shall be organized and maintained in this State, by insurance companies and associations as defined herein, an Administrative Agency to be known as "The Texas Workers' Compensation Assigned Risk Pool" (hereinafter referred to as "Agency"), and every such company and association shall be a member of the Agency. Provided, that any company or association not engaged in writing such insurance for members of the public generally shall, upon being so certified by the Board and under such conditions and for such time as the Board may determine, be exempt from the provisions of this Article during the period of any such certification.

(c) It shall be the duty of the companies and associations, members of the agency established pursuant to Paragraph (b) of this article, to provide insurance, in the manner herein provided, for any risk under the Workers' Compensation Law of Texas,¹ the Longshoremen's and Harbor Workers' Compensation Act,² and/or the Federal Coal Mine Health and Safety Act of 1969, as amended,³ or for any city, county or any other political subdivision, agency or department of the State authorized to provide workers' compensation insurance for its employees under any laws of the State of Texas, heretofore or hereafter enacted, which risk shall have been tendered to and rejected by any member of said agency. It shall be the further duty of the companies and associations, members of the agency established pursuant to Paragraph (b) of this article, to provide insurance in the manner herein provided on all policies and claims in existence for any insurance company which has been declared insolvent by the courts of this State or any other state in the same manner as if said policies had been written by servicing companies of this agency. With respect to said claims in existence at the time of said declaration of insolvency and paid by the agency, the agency shall have the same rights against the receiver of said insolvent company as are provided by the laws of this State for workers' compensation loss claimants of the insolvent insurance company. From and after the date

the rules made and adopted under Paragraph (e) have been approved by the Board the procedures and remedies established under this article shall be the sole and exclusive procedure and remedies, either at law or in equity, of any applicant for such insurance whose insurance has been rejected or cancelled by any company or association.

[See Compact Edition, Volume 2 for text of (d) to (g)]

(h) Any company or association may make and enforce reasonable rules for the prevention of injuries to employees of its policyholders or applicants for insurance under the Workers' Compensation Act. For this purpose, representatives of any such company or association, and representatives of the Board, shall be granted free access to the premises of each such policyholder or applicant during regular working hours. Failure or refusal by any such policyholder or applicant to comply with any such reasonable rule for the prevention of injuries as shall be prescribed by the Agency, together with such other relevant factors, shall determine the issue of whether said policyholder or applicant in good faith is entitled to such insurance. Any policyholder or applicant aggrieved by any such rule for the prevention of injuries may, within thirty (30) days after notice of such rule, petition the Board for a review, and the Board, upon a hearing held after notice and in conformity with Article 5.65 of this Code, shall affirm, modify or annul such rule.

[Amended by Acts 1975, 64th Leg., p. 1164, ch. 436, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 154, ch. 77, § 3, eff. Aug. 29, 1977.]

¹ Civil Statutes, Art. 8306 et seq.

² 33 U.S.C.A. § 901 et seq.

³ 30 U.S.C.A. § 801 et seq.

Section 2 of the 1975 amendatory act provided:

"As respects claims for injury sustained prior to the effective date of this Act, no inchoate, vested, matured, existing, or other rights, remedies, powers, duties, or authority, either of any employee or legal beneficiary, or of the Board, or of the association, or of any other person shall be in any way affected by any of the amendments herein made to the original law hereby amended, but all such rights, remedies, powers, duties, and authority shall remain and be in force as under the original law just as if the amendments hereby adopted had never been made."

SUBCHAPTER J. PROFESSIONAL LIABILITY INSURANCE FOR PHYSICIANS, PODIATRISTS, AND HOSPITALS [NEW]

Art. 5.82. Repealed by Acts 1977, 65th Leg., p. 2064, ch. 817, § 41.03, eff. Aug. 29, 1977

The repealed article, relating to professional liability insurance for physicians, podiatrists, and hospitals, was added by Acts 1975, 65th Leg., p. 864, ch. 330, § 1.

See, now, art. 5.15-1.

SUBCHAPTER K. POLICY FORMS AND ENDORSEMENTS FOR CERTAIN AIRCRAFT [NEW]

Art. 5.90. Policy Forms and Endorsements

The State Board of Insurance may prescribe policy forms and endorsements for each kind of aircraft insurance uniform in all respects except as necessitated by the different plans on which the various kinds of insurers operate, and no insurer may use

any other form or endorsement in writing aircraft insurance in this state if the board prescribes the forms and endorsements; but any insurer may use any form of endorsement appropriate to its plan of operation if the endorsement is first submitted to and approved by the board. Any contract or agreement not written into the application and policy shall be void and of no effect and in violation of the provisions of this subchapter and shall be sufficient cause for revocation of license of the insurer to write aircraft insurance within this state.

[Added by Acts 1977, 65th Leg., p. 1455, ch. 593, § 1, eff. Aug. 29, 1977.]

Art. 5.91. Maintenance Tax

Insurers writing insurance covered by this subchapter are subject to the provisions of Article 5.24 of this chapter.

[Added by Acts 1977, 65th Leg., p. 1455, ch. 593, § 1, eff. Aug. 29, 1977.]

Art. 5.92. Rules

The State Board of Insurance shall make any rules that are necessary to carry out the provisions of this subchapter.

[Added by Acts 1977, 65th Leg., p. 1455, ch. 593, § 1, eff. Aug. 29, 1977.]

CHAPTER SIX. FIRE AND MARINE COMPANIES

Article

6.01-A. Reserving Home Warranty Insurance [NEW].

Art. 6.01-A. Reserving Home Warranty Insurance

Sec. 1. Every company writing home warranty insurance in Texas shall maintain reinsurance or unearned premium reserves on all policies in force.

Sec. 2. The reserves on home warranty insurance shall be computed in the same manner and to the same extent as fire insurance is reserved in accordance with Article 6.01 of this Code.

[Added by Acts 1975, 64th Leg., p. 56, ch. 32, § 2, eff. April 3, 1975.]

CHAPTER NINE. TEXAS TITLE INSURANCE ACT

Article

9.48. Title Insurance Guaranty [NEW].

9.49. Insured Closing [NEW].

9.50. Home Solicitation Transactions Act as Consumer Protection Law [NEW].

9.51. Title Insurance Agents Right to Surrender License [NEW].

9.52. Escrow Officer's Right to Surrender License [NEW].

9.53. Uniform Closing and Settlement Statements [NEW].

9.54. Advance Disclosure of Settlement Costs Involving Residential Property [NEW].

9.55. Requirement for Issuance of Owners and Mortgagee Title Policies in Connection With Residential Property [NEW].

Article

9.56. Creation and Operation of Attorney's Title Insurance Company [NEW].

Art. 9.01. Short Title and Legislative Purpose and Intent

A. This Act shall be known and may be cited as the "Texas Title Insurance Act."

B. The Legislature of the State of Texas finds that the business of title insurance, both the direct issuance of policies and the reinsurance of any assumed risks, of every type, shall in all respects be totally regulated by the State of Texas so as to provide for the protection of every consumer and purchaser of a title insurance policy. It is the express legislative intent that this Chapter 9 accomplish such a result.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 1, eff. Sept. 1, 1975.]

Art. 9.02. Definitions

(a) "Title Insurance" means insuring, guaranteeing or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, or defects in the title to said property, and the invalidity of liens thereon, or doing any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Act.

(b) The "business of title insurance" shall be deemed to be (1) the making as insurer, guarantor or surety, or proposing to make as insurer, guarantor or surety, of any contract or policy of title insurance; (2) the transacting or proposing to transact, any phase of title insurance, including solicitation, negotiation preliminary to execution, execution of a contract of title insurance, insuring and transacting matters subsequent to the execution of the contract and arising out of it, including reinsurance; or (3) the doing, or proposing to do, any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Act.

(c) "Title Insurance Company" means any domestic company organized under the provisions of this Act for the purpose of insuring titles to real property, any title insurance company organized under the laws of another state or foreign government meeting the requirements of this Act and holding a certificate of authority to transact business in Texas and any domestic or foreign company having a certificate of authority to insure titles to real estate within this state and which meet the requirements of this Act.

(d) "Commissioner" means the Commissioner of Insurance of the State of Texas.

(e) "Board" means the State Board of Insurance of the State of Texas.

(f) "Title Insurance Agent" means a person, firm, association, or corporation owning or leasing and controlling an abstract plant as defined by the Board, or as a participant in a bona fide joint abstract plant operation as defined by the Board, and authorized in writing by a title insurance company to solicit insurance and collect premiums and to issue or countersign policies in its behalf.

(g) "Escrow Officer" means an officer or employee of a title insurance agent whose duties include any or all of the following:

(1) countersigning title insurance policies, commitments and binders; or

(2) supervising the preparation and delivery of title insurance policies, commitments and binders; or

(3) receiving, handling, or disbursing escrow funds;

provided that no clerical employees who perform any of the above duties under the direction and control of an escrow officer shall be included in this definition.

(h) "Foreign Title Insurance Company" means a title insurance company organized under the laws of any jurisdiction other than the State of Texas.

(i) "Abstract plant" as used herein shall mean a geographical abstract plant such as is defined by the Board from time to time and the Board, in defining an abstract plant, shall require a geographically arranged plant, currently kept to date, that is found by the Board to be adequate for use in insuring titles, so as to provide for the safety and protection of the policyholders.

(j) "Residential real property" means any real property which has improvements thereon and is designed principally for the occupancy of from one to four families (including individual units of condominiums and cooperatives).

(k) "Thing of value" includes any payment, advance, funds, loan, service, or other consideration.

(l) "Person" includes individuals, corporations, associations, partnerships and trusts.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 2, eff. Sept. 1, 1975.]

Art. 9.06. Capital Stock and Surplus Required

Except as provided by Article 9.56, Section 4A of this Chapter 9, all title insurance companies created and operating under the provisions of this Chapter must have a paid up capital of not less than One Million Dollars (\$1,000,000) and a surplus of not less than Four Hundred Thousand Dollars (\$400,000), provided, however, that the minimum unimpaired capital and surplus for a corporation which was authorized to transact title insurance business on the effective date of this Chapter and which on that date had an unimpaired capital of less than One

Million Dollars (\$1,000,000) and a surplus of less than Four Hundred Thousand Dollars (\$400,000) shall be as follows:

(a) Two Hundred Fifty Thousand Dollars (\$250,000) capital and One Hundred Thousand Dollars (\$100,000) surplus until July 1, 1976;

(b) From July 1, 1976, to July 1, 1977, Five Hundred Twenty-Five Thousand Dollars (\$525,000) capital and One Hundred Sixty Thousand Dollars (\$160,000) surplus;

(c) From July 1, 1977, to July 1, 1978, Six Hundred Fifty Thousand Dollars (\$650,000) capital and Two Hundred Twenty Thousand Dollars (\$220,000) surplus;

(d) From July 1, 1978, to July 1, 1979, Seven Hundred Seventy-Five Thousand Dollars (\$775,000) capital and Two Hundred Eighty Thousand Dollars (\$280,000) surplus;

(e) From July 1, 1979, to July 1, 1980, Nine Hundred Thousand Dollars (\$900,000) capital and Three Hundred Forty Thousand Dollars (\$340,000) surplus; and

(f) After July 1, 1980, every such corporation shall be required to have and maintain unimpaired capital of not less than One Million Dollars (\$1,000,000) and surplus of not less than Four Hundred Thousand Dollars (\$400,000) as otherwise required by this Chapter.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 3, eff. Sept. 1, 1975.]

Art. 9.07. Policy Forms and Premiums

Corporations organized under this Chapter, as well as foreign corporations and those created under Subdivision 57, Article 1302, of the Revised Civil Statutes of 1925, or under Chapter 8 of this Code, or any other law insofar as the business of either may be the business of title insurance, shall operate in Texas under the control and supervision and under such uniform rules and regulations as to forms of policies and underwriting contracts and premiums therefor, and such underwriting standards and practices as may be from time to time prescribed by the Board; and no Texas or foreign corporation, whether incorporated under this Chapter or any other law of the State of Texas, shall be permitted to issue any title policy of any character, or underwriting contract, or reinsure any portion of the risk assumed by any title policy, on Texas real property other than under this Chapter under such rules and regulations. No policy of title insurance, reinsurance of any risk assumed under any policy of title insurance, or any guarantee of any character on Texas titles shall be issued or valid unless written by a corporation complying with all provisions of and authorized or qualified under this Chapter, except as is provided in Article 9.19D. Before any premium rate provided for herein shall be fixed or charged, reasonable notice shall issue,

and a hearing afforded to the title insurance companies and title insurance agents authorized or qualified under this Chapter and the public. Under no circumstances may any title insurance company or title insurance agent use any form which is required under the provisions of this Chapter 9 to be promulgated or approved until the same shall have been so promulgated or approved by the Board.

The Board shall have the duty to fix and promulgate the premium rates to be charged by title insurance companies and title insurance agents created or operating under this Chapter for policies of title insurance or other promulgated or approved forms, and the premiums therefor shall be paid in the due and ordinary course of business. Premium rates for reinsurance as between title insurance companies qualified under this Chapter shall not be fixed or promulgated by the Board, and title insurance companies may set such premium rates for reinsurance as such title insurance companies shall agree upon. Under no circumstance shall any premium be charged for any policy of title insurance or other promulgated or approved forms different from those fixed and promulgated by the Board, except for premiums charged for reinsurance. The premium rates fixed by the Board shall be reasonable to the public and nonconfiscatory as to the title insurance companies and title insurance agents. For the purpose of collecting data on which to determine the proper rates to be fixed, the Board shall require all title insurance companies and all title insurance agents operating in Texas to submit such information in such form as it may deem proper, all information as to loss experience, expense of operation, and other material matter for the Board's consideration.

The Board shall hold an annual hearing during November of each calendar year, commencing in 1975, to consider adoption of premium rates and such other matters and subjects relative to the regulation of the business of title insurance as may be requested by any title insurance company, any title insurance agent, any member of the public, or as the Board may determine necessary to consider. Proper notice of such public hearing and the items to be considered shall be made to the public and shall be sent direct to all title insurance companies and title insurance agents qualified or authorized to do business under this Chapter for at least four (4) weeks in advance of such hearing.

Premium rates when once fixed shall not be changed until after a public hearing shall be had by the Board, after proper notice sent direct to all title insurance companies and title insurance agents qualified or authorized to do business under this Chapter, and after public notice in such manner as to give fair publicity thereto for at least four (4) weeks in advance. The Board must call such additional hear-

ing to consider premium rate changes at the request of a title insurance company.

The Board may, on its own motion, following notice as required for the annual hearing hold at any time a public hearing to consider adoption of premium rates and such other matters and subjects relative to the regulation of the business of title insurance as the Board shall determine necessary or proper.

Any title insurance company, any title insurance agent, or other person interested, feeling injured by any action of the Board with regard to premium rates or other action taken by the Board, shall have the right to file a suit in the District Court of Travis County, within thirty (30) days after the Board has made such order, to review the action. Such cases shall be tried de novo in the District Court in accordance with the provisions of Article 21.44 of the Insurance Code and shall be governed by the same rules of evidence and procedure as other civil cases in said court; in which suit the court may enter a judgment setting aside the Board's order, or affirming, the action of the Board.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 4, eff. Sept. 1, 1975.]

Art. 9.09. Prohibiting Transacting of Other Kinds of Insurance by Title Insurance Companies or the Transacting of Title Insurance by Other Types of Insurance Companies

Corporations, domestic or foreign, operating under this Chapter shall not transact, underwrite or issue any kind of insurance other than title insurance on real property; nor shall title insurance be transacted, underwritten or issued by any company transacting any other kinds of insurance; provided, however, that the above prohibitions shall not apply as to any corporation, domestic or foreign, which on October 1, 1967 was transacting, underwriting and issuing within the State of Texas title insurance and any other kind of insurance. Any corporation now organized and doing business under the provisions of Chapter 8 and actively writing title insurance shall be subject to all the provisions of this Chapter except Article 9.18 relating to investments.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 5, eff. Sept. 1, 1975.]

Art. 9.11. Revocation of Right to do Business

Any foreign or domestic corporations issuing any form of title insurance policy or other promulgated or approved forms, or charging any premium rates on an owner, mortgagee, or other title insurance policy, or on other promulgated or approved forms, except for the premium rates charged for reinsurance, on Texas real property other than forms and premium rates prescribed by the Board, under the

provisions of this Chapter shall forfeit its right to do business in this state. The provisions of this Article 9.11 shall not, however, be applicable to premium rates charged in connection with reinsurance transactions between or among title insurance companies doing business under the provisions of this Chapter, provided any such reinsurance contract complies with the provisions of Article 9.19 of this Chapter. [Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 6, eff. Sept. 1, 1975.]

Art. 9.13. Fees

The general laws applicable to payment of filing fees of corporations having capital stock are hereby made applicable to corporations coming under the provisions of this Chapter. [Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 7, eff. Sept. 1, 1975.]

Art. 9.14. Charter and Amendments

The original charter of corporations doing the business of title insurance and incorporated under the provisions of this Chapter, or under Subdivision 57, Article 1302, Revised Civil Statutes of 1925, or under Article 1302a, Texas Civil Statutes (Acts 1929, 41st Legislature, page 383, Chapter 245, Section 1) or under any other law regardless of the nature of such amendment, shall be certified only to and filed only with the Board, and only the Board shall collect from the said companies filing fees required under the law. All other laws or parts of laws, to the extent that the same are in conflict with the provisions of this Article, shall not hereafter apply to such corporations.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 8, eff. Sept. 1, 1975.]

Art. 9.15. Certificate of Authority

The Board after having satisfied itself by such investigation as it may deem proper with reference to the payment of capital stock and surplus as required by this Chapter 9, and the value of the assets offered in payment thereof (the expense of which examination shall be borne by the title insurance company), shall issue to such title insurance company a certificate of authority to transact the characters of business provided for in this Chapter on either an annual or a continuing basis. No title insurance company, domestic or foreign, shall transact business under this Chapter unless it shall hold a valid certificate of authority.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 9, eff. Sept. 1, 1975.]

Art. 9.19. Maximum Liability

A. No title insurance company operating under the provisions of this Chapter shall issue any policy of title insurance on any real property located within the State of Texas involving a potential liability by

virtue of such policy of more than fifty (50%) percent of the capital stock and surplus as stated in the most recent annual statement of the company unless the excess shall in due course be reinsured in some other title insurance company authorized to do business in Texas under this Chapter. Each title insurance company authorized to do business under the provisions of this Chapter may reinsure any or all of its policies and contracts issued on real property situated within the State of Texas, provided:

- (i) the reinsuring title insurance company shall be licensed to do business in the State of Texas under the provisions of this Chapter; and
- (ii) the form of the reinsurance contract shall be approved in advance by the Board.

B. If the Board has first approved one or more forms of reinsurance contracts for a title insurance company, such title insurance company may thereafter continue using such form or forms without submitting individual reinsurance contracts to the Board. Authority is reserved to the Board, however, to alter the required form so previously approved by it after first giving written notice to the title insurance company or title insurance companies affected by such required change.

C. No title insurance company authorized to do business in Texas under the provisions of this Chapter may accept reinsurance risks on real property situated within the State of Texas except from other title insurance companies holding a certificate of authority to do business in the State of Texas under the provisions of this Chapter.

D. The Board may, however, upon application and hearing permit any title insurance company licensed to do business in this State under this Chapter to acquire reinsurance upon an individual policy or facultative basis from title insurance companies not licensed to do business in this State, provided:

- (i) any such non-admitted foreign title insurance company has a combined capital and surplus of at least \$1,400,000 evidenced by its annual statement last preceding the acceptance of such reinsurance; and

- (ii) any such title insurance company so authorized to do business under this Chapter has exhausted the opportunity to acquire such reinsurance from all other title insurance companies so authorized to do business under the provisions of this Chapter.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 10, eff. Sept. 1, 1975.]

Art. 9.25. Capital and Surplus Required; Foreign Corporations

No foreign corporation shall conduct the business of title insurance in this state unless it shall show

from its financial statement and such other examination as the Board may desire to make, an unimpaired capital of not less than One Million Dollars (\$1,000,000.00) and surplus of not less than Four Hundred Thousand Dollars (\$400,000.00), provided, however, that the minimum unimpaired capital and surplus requirements for a foreign corporation operating under a certificate of authority on the effective date of this Chapter, which corporation on such date had an unimpaired capital of less than One Million Dollars (\$1,000,000.00) and surplus of less than Four Hundred Thousand Dollars (\$400,000.00) shall be as follows:

(a) Two Hundred Fifty Thousand Dollars (\$250,000.00) capital and One Hundred Thousand Dollars (\$100,000.00) surplus until July 1, 1976;

(b) From July 1, 1976, to July 1, 1977, Five Hundred Twenty-five Thousand Dollars (\$525,000.00) capital and One Hundred Sixty Thousand Dollars (\$160,000.00) surplus;

(c) From July 1, 1977, to July 1, 1978, Six Hundred Fifty Thousand Dollars (\$650,000.00) capital and Two Hundred Twenty Thousand Dollars (\$220,000.00) surplus;

(d) From July 1, 1978, to July 1, 1979, Seven Hundred Seventy-five Thousand Dollars (\$775,000.00) capital and Two Hundred Eighty Thousand Dollars (\$280,000.00) surplus;

(e) From July 1, 1979, to July 1, 1980, Nine Hundred Thousand Dollars (\$900,000.00) capital and Three Hundred Forty Thousand Dollars (\$340,000.00) surplus; and

(f) After July 1, 1980, every such corporation shall be required to have and maintain unimpaired capital of not less than One Million Dollars (\$1,000,000.00) and surplus of not less than Four Hundred Thousand Dollars (\$400,000.00) as otherwise required by this Chapter.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 11, eff. Sept. 1, 1975.]

Art. 9.30. Rebates and Discounts

A. No commission, rebate, discount, or other thing of value shall be paid, allowed or permitted by any title insurance company, domestic or foreign, or by any title insurance agent doing the business of title insurance provided for in this Chapter, relating to title policies or underwriting contracts and no portion of any premium shall be paid to any person for soliciting or referring title insurance business; provided this Article 9.30 shall not prevent any title insurance company, domestic or foreign, doing business under this Chapter, from appointing as its title insurance agent in any county any person, firm, or corporation owning and operating an abstract plant of such county as its title insurance agent and making such arrangements for division of premiums as may be approved by the Board.

B. No person shall give and no person shall accept any portion, split, or percentage of any charge made or received for the rendering of a real estate settlement or closing in connection with a transaction involving the conveyance or mortgaging of real estate located in the State of Texas other than for services actually performed.

C. Nothing in this Article 9.30 shall, however, be construed as prohibiting (a) the payment of a fee to attorneys at law for services actually rendered or (b) the payment to any person of a bona fide salary, compensation or other payment for goods or facilities actually furnished or for services actually performed.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 12, eff. Sept. 1, 1975.]

Art. 9.40. Right of Title Insurance Company to Examine Agent's Trust Fund Accounts and to Require Reports

Any title insurance company may at such time or times as it sees fit, through its examiners or auditors or through independent certified public accountants commissioned by it, examine the trust fund accounts and records pertaining thereto of any of its title insurance agents, such examination to be made at the expense of the title insurance company; or the title insurance company may require special reports from any such agent regarding any of its transactions. Each title insurance company shall periodically, but at least every two years, audit the unused forms in the possession of each of its title insurance agents so as to determine that all used forms have been reported to the title insurance company. A report of each such audit shall be made to the State Board of Insurance.

[Amended by Acts 1975, 64th Leg., p. 1063, ch. 409, § 22, eff. Sept. 1, 1975.]

Art. 9.48. Title Insurance Guaranty

Title

Sec. 1. This article shall be known and may be cited as the "Texas Title Insurance Guaranty Act."

Purpose

Sec. 2. This article is for the purposes and findings set forth in Section 1 of Article 21.28-A of the Insurance Code and in supplementation thereto by providing funds in addition to assets of impaired insurers for the protection of the holders of "covered claims" as defined herein through payment and through contracts of reinsurance or assumption of liabilities or of substitution or otherwise.

Scope

Sec. 3. This article shall apply only to all title insurance (direct and reinsurance) written by title insurance companies authorized to do business in this state and doing business under and regulated by the provisions of this Chapter 9.

Construction

Sec. 4. This article shall be liberally construed to effect the purpose under Section 2 which shall constitute an aid and guide to interpretation.

Definitions

Sec. 5. As used in this article

(1) A. "State Board of Insurance" is the State Board of Insurance of this State.

B. "Commissioner" is the Commissioner of Insurance of this State.

(2) "Covered claim" is an unpaid claim of an insured which arises out of and is within the coverage and not in excess of the applicable limits of a title insurance policy to which this article applies, issued or assumed (whereby an assumption certificate is issued) by an insurer licensed to do business in this state and covered by this article, if such insurer becomes an "impaired insurer" after the effective date of this article and the insured real property (or lien thereon) is located within this state. Individual "covered claims" shall be limited to \$100,000 and shall not include any amount in excess of \$100,000. "Covered claim" shall also include any sum up to \$100,000 for which any insurer is liable in connection with the fidelity or solvency of any title insurance agent of such insurer as authorized by Article 9.49 of this chapter of this code. "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool, or underwriting association, as subrogation recoveries or otherwise. "Covered claim" shall not include supplementary payment obligations, including but not limited to adjustment fees and expenses, attorneys' fees and expenses, court costs, interest, and bond premiums, incurred prior to the determination that an insurer is an "impaired insurer" under this article.

(3) "Insurer" is any title insurance company authorized to do business in this state, and doing business under and regulated by the provisions of this Chapter 9.

(4) "Impaired insurer" is (a) an insurer which, after the effective date of this article, is placed in temporary or permanent receivership under an order of a court of competent jurisdiction based on a finding of insolvency, and which has been designated an "impaired insurer" by the commissioner; or (b) after the effective date of this article, an insurer placed in conservatorship after it has been deemed by the commissioner to be insolvent and which has been designated an "impaired insurer" by the commissioner.

(5) "Payment of covered claims" is actual payment of claims and also is the utilization of funds of the impaired insurer and funds derived from assessments for consummation of con-

tracts of reinsurance or assumption of liabilities or contracts of substitution to provide for liabilities arising from covered claims.

(6) "Net direct written premiums" is the gross amount of premiums paid by policyholders for issuance of policies of title insurance insuring risks located in this state and to which this article applies. The term does not include premiums for reinsurance accepted from other licensed insurers, and there shall be no deductions for premiums for reinsurance ceded to other insurers.

Assessments

Sec. 6. Whenever the commissioner determines that an insurer has become an impaired insurer, the receiver appointed in accordance with Article 21.28 of the Insurance Code or the conservator appointed under the authority of Article 21.28-A or Article 9.29 of the Insurance Code shall promptly estimate the amount of additional funds needed to supplement the assets of the impaired insurer immediately available to the receiver or the conservator for the purpose of making payment of all covered claims. Thereafter, the commissioner shall be empowered to make such assessments as may be necessary to produce the additional funds needed to make payment of all covered claims. The commissioner may make partial assessments as the actual need for additional funds arises for each impaired insurer.

The commissioner shall assess individual insurers in proportion to the ratio that the total net direct written premium collected in the State of Texas by the insurer during the next preceding year bears to the total net direct written premium collected by all insurers (except impaired insurers) in the State of Texas. Assessments during a calendar year may be made up to, but not in excess of, two percent of each insurer's net direct written premium for the preceding calendar year. If the maximum assessment in any calendar year does not provide an amount sufficient for payment of covered claims of impaired insurers, assessments may be made in the next successive calendar years.

Insurers designated as impaired insurers by the commissioner shall be exempt from assessment from and after the date of such designation and until the commissioner determines that such insurer is no longer an impaired insurer.

The commissioner shall designate the impaired insurer for which each assessment or partial assessment is made and it shall be the duty of each insurer to pay the amount of its assessment to the conservator or receiver, as the case may be, within 30 days after the commissioner gives notice of the assessment, and assessments may be collected by the conservator or receiver through suits brought for that purpose. Venue for such suits shall lie in Travis

County, Texas, and actions to collect such assessments shall have precedence over all other causes on the docket of a different nature. Either party to said action may appeal to the appellate court having jurisdiction over said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction over said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. Neither the receiver nor the conservator shall be required to give an appeal bond in any cause arising hereunder.

Funds derived from assessments under the provisions of this article shall not become assets of the impaired insurer but shall be deemed a special fund loaned to the receiver or the conservator for payment of covered claims, which loan shall be repayable to the extent available from the funds of such impaired insurer, as herein provided.

No insurer shall be deemed or considered to have or incur any liability, real or contingent, under the provisions of this Article 9.48 of this Chapter 9 until any such assessment shall have been actually made in writing by the commissioner under the provisions of this Article 9.48.

Penalty for Failure to Pay Assessments

Sec. 7. The commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in this state of any insurer who fails to pay an assessment when due.

Any insurer whose certificate or authority to do business in this state is cancelled or surrendered shall be liable for any unpaid assessments made prior to the date of such cancellation or surrender.

Accounting for and Repayment of Assessments

Sec. 8. Upon receipt from an insurer of payment of an assessment or partial assessment, the receiver or conservator shall provide the insurer with a participation receipt which shall create a liability against the impaired insurer, and the holder of such participation receipt shall be regarded as a general creditor of the impaired insurer; provided, however, that with reference to the remaining balance of any portions of assessments received by the receiver or conservator and not expended in payment of "covered claims," the holders of such participation receipts shall have preference over other general creditors and shall share pro rata with other holders of participation receipts. The receiver or conservator of any impaired insurer shall adopt accounting procedures reflecting the expenditure and use of all funds received from assessments or partial assessments and shall make a final report of the expenditure and use of such funds to the commissioner, which final report shall set forth the remaining balance, if any,

from the funds collected by assessment. The receiver or conservator shall also make any interim reports concerning such accounting as may be required by the commissioner. Upon completion of the final report, the receiver or conservator shall, as soon thereafter as is practicable, refund pro rata the remaining balance of such assessments to the holders of the participation receipts.

Payment of Covered Claims

Sec. 9. When an insurer has been designated by the commissioner as an impaired insurer, the receiver or conservator, as the case may be, shall marshal all assets of the impaired insurer, including but not limited to those which are designated as or that constituted reserve assets offsetting reserve liabilities for all liabilities falling within the definition of "covered claim" as defined in this article. The receiver or conservator shall apply all of such assets to the payment of covered claims, but may utilize funds received from assessments in the payment of claims, pending orderly liquidation or disposition of such assets. When all covered claims have been paid or satisfied by the receiver or conservator, any balance remaining from the liquidation or disposition of such assets shall first be applied in repayment of funds expended from assessments. Such repayments shall be credited as remaining balances and be refunded as provided in Section 9 of this article.

In addition to authorization to make actual payment of covered claims, the receiver or conservator is specifically authorized to utilize such marshalled assets and funds derived from assessments for the purpose of negotiating and consummating contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for outstanding liabilities of covered claims. The commissioner shall not require the insurer that reinsures or assumes the policies of the impaired insurer or enters into an agreement to substitute itself in the place of the impaired insurer, to issue assumption certificates or other written evidence of such agreement to the policyholders of the impaired insurer, except to policyholders that have made a claim for loss arising under their policy (issued by the impaired insurer) before the date of such reinsurance, assumption or substitution agreement. The commissioner shall require that the reinsurance, assumption, or substitution agreement be filed as a public record with the State Board of Insurance. The commissioner shall approve such agreement unless, after public hearing held within 30 days following such filing, he determines that such agreement does not effectively protect the policyholders of the insurers to give notice of such hearing to its policyholders. Such notice shall be by publication, not less than seven days in advance of the hearing, in a newspaper of general circulation printed in the State of Texas. No cause of action shall lie against the impaired insurer for

breach of contract or refund of premium after the agreement has been approved by the commissioner and the notice of hearing before the commissioner shall so advise the policyholders of the impaired insurer.

This article shall not be construed to impose restriction or limitation upon the authority granted or authorized the commissioner, the conservator, or the receiver elsewhere in the Insurance Code and other statutes of this state but shall be construed and authorized for use in conjunction with other portions of the Insurance Code dealing with delinquency proceedings or threatened insolvencies or supervisions or conservatorships.

Approval of Covered Claims

Sec. 10. Covered claims against an impaired insurer placed in temporary or permanent receivership under an order of liquidation, rehabilitation, or conservation by a court of competent jurisdiction shall be processed and acted upon by the receiver or ancillary receiver in the same manner as other claims as provided in Article 21.28 of the Insurance Code and as ordered by the court in which such receivership is pending; provided, however, that funds received from assessments shall be liable only for the difference between the amount of the covered claims approved by the receiver and the amount of the assets marshalled by the receiver for payment to holders of covered claims; and provided further that in ancillary receiverships in this state, funds received from assessments shall be liable only for the difference between the amount of the covered claims approved by the ancillary receiver and the amount of assets marshalled by the receivers in other states for application to payment of covered claims within this state. Such funds received from assessments shall not be liable for any amount over and above that approved by the receiver for a covered claim, and any action brought by the holder of such covered claim appealing from the receiver's action shall not increase the liability of such funds; provided, however, that the receiver may review his action in approving a covered claim and for just cause modify such approval at any time during the pendency of the receivership.

If a conservator is appointed to handle the affairs of an impaired insurer, the conservator shall determine whether or not covered claims should or can be provided for in whole or in part by reinsurance, assumption, or substitution. Upon determination by the conservator that actual payment of covered claims should be made, the conservator shall give notice of such determination to claimants falling within the class of "covered claims." The conservator shall mail such notice to the latest address reflected in the records of the impaired insurer. If the records of the impaired insurer do not reflect the

address of a claimant, the conservator may give notice by publication in a newspaper of general circulation. Such notice shall state the time within which the claimant must file his claim with the conservator, which time shall in no event be less than 90 days from the date of the mailing or publication of such notice. The conservator may require, in whole or in part, that sworn claim forms be filed and may require that additional information or evidence be filed as may be reasonably necessary for the conservator to determine the legality or the amount due under a covered claim. When an impaired insurer has been placed in conservatorship, the funds received from assessments shall be liable only for the difference between the amount of the covered claim approved by the conservator and the amount of assets marshalled by the conservator for payment to holders of covered claims. Any action brought by the holder of such covered claim against the impaired insurer shall not increase the liability of such funds; provided, however, that the conservator may review his action in approving a covered claim and may for just cause modify such approval at any time during the pendency of the conservatorship.

Upon determination by the conservator that actual payment of covered claims should be made or upon order of the court to the receiver to give notice for the filing of claims, any person who has a cause of action against an insured of the impaired insurer under a title insurance policy issued or assumed by such insurer shall, if such cause of action meets the definition of "covered claim," have the right to file a claim with the receiver or the conservator, regardless of the fact that such claim may be contingent, and such claim may be approved as a "covered claim" (1) if it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured; and (2) if such person shall furnish suitable proof that no further valid claims against such insurer arising out of his cause of action other than those already presented can be made; and (3) if the total liability of such insurer to all claimants arising from the same title insurance policy shall be no greater than its total liability would be were it not in liquidation, rehabilitation, or conservation. In the proceedings of considering "covered claims," no judgment against an insured taken after the date of the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default or by collusion prior to the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as conclusive evidence either (1) of the liability of such insured to such person upon such cause of action, or (2) of the amount of damages to which such person is therein entitled.

The acceptance of payment from the receiver or conservator by the holder of a covered claim or the acceptance of the benefits of contracts negotiated by the receiver or conservator providing for reinsurance or assumption of liabilities or for substitution shall constitute an assignment to the impaired insurer of any cause of action or right of the holder of such covered claim arising from the occurrence upon which the covered claim is based. Such assignment shall be to the extent of the amount accepted or the value of the benefits provided by such contracts of reinsurance or assumption of liabilities or substitution. Such assignment to the impaired insurer may be assigned to the insurer executing such reinsurance, assumption or substitution agreement.

Release From Conservatorship or Receivership

Sec. 11. An impaired insurer placed in conservatorship or receivership for which assessments have been made under the provisions of this article shall not be authorized, upon release from conservatorship or receivership, to issue new or renewal insurance policies until such time as the impaired insurer has repaid pro rata in full to each holder of a participation receipt the assessment amount paid by the receipt holder or its assigns; provided, however, the commissioner may, upon application of the advisory association and after hearing, permit the issuance of new policies in accordance with a plan of operations by the released insurer for repayment of assessments. The commissioner may, in approving such plan, place such restrictions upon the issuance of new or renewal policies as he deems necessary to the implementation of the plan. The commissioner shall give 10 days notice of such hearing to the insurers to whom the participation receipts were issued for an assessment made for the benefit of the released insurer, and the holders of the receipts shall be entitled to appear at and participate in such hearing.

Creation of Advisory Association

Sec. 12. There is created by this article an advisory association to be known as the "Texas Title Insurance Advisory Association", herein called the "advisory association", to be composed of four insurers. Within 30 days after the effective date of this article, the State Board of Insurance shall appoint the insurers who will serve as the initial advisory association. Of the initial advisory association members, one shall be appointed to serve for a one-year term of office, one shall be appointed to serve for a two-year term of office, one shall be appointed to serve for a three-year term of office, and one shall be appointed to serve a four-year term of office. Subsequent members of the advisory association shall serve for the term of office as stated above and shall be elected by insurers, subject to the approval by the commissioner.

The initial members of the advisory association and subsequent members shall be chosen to afford fair representation to all insurers subject to this article, giving due consideration to geographical location and segments of the industry represented in Texas. Vacancies on the advisory association shall be filled for the remaining period of the term in the same manner as the initial appointments.

The advisory association shall conduct its meetings in Austin, Texas, in the Insurance Building of the State of Texas. Meetings shall be held upon call by the commissioner or upon written request of a majority of the members. Meetings shall not be open to the public, and only members of the advisory association, members of the State Board of Insurance, the commissioner, and persons authorized by the commissioner shall attend such meetings.

The advisory association shall advise and counsel with the commissioner upon matters relating to the solvency of insurers. The commissioner shall call a meeting of the advisory association when he determines that an insurer is insolvent or impaired and may call a meeting of the advisory association when he determines that a danger of insolvency or impairment of an insurer exists. The advisory association shall, upon majority vote, notify the commissioner of any information indicating that an insurer may be unable or potentially unable to fulfill its contractual obligations and request a meeting with the commissioner. At such meetings the commissioner may divulge to the advisory association any information in his possession and any records of the State Board of Insurance, including examination reports or preliminary reports from examiners relating to such insurer. The commissioner may summon officers, directors, and employees of an insolvent or impaired insurer, or an insurer the commissioner considers to be in danger of insolvency or impairment, to appear before the advisory association for conference or for the taking of testimony. Members of the advisory association shall not reveal information received in such meetings to anyone unless authorized by the commissioner or the State Board of Insurance or when required as witness in court. Advisory association members shall be subject to the same standard of confidentiality as is imposed upon examiners under Article 1.18 of the Insurance Code, except that no bond shall be required of advisory association members.

The advisory association shall, upon request by the commissioner, attend hearings before the commissioner and meet with and advise the commissioner, the liquidator or conservator appointed by the commissioner, on matters relating to the affairs of an impaired insurer and relating to action that may be taken by the commissioner, liquidator, or conservator to best protect the interests of persons holding covered claims against an impaired insurer and re-

lating to the amount and timing of partial assessments and the marshalling of assets and the processing and handling of covered claims.

Reports or recommendations made by the advisory association to the commissioner, liquidator, or conservator shall not be considered public documents, and there shall be no liability on the part of and no cause of action against a member of the advisory association or the advisory association for any report, individual report, recommendation or individual recommendation by the advisory association or members to the commissioner, liquidator, or conservator.

Members shall serve without pay, but their expenses in attending meetings shall be paid subject to the authorization by the legislature in its appropriations bills or otherwise, and subject to the rules of the State Board of Insurance. Members shall serve until their successors are appointed.

Any insurer that has an officer, director, or employee serving as a member of the advisory association shall not lose the right to negotiate for and enter into contracts of reinsurance or assumption of liability or contracts of substitution to provide for liabilities for covered claims with the receiver or conservator of an impaired insurer. The entering into any such contract shall not be deemed a conflict of interest.

The advisory association or any insurer assessed under this article shall be an interested party under Section 3(h) of Article 21.28 of the Insurance Code.

The State Board of Insurance shall within 90 days after the effective date of this article promulgate reasonable organizational rules for the association which shall set forth, among other things, quorum and attendance requirements for meetings, procedural rules to be followed at association meetings and rules concerning the replacement of members.

Recognition of Assessments in Rates and Premium Tax Offset

Sec. 13. Insurers shall be entitled to recoup assessments up to one percent of their net direct written premiums from rates promulgated, established, or approved by the State Board of Insurance in the next calendar year. The State Board of Insurance in promulgating, establishing, or approving rates shall take into account assessments and refunds of assessments made in accordance with this article and shall include in the formula forming the basis for promulgating, establishing, or approving rates sums sufficient to provide for such recoupment.

Unless the State Board of Insurance has determined that all amounts paid by each insurer on assessments on total net direct written premiums have been included in the rates and premiums as

provided above, any amounts not so included shall be allowed to such insurer as a credit against its premium tax under Article 7064, Revised Civil Statutes of Texas, 1925, as amended. The tax credit referred to herein shall be allowed at a rate of 20 percent per year for five successive years following the date of assessment and at the option of the insurer may be taken over an additional number of years.

Advertisement

Sec. 14. It shall be unlawful for an insurer to advertise or refer to this Act in any manner as an inducement to the purchase of title insurance.

Immunity

Sec. 15. There shall be no liability on the part of and no cause of action of any nature shall arise against any insurer subject to this article or its agents or employees, the advisory association, or the commissioner or his representatives for any action taken by them in the performance of their powers and duties under this article.

Rules and Regulations

Sec. 16. The State Board of Insurance is authorized and directed to issue such reasonable rules and regulations as may be necessary to carry out the various purposes and provisions of this article and in augmentation thereof.

Appeals

Sec. 17. Any action or ruling of the commissioner under this article may be appealed as provided in Article 1.04 of the Insurance Code, as amended. The liability of the appealing insurer for an assessment shall be suspended pending appeal by such insurer contesting the amount or legality of such assessment.

Control Over Conflicts

Sec. 18. The provisions of this article and the powers and functions authorized by this article are to be exercised to the end that its purposes are accomplished. This article is cumulative of existing laws, but in the event of conflict between this article and any other law relating to the subject matter of this article or its application, the provisions of this article shall control.

Unconstitutional Application Prohibited

Sec. 19. This article and law does not apply to any insurer or other person to whom, under the Constitution of the United States or the Constitution of the State of Texas, it cannot validly apply. [Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 13, eff. Sept. 1, 1975.]

Art. 9.49. Insured Closing

Title insurance companies operating under the provisions of this chapter are hereby expressly au-

thorized and empowered to issue upon request on real property transactions in this state at no charge whatever insured closing and settlement letters, in the form prescribed by the board, in connection with the closing and settlement of loans made by title insurance agents for any title insurance company operating under the provisions of this chapter. After January 1, 1976, only the form prescribed by the board shall be used thereafter in issuing such insured closing and settlement letters. The liability of the title insurance company shall not be changed or altered by the failure of the title insurance company to issue such insured closing and settlement letters as authorized by this Article 9.49.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 14, eff. Sept. 1, 1975.]

Art. 9.50. Home Solicitation Transactions Act as Consumer Protection Law

Chapter 246, Acts of the 63rd Legislature, Regular Session, 1973 (Article 5069-13.01 through Article 5069-13.06, Vernon's Texas Civil Statutes), shall be deemed and considered a consumer protection law when construed in connection with any policy of title insurance issued in this state.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 15, eff. Sept. 1, 1975.]

Art. 9.51. Title Insurance Agents Right to Surrender License

No title insurance agent shall be permitted to surrender his license under the provisions of Article 9.37 of this Chapter 9 if, prior to the offer to surrender such license, an action shall have been commenced under the provisions of Article 9.37 by the commissioner of insurance for revocation of such person's title insurance agent's license.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 16, eff. Sept. 1, 1975.]

Art. 9.52. Escrow Officer's Right to Surrender License

No escrow officer shall be permitted to surrender his license under the provisions of Article 9.44 of this Chapter 9 if, prior to the offer to surrender such license, an action shall have been commenced under the provisions of Article 9.44 by the commissioner of insurance for revocation of such person's escrow agent's license.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 17, eff. Sept. 1, 1975.]

Art. 9.53. Uniform Closing and Settlement Statements

On or prior to January 1, 1976, the board, after notice and hearing, shall prescribe uniform settlement and closing statement forms to be used in connection with the settlement and closing of any conveyance or mortgaging of real estate in which

transaction a title insurance policy is issued by any title insurance company or title insurance agent. The board is specifically authorized to establish separate forms for transactions involving improved residential real property and for all other real property transactions. The forms prescribed by the board shall be designed so that dual forms or separate forms provided for each party to the transaction identifying only the charges made to such party may be used at any settlement or closing.

Every such settlement and closing statement furnished to a party to the transaction shall state thereon the name of any person, firm, or corporation receiving any sum from such party to the settlement or closing. The title insurance company and the title insurance agent, however, shall be required to include within the closing and settlement statement only those items of disbursement as are actually disbursed by the title insurance company or the title insurance agent. If a title is examined or any closing or settlement services rendered by an attorney, other than a full-time employee of either the title insurance company or the title insurance agent, the amount of such fee (shown as included in the premium) and the name of the attorney (which may be expressed by the name of the firm, if applicable) to whom such fee was paid shall be shown thereon. Such form shall also conspicuously and clearly itemize the charges imposed upon such party in connection with the settlement and closing. If a charge for title insurance is made to such party, the form shall state whether the title insurance premium included in such charges covers or insures the mortgagee's interest in the property, the borrower's interest, or both.

Any title insurance company or any title insurance agent may at its election use the uniform closing statement prepared under the provisions of the Real Estate Settlement Procedures Act of 1974 (Public Law 93-533)¹ in lieu of the uniform closing statement prescribed by the board.

The provisions of this Article 9.53 of this Chapter 9 shall not apply to the settlement or closing of any residential real estate transaction regulated by the provisions of the Real Estate Settlement Procedures Act of 1974 (Public Law 93-533).

The provisions of this Article 9.53 of this Chapter 9 shall not apply to a settlement or closing if neither a title insurance company, a title insurance agent, an attorney for a title insurance company or title insurance agent, nor a representative of the title insurance company, title insurance agent or attorney for a title insurance company or title insurance agent has actually handled the closing or settlement of such real estate transaction.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 18, eff. Sept. 1, 1975.]

¹ 12 U.S.C.A. § 2601 et seq.

Art. 9.54. Advance Disclosure of Settlement Costs Involving Residential Property

Every title insurance company and every title insurance agent licensed to do business in Texas under the provisions of this Chapter 9 shall, in connection with the issuance of any type of title policy guaranteeing either a lien upon or the title to improved residential property, upon written request of the buyer, seller, or borrower prior to settlement and closing, furnish to any such requesting party to such transaction an itemized disclosure in writing, to the extent that the information is available, each charge to be made to such party, arising in connection with such closing and settlement, upon any standard real estate settlement and closing form developed, prescribed or authorized under Article 9.53 of this chapter. If information is not available concerning any item or items of charges to be made to such party, proper notation shall be made that a charge is to be made, but the information is not available or that the amount shown is an estimate of such charge. Such person shall be advised in writing as to the identity of the person or organization responsible for such charges to be made for which an estimate has been made or for which notation has been made that the information is not available.

Provided, however, that the title insurance company or title insurance agent providing the disclosures of items of charge shall not be required to disclose costs or charges which the lender is required by any law to disclose to such party. Nothing contained in this Article 9.54 shall be deemed or construed as placing upon any title insurance company or title insurance agent any of the obligations imposed upon lenders by reason of the Federal Real Estate Settlement Procedures Act of 1974 (Public Law 93-533).¹

The provisions of this Article 9.54 of this Chapter 9 shall not apply to a settlement or closing if neither a title insurance company, a title insurance agent, an attorney for a title insurance company or title insurance agent, nor a representative of the title insurance company, title insurance agent or attorney for a title insurance company or title insurance agent has actually handled the closing or settlement of such real estate transaction.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 19, eff. Sept. 1, 1975.]

¹ 12 U.S.C.A. § 2601 et seq.

Art. 9.55. Requirement for Issuance of Owners and Mortgagee Title Policies in Connection With Residential Property

After January 1, 1976, whenever any improved residential real property situated in the State of Texas shall be sold and a mortgagee title policy issued to guarantee the validity of a lien thereon, the title insurance company or title insurance agent so issuing such mortgagee title policy of insurance

shall also issue an owner title policy to the owner of such property and the required premium as promulgated by the board shall be charged.

The provisions of this article may, however, be rejected, provided that the person acquiring title shall, at or prior to closing and settlement, execute a written and acknowledged rejection wherein the purchaser rejects issuance of such owner title policy. The form of such rejection shall be prescribed, after notice and hearing, by the board.

The provisions of this Article 9.55 of this Chapter 9 shall not apply to a settlement or closing if neither a title insurance company, a title insurance agent, an attorney for a title insurance company or title insurance agent, nor a representative of the title insurance company, title insurance agent or attorney for a title insurance company or title insurance agent has actually handled the closing or settlement of such real estate transaction.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 20, eff. Sept. 1, 1975.]

Art. 9.56. Creation and Operation of Attorney's Title Insurance Company

Authorization; Applicability of Chapter; Legislative Intent

Sec. 1. (a) This Article 9.56 authorizes, under the limitations and express requirements as herein contained, the incorporation and operation of an "attorney's title insurance company."

(b) All provisions of Chapter 9 of this Insurance Code shall be applicable to such attorney's title insurance company as may be so incorporated, except as shall be otherwise expressly provided in this Article 9.56. The provisions of this Chapter 9 which apply to title insurance companies shall also apply to attorney's title insurance companies except as otherwise expressly provided in this Article 9.56; the provisions of this Chapter 9 which apply to title insurance agents shall also apply to title attorneys, except as otherwise expressly provided in this Article 9.56.

(c) Any rule, regulation, or promulgated premium rate heretofore adopted by the State Board of Insurance or hereafter adopted by the State Board of Insurance under the provisions of Chapter 9 of this Insurance Code shall likewise be applicable to any such attorney's title insurance company and to any title attorneys.

(d) It is the express intent of the Legislature of the State of Texas that any such attorney's title insurance company as and when created shall be expressly regulated as are other title insurance companies conducting the business of title insurance under the provisions of this Chapter 9 of this Insurance Code unless expressly provided in this Article 9.56 to the contrary.

Definitions

Sec. 2. The following definitions shall be applicable to this Article 9.56 of this Chapter 9, to wit:

(a) "Attorney's title insurance" means insuring, guaranteeing, or indemnifying owners of real property or others interested therein against loss or damage suffered by reason of liens, encumbrances upon, or defects in the title to said property, and the invalidity of liens thereon, issued only in connection with and as a part of a real property transaction and title opinion of a title attorney as the term "title attorney" is defined herein, or doing any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Chapter 9.

(b) The "business of attorney's title insurance" shall be conducted by and through a title attorney, as herein defined, duly appointed by such attorney's title insurance company and such business of attorney's title insurance shall be deemed to be

(1) the making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor, or surety, of any contract or policy of title insurance;

(2) the transacting or proposing to transact, any phase of title insurance, including solicitation, negotiation preliminary to execution, execution of a contract of title insurance, insuring and transacting matters subsequent to the execution of the contract and arising out of it, including reinsurance; or

(3) the doing, or proposing to do, any business in substance equivalent to any of the foregoing in a manner designed to evade the provisions of this Chapter 9, all as a part of a real estate transaction and title opinion of a title attorney.

(c) "Attorney's title insurance company" means any domestic company organized under the provisions of this chapter for the business of attorney's title insurance.

(d) "Title attorney" means any attorney who

(1) is a member in good standing of the State Bar of Texas; and

(2) owns one or more shares of stock in the attorney's title insurance company by which he is appointed a title attorney under this section; and

(3) is actively engaged in the practice of law; and

(4) owns or leases and controls an abstract plant as defined by the board, or is a participant in a bona fide joint plant operation as defined by the board, or has a con-

tract to obtain title information from an abstract plant licensed by the board (which said contract is upon the form promulgated by the board and the portion of the premium to be paid to the owner or the operator of said abstract plant has been approved by the board), or who is the appointed title attorney for an attorney's title insurance company and bases his title opinion upon title evidence furnished from an abstract plant approved by the board and owned or leased and controlled by such attorney's title insurance company, except that in the event any attorney does not own or lease and control a licensed abstract plant nor is a participant in a bona fide joint plant operation and is further unable to contract to obtain title information from an abstract plant licensed by the board and located in the county in which such attorney is a resident, such attorney may satisfy the requirements of this Subsection (4) by filing with the board disclosure of the inability to obtain said contract as a part of his license application upon a form prescribed by the board so as to make such disclosure a part of the application; and

(5) is appointed as a title attorney by an attorney's title insurance company by contract making such arrangements for division of premium as may be approved by the board under this chapter and authorized by such attorney's title insurance company to solicit insurance and collect premiums and to issue or countersign policies in its behalf; and

(6) is certified as such to the State Board of Insurance; and

(7) is licensed by the board as a title attorney for such attorney's title insurance company.

May Incorporate

Sec. 3. Private corporations may be created by 15 or more State of Texas resident members of the State Bar of Texas to insure titles to lands or interest therein in this state and indemnify the owners of such lands, or the holders of interests in or liens on such lands, against loss or damage on account of encumbrances upon or defects in the title to such lands or interests therein, provided that such title insurance shall be issued only in connection with and as a part of a title opinion of a title attorney, without any premium or fee therefor except the prescribed title insurance rates provided for in Article 9.07 of this Chapter 9.

Subject to the provisions of Article 9.06 of this Chapter 9, and Section 4 of this article, the capital

shares of such corporations may be issued for a par value of \$100 or more per share, and in one or more classes, provided, however, that (a) except as provided in (b) hereafter, all such shares shall be subscribed and paid for, and issued to members of the State Bar of Texas, residing in the State of Texas, subject to the right of reacquisition of such shares by such corporation in the event of death of such attorney shareholder or failure of such attorney shareholder to be and remain a licensed member of the State Bar of Texas, or failure of such attorney shareholder to be and remain qualified to be appointed a title attorney under the provisions of this Article 9.56; and (b) nothing herein contained prohibits an association of the organized State Bar of Texas, the State Bar of Texas, or any foundation created by or through the State Bar of Texas, whose purposes include among others the continuing legal education of the bench and bar of Texas, from owning shares of any class thereof, providing at least 15 resident members of the State Bar of Texas at all times own shares therein whether of the same class or not.

Capital Stock and Surplus Required—Association of the Organized State Bar of Texas, the State Bar of Texas, or any Foundation Created By or Through the State Bar of Texas

Sec. 4. (a) The attorney's title insurance company created as an affiliate or subsidiary of the organized State Bar of Texas, the State Bar of Texas, or any foundation created by or through the State Bar of Texas, and operating under the provisions of this section, must have a paid-up capital of not less than \$250,000 and a surplus of not less than \$150,000.

(b) Any other attorney's title insurance company shall meet the capital and surplus requirements upon organization as required by Article 9.06 of this Chapter 9.

Requirements for Title Attorneys

Sec. 5. No attorney shall act within this state as a title attorney for an attorney's title insurance company without first having been (1) licensed as a title attorney for such company by the board and (2) filing a bond or cash deposit in lieu thereof as required in Section 9; and no attorney's title insurance company shall allow or permit any attorney to act as its title attorney within the state unless said attorney shall first have obtained a license and filed a bond as required by this chapter.

Title Attorney's Licenses

Sec. 6. (a) Before an initial license is issued to any Texas licensed attorney to act as a title attorney within the State of Texas for an attorney's title insurance company, there shall first be filed by the attorney's title insurance company with the board an application for a title attorney's license, on forms to be provided by the board, accompanied by a fee of

\$2. The application shall be signed and duly sworn to by the attorney's title insurance company and the applicant title attorney. Such application shall contain the following:

(1) that the applicant title attorney is a bona fide licensed Texas attorney, resident of Texas; and

(2) that the applicant title attorney is actively engaged in the practice of law; and

(3) that the applicant title attorney is known to the attorney's title insurance company to have a good business reputation, to be a current member of the State Bar of Texas, in good standing, and is worthy of the public trust and said attorney's title insurance company knows of no fact or condition which would disqualify him from receiving a license; and

(4) that the applicant title attorney is qualified as defined in this Article 9.56 of this Chapter 9.

The board shall grant such title attorney's license if it determines from the application and its own investigation that the foregoing requirements have been met.

(b) On or before the first day of June of each year, every attorney's title insurance company operating under the provisions of this Chapter 9 shall certify to the board, on forms provided by the board, the names and addresses of every title attorney of said attorney's title insurance company, and shall apply for and pay a fee of \$2 for an annual license in the name of each title attorney included in said list; if any such attorney's title insurance company shall terminate any licensed title attorney, it shall immediately notify the board in writing of such act and request cancellation of such license, notifying the title attorney of such action. No such attorney's title insurance company shall permit any title attorney appointed by it to write, sign, or deliver title insurance policies within the state until the foregoing conditions have been complied with, and the board has granted said license. The board shall deliver such license to the attorney's title insurance company for transmittal to the title attorney.

Licenses shall continue until the first day of the next June unless previously cancelled; provided, however, that if any attorney's title insurance company surrenders or has its certificate of authority revoked by the board, all existing licenses of its title attorneys shall automatically terminate without notice.

The board shall keep a record of the names and addresses of all licensed title attorneys in such manner that the title attorneys appointed by any attorney's title insurance company authorized to transact the business of an attorney's title insurance company

within the State of Texas may be conveniently ascertained and inspected by any person upon request.

(c) If an attorney's title insurance company terminates its contract with a title attorney or gives notice of termination to the title attorney, then any such title attorney may, within 30 days after either occurrence apply to the board for continuation of his license with an amendment thereto showing the name of another attorney's title insurance company for whom he is or will be authorized to act.

Authority of Title Attorney

Sec. 7. (a) A duly licensed title attorney may issue policies of title insurance for an attorney's title insurance company only if: (1) such title attorney is an appointed title attorney for an attorney's title insurance company; and (2) such title attorney bases each title opinion upon separate and current title evidence furnished by a licensed abstract plant of the records of the county in which the real property, the title to which is to be insured, is located; and (3) if such title attorney does not own or lease and control a licensed abstract plant and does not participate in a bona fide joint plant operation, such title attorney pays to the licensed abstract plant furnishing the title information the portion of the premium which may be agreed upon between the title attorney and the licensed abstract plant and approved by the board under the contract to furnish title information provided for under Paragraph (b) of this Section 7.

(b) The board shall, not later than January 1, 1976, promulgate the form of the contract to be made and entered into between a title attorney and a licensed abstract plant whereby title information shall be furnished by a licensed abstract plant to a title attorney. Such contract shall state therein the standards for the information which is to be furnished. Contracts shall be entered into between each title attorney and each licensed abstract plant. The board may from time to time alter, change, or amend the form of such contract.

The parties to any such contract shall determine the portion of the premium to be paid by the title attorney to the licensed abstract plant, except that the board is authorized to and may disapprove any division of the premium which the board finds to be excessive or inadequate. Such portion of the premium to be paid to the licensed abstract plant shall be deemed and considered as the "regular charge" for title information as that term is used in Article 9.34 of this Chapter 9. Within 10 days following execution, the parties to each such contract shall file a copy of the executed contract with the board. Each such contract shall be deemed to be approved as to the division of the premium until the parties are notified of disapproval by the board.

(c) In the event a title attorney does not own or lease and control a licensed abstract plant nor is a participant in a bona fide joint plant operation and is unable to contract with a licensed abstract plant to obtain the required title information in the county in which the real property, the title to which is to be insured, is located, such title attorney may deliver (but not issue) title insurance policies in conformity with the provisions of Article 9.34 of this Chapter 9. Likewise, a title attorney may deliver (but not issue) a title insurance policy upon real property in conformity with the provisions of Article 9.34 of this Chapter 9 when based upon a duly certified abstract of title prepared by a licensed abstract plant covering the particular real property from the sovereignty of the soil to the date of the transaction.

(d) Each annual audit of each title attorney shall include therein disclosure of the payments for title information and to whom such payments were made."

Title Attorneys' Licenses: Surrender, Forfeiture, Grounds for Revocation; Notice, Hearing, and Appeal

Sec. 8. (a) Any title attorney may surrender his license at any time by giving notice to the board and to the attorney's title insurance company concerned, except that no title attorney shall be permitted to surrender his license under the provisions of this Section 8 if prior to the offer to surrender such license an action shall have been commenced under the provisions of this Section 8 by the Commissioner of Insurance for revocation of such title attorney's license. Any title attorney shall automatically forfeit the license under the attorney's title insurance company represented if he shall terminate his relationship with the attorney's title insurance company.

(b) The license of any title attorney may be denied, or a license duly issued may be suspended or revoked or a renewal thereof refused by the board, if, after notice and hearing as hereafter provided, it finds that the applicant for or holder of such license:

(1) has wilfully violated any provision of this Chapter 9; or

(2) has intentionally made a material misstatement in the application for such license; or

(3) has obtained, or attempted to obtain, such license by fraud or misrepresentation; or

(4) has misappropriated or converted to his own use or illegally withheld money belonging to an attorney's title insurance company, an insured, or any other person; or

(5) has otherwise demonstrated lack of trustworthiness or competence to act as a title attorney; or

(6) has been guilty of fraudulent or dishonest practices; or

(7) has materially misrepresented the terms and conditions of title insurance policies or contracts; or

(8) is not of good character or reputation; or

(9) has failed to maintain a separate and distinct accounting of escrow funds, and has failed to maintain an escrow bank account or accounts separate and apart from all other accounts; or

(10) has failed to remain a member of the State Bar of Texas, or has been disbarred; or

(11) is no longer actively engaged in the practice of law.

(c) Before the license of any title attorney shall be denied, or suspended or revoked, or the renewal thereof refused hereunder, the board shall give notice of its intention so to do, by registered mail, to the applicant for or holder of such license and to the attorney's title insurance company who desires that such license be granted or continued in effect, and shall set a date not less than 20 days from the date of mailing such notice when the applicant or licensee and a duly authorized representative of the attorney's title insurance company may appear to be heard and produce evidence. In the conduct of such hearing, the commissioner of insurance or any regular salaried employee specially designated by him for such purpose shall have power to administer oaths, to require the appearance of and examine any person under oath, and to require the production of books, records, or papers relevant to the inquiry upon his own initiative or upon the request of the applicant or licensee. Upon termination of such hearing, findings shall be reduced to writing and, upon approval by the commissioner, shall be filed in his office and notice of the findings sent by registered mail to the applicant or licensee and the attorney's title insurance company concerned.

(d) No applicant or licensee whose license has been denied, refused, or revoked hereunder shall be entitled to file another application for a license as a title attorney within one year from the effective date of such denial, refusal, or revocation, or, if judicial review of such denial, refusal, or revocation is sought, within one year from the date of final court order or decree affirming such action. Such application, when filed after one year, may be refused by the board unless the applicant shows good cause why the denial, refusal, or revocation of his license shall not be deemed a bar to the issuance of a new license.

(e) If the board shall refuse an application for any license provided for in this Act, or shall suspend, revoke, or refuse to renew any such license at said hearing, then any such applicant or licensee, and any attorney's title insurance company concerned, may appeal from said order by filing suit against the board as defendant in any of the district courts of Travis County, Texas, and not elsewhere, within 20

days from the date of the order of said board. Said action shall have precedence over all other causes of a different nature on the docket. The action shall not be limited to questions of law and shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Any party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The board shall not be required to give any appeal bond in any cause arising hereunder.

Bonds for Title Attorneys

Sec. 9. (a) Every attorney who has been licensed as a title attorney shall make, file, and pay for a surety bond with a corporate surety company authorized to write surety bonds in this state, payable to the State Board of Insurance in the sum of \$7,500, which bond shall obligate the principal and surety to (1) pay such pecuniary losses as may result to any participant in a real estate settlement or closing where an attorney's title insurance policy is issued by such title attorney which shall be sustained through acts of fraud, dishonesty, theft, embezzlement, or wilful misapplication on the part of any title attorney, (2) to pay such pecuniary loss as any party to an escrow agreement in which the title attorney is escrowee shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, or wilful misapplication on the part of such title attorney, either directly and alone, or in connivance with others. In lieu of such bond any title attorney may deposit with the board cash (or securities approved by the board) which cash and securities shall be in the amount of \$7,500 and subject to the same conditions as provided for in said bond.

(b) If at any time it appears to the board that the terms of any title attorney's bond may have been violated, the board may require the title attorney to appear in Travis County with such records as the board deems proper on a named date not earlier than 10 days nor later than 15 days from service of notice, and there conduct an examination into the matter. If upon such examination the board is satisfied that the terms of said bond have been violated, the board shall immediately notify the surety and prepare a written statement covering the facts and deliver it to the Attorney General of Texas, whose duty it shall be to investigate the charges, and if satisfied that the terms of said bond have been violated, then to enforce the liability against cash or securities, or by suit on said bond in Travis County in the name of the board for the benefit of all parties who have suffered any loss because of breach of the terms of said bond.

Annual Audit and Report of Title Attorneys

Sec. 10. Every title attorney shall have an annual audit, at his expense, made of trust fund accounts, and within 90 days after January 1 of each calendar year shall send by certified mail, postage prepaid, to the board one copy of such audit report with a letter of transmittal, and each such title attorney shall also send a copy of such letter of transmittal and audit report to the attorney's title insurance company which he represents.

Said audit shall be made by an independent certified public accountant or licensed public accountant, or a firm composed of either, recommended by said title attorney and approved by the title insurance company represented by said title attorney.

Each attorney's title insurance company shall examine and analyze the audit report furnished by each of its title attorneys and shall within three months of receipt of same report to the board on forms to be promulgated by the board the findings and results of its examination and analysis of such audit report. If an attorney's title insurance company fails to receive an audit report from any of its title attorneys within the time specified above, it shall forthwith report such omission to the board.

All such reports and analyses furnished by the attorney's title insurance company to the board shall, at the election of the commissioner, be classed as confidential and privileged after having been filed with the board.

If any title attorney shall fail or refuse to furnish an audit report within the time required, or shall furnish an audit report which reveals any shortage or other irregularity, or any practice not in keeping with sound, honest business practices, the board may, after notice to the title attorney and the attorney's title insurance company involved and after a hearing at which the attorney and attorney's title insurance company may offer evidence explaining or excusing such omissions or irregularity, revoke the license of such title attorney.

Any title attorney or attorney's title insurance company feeling aggrieved by any action of the board hereunder shall have the right to file a suit in a District Court of Travis County in the time and manner provided in Section 8.

Right of Attorney's Title Insurance Company to Examine Title Attorney's Fund Accounts and Require Reports

Sec. 11. Any attorney's title insurance company may at such time or times as it sees fit, through its examiners or auditors or through independent certified public accountants commissioned by it, examine the trust fund accounts and records pertaining thereto of any of its title attorneys, such examination to be made at the expense of the attorney's title insurance company; or the attorney's title insurance

company may require special reports from any such title attorney regarding any of its transactions.

Application to Other Title Insurance Companies

Sec. 12. The business of attorney's title insurance shall only be conducted by attorney's title insurance companies, as defined herein, and no title insurance company, foreign or domestic, or title insurance agent or escrow officer of a title insurance agent presently or hereafter licensed to transact a title insurance business in the State of Texas, pursuant to the provisions of this Chapter 9 of this Insurance Code, may operate as an attorney's title insurance company or a title attorney under the provisions of this chapter.

Exemption From Other Acts

Sec. 13. (a) The sale, issuance, or offering of any capital stock to persons permitted by the provisions of this Article 9.56 to own such capital stock are hereby exempted from all provisions of the laws of this state, other than this Chapter 9, which provide for supervision, registration, or regulation in connection with the sale, issuance, or offering of securities; and the sale, issuance, or offering of any such capital stock to such persons shall be legal without any action or approval whatsoever on the part of any official or state regulatory agency authorized to license, regulate, or supervise the sale, issuance, or offering of securities.

(b) The shares of stock of each attorney's title insurance company (regardless of class) may be owned only (except as provided in Section 3 of this Article 9.56) by attorneys duly licensed by the State Bar of Texas, residing in the State of Texas, and qualified to be appointed a title attorney under the provisions of this Article 9.56. Each certificate evidencing any share shall have endorsed thereon provisions relating to limitation upon the alienation of such shares whereby such shares may be owned only by such qualifying attorneys or the attorney's title insurance company so issuing such shares. The provisions of this Section 13B shall not, however, be applicable to shares owned by the organized State Bar of Texas, the State Bar of Texas, or any foundation created by or through the State Bar of Texas, whose purposes include among others the continuing legal education of the bench and bar of Texas.

(c) At time of organization of any attorney's title insurance company, the applicants for such attorney's title insurance company shall, as a part of the application for granting and approving the charter of such attorney's title insurance company, file with and obtain the approval of the State Board of Insurance an acceptable plan providing for the reacquisition of any and all shares of stock of such attorney's title insurance company issued to any qualified attorney when such attorney no longer remains qualified to own the same or upon the death of such

attorney, whichever shall first occur. Such plan shall, in addition to its other provisions, contain an express provision that under no circumstance may such attorney's title insurance company acquire outstanding shares of its stock as treasury stock if such reacquisition of such shares will result in reducing the capital and surplus of such attorney's title insurance company below the minimum capital and surplus required for the initial organization of such attorney's title insurance company.

(d) In the event of the death of any title attorney, the attorney's title insurance company shall have a period of nine months following the death of such title attorney within which to acquire such deceased title attorney's share or shares.

[Added by Acts 1975, 64th Leg., p. 1063, ch. 409, § 21, eff. Sept. 1, 1975.]

CHAPTER FOURTEEN. GENERAL PROVISIONS FOR MUTUAL ASSESSMENT COMPANIES

Article

14.40a. Application of Sunset Act [NEW].

Art. 14.17. Certificate of Authority Required; Exemptions

It shall be the duty of the Board of Insurance Commissioners to require any corporation, person, firm, association, local mutual aid association, or any local association, company, or organization to have a certificate of authority before being authorized to carry on any insurance business in this State. If, in any event, any such company, person, firm, association, corporation, local aid association, or local organization is writing any form of insurance whatsoever without a permit or certificate of authority issued by the Department of Insurance of Texas, it shall be the duty of the Board to make known said fact to the Attorney General of the State of Texas, who is hereby required to institute proceedings in the District Court of Travis County, Texas, to restrain such corporation, person, firm, association, company, local aid association, or organization from writing any insurance of any kind or character without a permit; provided no provision of this and the preceding Article shall be construed to apply to associations which limit their membership to the employees and the families of employees of any particular designated firm, corporation, or individual, nor shall it apply to associations which limit their membership to bona fide borrowers of a Federal agency in Texas and members of the borrower's immediate family who are living with him and who are not engaged in nonfarm work for their chief income, and which association has been in existence for at least five (5) years, and which are not operated for profit and which pay no commissions to anyone and whose operating expenses do not exceed One Thousand Dollars (\$1,000) per month; provided, however, that

all such associations shall make annual reports to the Department of Insurance on blanks furnished for that purpose, showing the financial condition, the receipts and expenditures, and such other facts as the Board of Insurance Commissioners may require. No such association shall be permitted to operate, however, without making report to the Insurance Department of the State of Texas and securing a permit to so function. Such permit shall be for the current year or fractional part thereof and shall expire on the thirty-first day of May thereafter and shall be renewed annually upon the approval of the financial statement of the organization by the Board of Insurance Commissioners.

[Amended by Acts 1975, 64th Leg., p. 483, ch. 206, § 1, eff. Sept. 1, 1975.]

Art. 14.20. Reduced Benefits or Excluded Coverage on Life Policies; Health and Accident Policies Excluded

Sec. 1. Any company or association licensed and operating under this chapter, may with the approval of the State Board of Insurance issue policies providing for reduced benefits when death or injury occurs while the insured is engaged in military, naval, aerial service, or aerial flight in time of peace or war; or in case of death of the member by his own hand while sane or insane; or while engaged in certain hazardous occupations to be named in the policy; or if death or injury is caused by mob violence or legal execution; or reduce or exclude benefits for sickness from certain named causes. Attention shall be called on the front page of the policy to any reduction or exclusion of benefits provided herein, and the circumstances or conditions under which reduction or exclusion of benefits are applicable shall be plainly stated in the policy. The provisions of this Section 1 of this Article 14.20 shall apply to all outstanding policies already containing such limitations.

Sec. 2. In the event a policy providing natural death benefits shall contain a provision for reduction (other than for the specific reductions enumerated and authorized by Section 1 of this Article 14.20) of the highest or ultimate death benefit stated in such policy for a specified insured, such reduced death benefit for such specified insured shall at all times during the period of time such reduction in death benefit is in effect equal at least 120 percent of the total premium then paid upon such policy by such specified insured; the period of any such reduced benefit (other than as enumerated and authorized by Section 1 of this Article 14.20) shall not exceed five years from issue date. This Section 2 of this Article 14.20 shall not be applicable, however, to any policy of life insurance upon which the reduction of the death benefit is not applicable at the time of the death of such specified insured.

Sec. 3. In the event a policy of life insurance shall provide, during any of the first five years of such policy, for an increase in the death benefit whereby the initial amount of the death benefit for a specified insured shall be increased one or more times during such five-year period, such amount of death benefit for any such specified insured shall at all times during the period or periods of such increasing benefit equal at least 120 percent of the premiums paid on such policy by such specified insured during the period of such increase. This Section 3 of this Article 14.20 shall not be applicable, however, to any policy of life insurance after it has been in force for more than five years from the policy issue date.

Sec. 4. The provisions of Section 2 and Section 3 of this Article 14.20 shall not be applicable to family group life policies as the term "family group life policies" is defined in Section 2(a)(2) of Article 14.15 of this Insurance Code.

Sec. 5. The provisions of this Article 14.20 shall not apply to health and accident policies.

[Amended by Acts 1975, 64th Leg., p. 1035, ch. 400, § 1, eff. Nov. 1, 1975.]

Section 2 of the 1975 Act amended § 5 of art. 22.13; § 3 thereof provided: "Sec. 3. The provisions of this Act shall be effective on November 1, 1975, and any insurer issuing a policy which has been previously approved for issuance in this state may bring it into compliance with the provisions of this Act by the use of endorsements thereon or affixed thereto, provided that any such endorsement is approved by the State Board of Insurance prior to usage."

Art. 14.40a. Application of Sunset Act

The Burial Association Rate Board is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1979.

[Added by Acts 1977, 65th Leg., p. 1835, ch. 735, § 2.020, eff. Aug. 29, 1977.]

¹ Civil Statutes, art. 5429k.

CHAPTER FIFTEEN. MUTUAL INSURANCE COMPANIES OTHER THAN LIFE

Article

15.05-A. Application of Texas Non-Profit Corporation Act [NEW].

Art. 15.05-A. Application of Texas Non-Profit Corporation Act

Insofar as the provisions of the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), are not inconsistent with or contrary to any applicable provisions of the Insurance Code, as amended, the provisions of the Texas Non-Profit Corporation Act as amended (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), shall apply to and govern mutual insurance companies as defined in Article 15.01 of this chapter. Provided however, any such mutual insurance company may upon advance approval of the Commissioner of Insurance pay dividends to its members,

and wherever in the Texas Non-Profit Corporation Act, as amended (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes), some duty, responsibility, power, authority, or act is vested in, required of, or to be performed by the secretary of state, such is to be vested in, required of, or performed by the Commissioner of Insurance insofar as such mutual insurance companies are concerned.

[Added by Acts 1975, 64th Leg., p. 347, ch. 148, § 1, eff. May 8, 1975.]

CHAPTER TWENTY. GROUP HOSPITAL SERVICE

Art. 20.02. Supervision; Requirements

All corporations organized under the provisions of this chapter shall be under the direct supervision of the Board of Insurance Commissioners of the State of Texas, and shall be subject to the following requirements:

[See Compact Edition, Volume 2 for text of (a) and (b)]

(c) They shall maintain reserves to cover the liability for claims incurred but not yet paid and for the expenses of settlement on those claims; provided that the reserves shall be estimated using a method which has been submitted to the Commissioner of Insurance for approval; and provided further that the method shall be deemed approved thirty (30) days after filing unless earlier affirmatively approved or disapproved by the Commissioner of Insurance;

[See Compact Edition, Volume 2 for text of (d)]

(e) Policy, certificate, and application forms, and forms of all contracts with health care providers, as defined in Article 20.11 of this chapter, as amended, shall be subject to the provisions of Article 3.42 of this code, as amended.

[Amended by Acts 1977, 65th Leg., p. 1037, ch. 383, § 1, eff. Oct. 1, 1977.]

Section 10 of Acts 1977, 65th Leg., p. 1039, ch. 383, provided an October 1, 1977 effective date.

Art. 20.06. Dissolution; Liquidation; Rehabilitation; Conservation

Any dissolution, liquidation, rehabilitation, or conservation of any such corporation shall be handled as provided in Articles 21.28, 21.28-A, and 21.28-B of this code.

[Amended by Acts 1977, 65th Leg., p. 1037, ch. 383, § 2, eff. Oct. 1, 1977.]

Art. 20.07. Repealed by Acts 1977, 65th Leg., p. 1039, ch. 383, § 9, eff. Oct. 1, 1977

Art. 20.09. Applicability of Certain Legal Requirements

Such corporations organized and operated under the provisions of this chapter shall not be required by any department of this State to post bond, or place deposits with any department of this State to begin and/or operate under this chapter, except as may be otherwise required in this chapter, and the provisions of the other chapters of this code which are not expressly made applicable to corporations organized and operating under this chapter are hereby declared inapplicable.

[Amended by Acts 1977, 65th Leg., p. 1038, ch. 383, § 3, eff. Oct. 1, 1977.]

Art. 20.10. Corporations Nonprofit; Salaries; Investments; Expenses

Such corporations shall be governed and conducted as nonprofit organizations; and provided that no paid officer or employee of said corporations shall receive more than Twenty Thousand Dollars (\$20,000.00) per annum for his services, unless such payment be first authorized by a vote of the board of directors of such company, or by a committee of such board charged with the duty of authorizing such payments. Such corporation's investments shall be subject to the limitations applicable to insurance companies operating under the provisions of Chapter 3 of this code. No corporation operating under this chapter may incur general expenses during a calendar year in excess of twenty percent (20%) of premiums earned in that calendar year; provided further that the maximum expense shall be reduced by one-half percent ($\frac{1}{2}\%$) for each Fifty Million Dollars (\$50,000,000) of premium earned to fifteen percent (15%) for corporations earning Five Hundred Million Dollars (\$500,000,000) or more of premium in a calendar year. "General expenses" means the expenses incurred by a corporation in the operation of its business except that the term shall not be deemed to include taxes, license fees, commissions, or any expenses incurred in the performance of contracts made directly or indirectly with the government of this state or of the United States under which the corporation does not assume an insurance risk.

[Amended by Acts 1977, 65th Leg., p. 1038, ch. 383, § 4, eff. Oct. 1, 1977.]

Art. 20.11. Authority of Corporation to Contract with Providers Other Than Physicians

Such corporations shall have authority to contract with health care providers, other than physicians, in such manner as to assure to each person holding a policy or certificate of said corporation the furnishing of such services and supplies as may be agreed upon in the policy, with the right to said corporation to limit in the policy the types of disease for which it shall furnish benefits; provided that such corpora-

tions shall not be required to contract with any particular health care provider; and provided further that this Article shall not be deemed to authorize such corporation to contract with any health care provider in any manner which is prohibited by any licensing law of this state under which the health care provider operates. Health care provider means any person, association, partnership, corporation, or other entity furnishing or providing any services or supplies for the purpose of preventing, alleviating, curing, or healing human illness or injury.

[Amended by Acts 1977, 65th Leg., p. 1038, ch. 383, § 5, eff. Oct. 1, 1977.]

Art. 20.12. Prohibition Against Contracting for Medical Services

Such corporations shall not contract to furnish to the member a physician or any medical services, nor shall said corporation contract to practice medicine in any manner, nor shall said corporation control or attempt to control the relations existing between said member and his or her physician, nor restrict the right of the patient to obtain the services of any licensed doctor of medicine; provided that nothing in this article shall prohibit a corporation from contracting with a health organization certified under Article 4509a, Revised Civil Statutes of Texas, 1925. In addition, such corporations are hereby authorized to provide benefits for medical and/or surgical care on the basis of indemnity payments for expenses incurred.

[Amended by Acts 1977, 65th Leg., p. 1039, ch. 383, § 6, eff. Oct. 1, 1977.]

Art. 20.13. Personnel of Directors

Such corporation shall have 20 directors who shall have full control over its management affairs. The board of directors shall be composed of persons who are residents of Texas. Not more than five directors may be persons who are chief executive officers or owners of an institutional health care provider. Not more than three directors may be persons licensed by the Texas State Board of Medical Examiners. Not more than one director may be a person licensed by the Texas State Board of Dental Examiners. The remaining directors shall not be health care providers or employees of or have a financial interest in a health care provider as defined in this chapter.

[Amended by Acts 1977, 65th Leg., p. 1039, ch. 383, § 7, eff. Oct. 1, 1977.]

Art. 20.15. Minimum Surplus

Such corporation shall maintain a surplus of at least \$100,000 to meet adverse contingencies.

[Amended by Acts 1977, 65th Leg., p. 1039, ch. 383, § 8, eff. Oct. 1, 1977.]

CHAPTER TWENTY A. HEALTH MAINTENANCE ORGANIZATION ACT [NEW]

Article

- 20A.01. Short Title.
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[This chapter was not enacted as part of the Insurance Code.]

Art. 20A.01. Short Title

This Act may be cited as the Texas Health Maintenance Organization Act.

[Acts 1975, 64th Leg., p. 514, ch. 214, § 1, eff. Dec. 1, 1975.]

Art. 20A.02. Definitions

(a) "Basic health care services" means health care services which an enrolled population might reasonably require in order to be maintained in good health, including, as a minimum, emergency care, inpatient hospital and medical services, and outpatient medical services.

(b) "Board" means the State Board of Health.

(c) "Commissioner" means the commissioner of insurance.

(d) "Enrollee" means an individual who has been enrolled in a health care plan, including covered dependents.

(e) "Evidence of coverage" means any certificate, agreement, or contract issued to an enrollee setting out the coverage to which the enrollee is entitled.

(f) "Group hospital service corporation" means a nonprofit corporation organized and operating under Chapter 20 of the Insurance Code.¹

(g) "Health care" means prevention, maintenance, and rehabilitation services provided by qualified persons other than medical care.

(h) "Health care plan" means any arrangement whereby any person undertakes to provide, arrange for, pay for, or reimburse any part of the cost of any health care services and at least part of such arrangement consists of arranging for or the provision of health care services, as distinguished from mere indemnification against the cost of such service, on a prepaid basis through insurance or otherwise.

(i) "Health care services" means any services, including the furnishing to any individual of medical or dental care, or hospitalization or incident to the furnishing of such care or hospitalization, as well as the furnishing to any person of any and all other services for the purpose of preventing, alleviating, curing or healing human illness or injury.

(j) "Health maintenance organization" means any person who undertakes to provide or arrange for one or more health care plans.

(k) "Medical care" means furnishing those services defined as the practice of medicine in Section 11, Chapter 426, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4510a, Vernon's Texas Civil Statutes).

(l) "Person" means any natural or artificial person, including, but not limited to, individuals, partnerships, associations, trusts, or corporations.

(m) "Physician" means anyone licensed to practice medicine in the State of Texas.

(n) "Provider" means any practitioner other than a physician, such as a registered nurse, pharmacist, pharmacy, hospital, or other institution or organization or person that furnishes health care services, who is licensed or otherwise authorized to practice in this state.

[Acts 1975, 64th Leg., p. 514, ch. 214, § 2, eff. Dec. 1, 1975.]

¹ Article 20.01 et seq.

Art. 20A.03. Establishment of Health Maintenance Organization

(a) Notwithstanding any law of this state to the contrary, any person may apply to the commissioner for and obtain a certificate of authority to establish and operate a health maintenance organization in compliance with this Act. No person shall establish or operate a health maintenance organization in this state, or sell or offer to sell or solicit offers to purchase or receive advance or periodic consideration in conjunction with a health maintenance organization without obtaining a certificate of authority under this Act. A foreign corporation may qualify under this Act, subject to its registration to do business in this state as a foreign corporation under the Texas Business Corporation Act and compliance with all provisions of this Act and other applicable Texas statutes.

(b) Within 90 days of the effective date of this Act, every existing health maintenance organization shall submit an application for a certificate of authority. Each such applicant may continue to operate until the commissioner acts on the application. In the event that an application is denied, the applicant shall henceforth be treated as a health maintenance organization whose certificate of authority has been revoked.

[Acts 1975, 64th Leg., p. 514, ch. 214, § 3, eff. Dec. 1, 1975.]

Art. 20A.04. Application for Certificate of Authority

(a) Each application for a certificate of authority shall be on a form prescribed by rule of the commissioner and shall be verified by the applicant, an officer, or other authorized representative of the applicant, and shall set forth or be accompanied by the following:

(1) a copy of the basic organizational document, if any, of the applicant, such as the articles of incorporation, articles of association, partnership agreement, trust agreement, or other applicable documents, and all amendments thereto;

(2) a copy of the bylaws, rules and regulations, or similar document, if any, regulating the conduct of the internal affairs of the applicant;

(3) a list of the names, addresses, and official positions of the persons who are to be responsible for the conduct of the affairs of the applicant, including all members of the board of directors, board of trustees, executive committee, or other governing body or committee, the principal officer in the case of a corporation, and the partnership or members in the case of a partnership or association;

(4) a copy of any independent or other contract made or to be made between any provider, physician, or persons listed in Paragraph (3) hereof and the applicant;

(5) a statement generally describing the health maintenance organization, its health care plan or plans, facilities, and personnel;

(6) a copy of the form of evidence of coverage to be issued to the enrollee;

(7) a copy of the form of the group contract, if any, which is to be issued to employers, unions, trustees, or other organizations;

(8) a financial statement showing the applicant's assets, liabilities, and sources of financial support; if the applicant's financial affairs are audited by an independent certified public accountant, a copy of the applicant's most recent regular certified financial statement shall be deemed to satisfy this requirement unless the commissioner directs that additional or more

recent financial information is required for the proper administration of this Act;

(9) a description of the proposed method of marketing the plan, a financial plan which includes a three-year projection of the initial operating results anticipated, and a statement as to the sources of working capital, as well as any other sources of funding;

(10) a power of attorney duly executed by such applicant, if not domiciled in this state, appointing the commissioner and his successors in office, or a duly authorized deputy, as the true and lawful attorney of such applicant in and for the state upon whom all lawful processes in any legal action or proceedings against the health maintenance organization on a cause of action arising in this state may be served;

(11) a statement reasonably describing the geographic area or areas to be served;

(12) a description of the complaint procedures to be utilized;

(13) a description of the procedures and programs to be implemented to meet the quality of health care requirements set forth herein;

(14) a description of the mechanisms by which enrollees will be afforded the opportunity to participate in matters of policy and operation; and

(15) such other information as the commissioner may require to make the determinations required by this Act.

(b) A health maintenance organization shall file notice with the commissioner prior to any modification of the operations or documents described in Subsection (a) of this section. As soon as reasonably possible after the filing has been made, the commissioner shall in writing approve or disapprove the same. Any filing shall be considered approved unless disapproved within 30 days; provided that the commissioner may by official order postpone the action for such further time not exceeding 30 days, as may be considered necessary for proper consideration.

[Acts 1975, 64th Leg., p. 515, ch. 214, § 4, eff. Dec. 1, 1975.]

Art. 20A.05. Issuance of Certificate of Authority

(a)(1) Upon receipt of an application for issuance of a certificate of authority, the commissioner shall begin consideration of the application and forthwith transmit copies of such application and accompanying documents to the board.

(2) The board shall determine whether the applicant for a certificate of authority, with respect to health care services to be furnished:

(A) has demonstrated the willingness and potential ability to assure that such health care

services will be provided in a manner to assure both availability and accessibility of adequate personnel and facilities, in a manner enhancing availability, accessibility, and continuity of services;

(B) has arrangements, established in accordance with rules and regulations promulgated by the board with the concurrence of the commissioner, for an ongoing quality of health care assurance program concerning health care processes and outcome; and

(C) has a procedure, established by rules and regulations of the board with the concurrence of the commissioner, to develop, compile, evaluate, and report statistics relating to the cost of operation, the pattern of utilization of its services, availability and accessibility of its services.

(3) Within 45 days of receipt of the application by the board for issuance of a certificate of authority, the board shall certify to the commissioner whether the proposed health maintenance organization meets the requirements of this section. If the board certifies that the health maintenance organization does not meet such requirements, it shall specify in what respects it is deficient.

(b) The commissioner shall, after notice and hearing, issue or deny a certificate of authority to any person filing an application pursuant to Section 4 of this Act within 75 days of the receipt of the certification of the board. Issuance of the certificate of authority shall be granted upon payment of the application fee prescribed in Section 32 of this Act if:

(1) the board certifies that the health maintenance organization's proposed plan of operation meets the requirements of Subsection (a)(2) of this section; and

(2) the commissioner is satisfied that:

(A) the person responsible for the conduct of the affairs of the applicant is competent, trustworthy, and possesses a good reputation;

(B) the health care plan constitutes an appropriate mechanism whereby the health maintenance organization will effectively provide or arrange for the provision of basic health care services on a prepaid basis, through insurance or otherwise, except to the extent of reasonable requirements for co-payment;

(C) the health maintenance organization is fully responsible and may reasonably be expected to meet its obligations to enrollees and prospective enrollees. In making this determination, the commissioner shall consider:

(i) the financial soundness of the health care plan's arrangement for health care services and a schedule of charges used in connection therewith;

(ii) the adequacy of working capital;

(iii) any agreement with an insurer, group hospital service corporation, a political subdivision of government, or any other organization for insuring the payment of the cost of health care services or the provision for automatic applicability of an alternative coverage in the event of discontinuance of plan;

(iv) any agreement which provides for the provision of health care services; and

(v) any surety bond or deposit of cash or securities submitted in accordance with Section 13 of this Act as a guarantee that the obligations will be duly performed;

(D) the enrollees will be afforded an opportunity to participate in matters of policy and operation pursuant to Section 7(b) of this Act;

(E) nothing in the proposed method of operation, as shown by the information submitted pursuant to Section 4 of this Act, or by independent investigation, is contrary to Texas law.

(c) If the board or the commissioner, or both, shall certify that the health maintenance organization's proposed plan of operation does not meet the requirements of this section, the commissioner shall not issue the certificate of authority. The commissioner shall notify the applicant that it is deficient, and shall specify in what respects it is deficient.

(d) A certificate of authority shall continue in force as long as the person to whom it is issued meets the requirements of this Act or until suspended or revoked by the commissioner or terminated at the request of the certificate holder. Any change in control, as defined by Article 21.49-1 of the Insurance Code of Texas, of the health maintenance organization, shall be subject to the approval of the commissioner.

[Acts 1975, 64th Leg., p. 517, ch. 214, § 5, eff. Dec. 1, 1975.]

Art. 20A.06. Powers of Health Maintenance Organization

(a) The powers of a health maintenance organization include, but are not limited to, the following:

(1) the purchase, lease, construction, renovation, operation, or maintenance of hospitals, medical facilities, or both, and ancillary equipment and such property as may reasonably be required for its principal office or for such other purposes as may be necessary in the transaction of the business of the health maintenance organization;

(2) the making of loans to a medical group, under an independent contract with it in furtherance of its program, or corporations under its control, for the purpose of acquiring or constructing medical facilities and hospitals, or in the furtherance of a program providing health care services to enrollees;

(3) the furnishing of medical care services through physicians who have independent contracts with the health maintenance organizations; the furnishing or arranging for the delivery of health care services through providers or groups of providers who are under contract with or employed by the health maintenance organization; provided, however, that a health maintenance organization is not authorized to employ or contract with physicians or providers in any manner which is prohibited by any licensing law of this state under which such physicians or providers are licensed;

(4) the contracting with any person for the performance on its behalf of certain functions such as marketing, enrollment, and administration;

(5) the contracting with an insurance company licensed in this state, or with a group hospital service corporation authorized to do business in the state, for the provision of insurance, indemnity, or reimbursement against the cost of health care and medical care services provided by the health maintenance organization;

(6) the offering, in addition to the basic health care services, of:

(A) additional health care or medical services;

(B) indemnity benefits covering out-of-area emergency services; and

(C) indemnity benefits in addition to those relating to out-of-area and emergency services, provided through insurers or group hospital service corporations;

(7) receiving and accepting from government or private agencies payments covering all or part of the cost of the services provided or arranged for by the organization;

(8) all powers given to corporations (including professional corporations and associations), partnerships, and associations pursuant to their organizational documents which are not in conflict with provisions of this Act, or other applicable law.

(b)(1) The health maintenance organization shall file notice, with adequate supporting information, with the commissioner prior to the exercise of any power granted in Subdivision (1) or (2) of Subsection (a) of this section. The commissioner shall disapprove such exercise of powers which, in his or her

opinion would substantially and adversely affect the financial soundness of the health maintenance organization and endanger its ability to meet its obligations. If the commissioner does not disapprove within 30 days of filing, it shall be deemed approved; provided that the commissioner may, by official order, postpone action for such further time, not exceeding 30 days, as may be considered necessary for proper consideration.

(2) The commissioner may promulgate rules and regulations exempting from the filing requirements of this subdivision those activities having a de minimis effect.

[Acts 1975, 64th Leg., p. 518, ch. 214, § 6, eff. Dec. 1, 1975.]

Art. 20A.07. Governing Body

(a) The governing body of any health maintenance organization may include physicians, providers, or other individuals, or any combination of the above.

(b) The governing body shall establish a mechanism to afford the enrollees an opportunity to participate in matters of policy and operation through the establishment of advisory panels, by the use of advisory referenda on major policy decisions, or through the use of other mechanisms.

[Acts 1975, 64th Leg., p. 519, ch. 214, § 7, eff. Dec. 1, 1975.]

Art. 20A.08. Fiduciary Responsibility

Any director, officer, member, employee, or partner of a health maintenance organization who receives, collects, disburses, or invests funds in connection with the activities of such organization shall be responsible for such funds in a fiduciary relationship to the enrollees.

[Acts 1975, 64th Leg., p. 519, ch. 214, § 8, eff. Dec. 1, 1975.]

Art. 20A.09. Evidence of Coverage and Charges

(a)(1) Every enrollee residing in this state is entitled to evidence of coverage under a health care plan. If the enrollee obtains coverage under a health care plan through an insurance policy or a contract issued by a group hospital service corporation, whether by option or otherwise, the insurer or the group hospital service corporation shall issue the evidence of coverage. Otherwise, the health maintenance organization shall issue the evidence of coverage.

(2) No evidence of coverage, or amendment thereto, shall be issued or delivered to any person in this state until a copy of the form of evidence of coverage, or amendment thereto, has been filed with and approved by the commissioner.

(3) An evidence of coverage shall contain:

(A) no provisions or statements which are unjust, unfair, inequitable, misleading, deceptive, which encourage misrepresentation, or

which are untrue, misleading, or deceptive as defined in Section 14 of this Act; and

(B) a clear and complete statement, if a contract, or a reasonably complete facsimile, if a certificate, of:

(i) the medical and health care services and the issuance of other benefits, if any, to which the enrollee is entitled under the health care plan;

(ii) any limitation on the services, kinds of services, benefits, or kinds of benefits to be provided, including any deductible or co-payment feature;

(iii) where and in what manner information is available as to how services may be obtained;

(iv) the total amount of payment for health care services and the indemnity or service benefits, if any, which the enrollee is obligated to pay with respect to individual contracts, or indication whether the plan is contributory or noncontributory with respect to group certificates; and

(v) a clear and understandable description of the health maintenance organization's methods for resolving enrollee complaints. Any subsequent changes may be evidenced in a separate document issued to the enrollee.

(4) Copy of the form of the evidence of coverage to be used in this state, and any amendments thereto, shall be subject to the filing and approval requirements of Subsection (b) of this section, unless it is subject to the jurisdiction of the commissioner under the laws governing health insurance or group hospital service corporations, in which event the filing and approval provisions of such law shall apply. To the extent, however, that such provisions do not apply to the requirements of Subdivision (3), Subsection (a) of this section, the requirements of Subdivision (3) shall be applicable.

(b)(1) No schedule of charges for enrollee coverage for medical services or health care services or amendments thereto may be used in conjunction with any health care plan until a copy of such schedule or amendments thereto has been filed with the commissioner.

(2) Such charges may be established in accordance with actuarial principles for various categories of enrollees, provided that charges applicable to an enrollee shall not be individually determined based on the status of his or her health. However, the charges shall not be excessive, inadequate, or unfairly discriminatory, and the benefits shall be reasonable with respect to the rates charged. A certification, by a qualified actuary, to the appropriateness of the charges, based on reasonable assumptions,

shall accompany the filing along with adequate supporting information.

(c) The commissioner shall, within a reasonable period, approve any form if the requirements of this section are met and any evidence of coverage if the requirements of this section are met. It shall be unlawful to issue such form until approved or to use such schedule or charges until filed. If the commissioner disapproves such filing, he or she shall notify the filer. In the notice, the commissioner shall specify the reason for the disapproval. A hearing shall be granted within 30 days after a request in writing by the person filing. If the commissioner does not approve any form within 30 days after the filing of such forms or charges, they shall be deemed approved.

(d) The commissioner may require the submission of whatever relevant information he or she deems necessary in determining whether to approve or disapprove a filing made pursuant to this section. [Acts 1975, 64th Leg., p. 519, ch. 214, § 9, eff. Dec. 1, 1975.]

Art. 20A.10. Annual Report

(a) Each health maintenance organization shall annually, on or before the 1st day of March, file a report, verified by at least two principal officers, with the commissioner, with a copy to the board, covering the preceding calendar year.

(b) Such report shall be on forms prescribed by the commissioner and shall include:

(1) a financial statement of the organization, including its balance sheet and receipts and disbursements for the preceding year, certified by an independent public accountant;

(2) any material changes in the information submitted pursuant to Section 4 of this Act;

(3) the number of persons enrolled during the year, the number of enrollees as of the end of the year, and the number of enrollments terminated during the year;

(4) a summary of the information compiled pursuant to Section 12 of this Act in such form as required by the board; and

(5) such other information relating to the performance of the health maintenance organization as is necessary to enable the commissioner to carry out the duties under this Act.

[Acts 1975, 64th Leg., p. 521, ch. 214, § 10, eff. Dec. 1, 1975.]

Art. 20A.11. Information to Enrollees

Every health maintenance organization shall annually provide to its enrollees:

(a) the most recent annual statement of financial condition, including a balance sheet and summary of receipts and disbursements;

(b) a description of the organizational structure and operation of the health care plan and a summary of any material changes since the issuance of the last report;

(c) a description of services and information describing where and how to secure the services; and

(d) a clear and understandable description of the health maintenance organization's method for resolving enrollee complaints.

[Acts 1975, 64th Leg., p. 521, ch. 214, § 11, eff. Dec. 1, 1975.]

Art. 20A.12. Complaint System

(a)(1) Every health maintenance organization shall establish and maintain a complaint system which has been approved by the commissioner after consultation with the board to provide reasonable procedures for the resolution of written complaints initiated by enrollees concerning health care services.

(2) Every health maintenance organization shall submit to the commissioner and to the board an annual report in a form prescribed by rule of the commissioner after consultation with the board.

(b) The commissioner or board may examine such complaint system.

[Acts 1975, 64th Leg., p. 521, ch. 214, § 12, eff. Dec. 1, 1975.]

Art. 20A.13. Protection Against Insolvency

Each health maintenance organization shall furnish a surety bond in a reasonable amount satisfactory to the commissioner or deposit with the commissioner cash or securities acceptable to the commissioner in at least the same amount as a guarantee that the obligations to the enrollees will be performed. The commissioner may waive this requirement when satisfied that the assets of the organization or its contracts with insurers, group hospital service corporations, governments, or other organizations are sufficient to assure reasonably the performance of its obligations.

[Acts 1975, 64th Leg., p. 521, ch. 214, § 13, eff. Dec. 1, 1975.]

Art. 20A.14. Prohibited Practices

(a) No health maintenance organization, or representatives thereof, may cause or knowingly permit the use of advertising which is untrue or misleading, solicitation which is untrue or misleading, or any form of evidence of coverage which is deceptive. For the purposes of this Act:

(1) a statement or item of information shall be deemed to be untrue if it does not conform to fact in any respect which is or may be significant to an enrollee of, or person considering enrollment in, a health care plan;

(2) a statement or item of information shall be deemed to be misleading, whether or not it

may be literally untrue, if, in the total context in which said statement is made or such item of information is communicated, such statement or items of information may be reasonably understood by a reasonable person, not possessing special knowledge, regarding health care coverage, as indicating any benefit or advantage or absence of any exclusion, limitation, or disadvantage of possible significance to an enrollee of or person considering enrollment in, a health care plan, if such benefit or advantage or absence of limitation, exclusion, or disadvantage does not in fact exist;

(3) an evidence of coverage shall be deemed to be deceptive if the evidence of coverage, taken as a whole, and with consideration given to typography and format, as well as language, shall be such as to cause a reasonable person, not possessing special knowledge regarding health care plans, and evidence of coverage therefor, to expect benefits, services, charges, or other advantages which the evidence of coverage does not provide or which the health care plan issuing such evidence of coverage does not regularly make available for enrollees covered under such evidence of coverage.

(b) Article 21.21, as amended, of the Insurance Code, shall be construed to apply to health maintenance organizations and health care plans and evidence of coverage, except to the extent that the commissioner determines that the nature of health maintenance organizations and health care plans and evidence of coverage renders such sections clearly inappropriate.

(c) An enrollee may not be cancelled or not renewed except for the failure to pay the charges for such coverage, or for such other reason as may be promulgated by rule of the commissioner.

(d) No health maintenance organization, unless licensed as an insurer, may use in its name, contracts, or literature, any of the words "insurance," "casualty," "surety," "mutual," or any other words descriptive of the insurance, casualty, or surety business or deceptively similar to the name or description of any insurance or surety corporation doing business in this state.

(e) No physician or health care provider or group of physicians or providers or health care facility or institution may exclude any other physician or provider from staff privileges, facilities, or institutions solely on the ground that such physician or provider is associated with a health maintenance organization issued a certificate of authority under this Act.

(f) Only those persons who comply with the provisions of this Act and are issued a certificate of authority by the commissioner may use the phrase "health maintenance organization" or "HMO" in the course of operation.

[Acts 1975, 64th Leg., p. 522, ch. 214, § 14, eff. Dec. 1, 1975.]

Art. 20A.15. Regulation of Agents

The commissioner may, after notice and hearings, promulgate such reasonable rules and regulations as are necessary to provide for the licensing of agents. An agent means a person directly or indirectly associated with a health care plan who engages in solicitation or enrollment.

[Acts 1975, 64th Leg., p. 523, ch. 214, § 15, eff. Dec. 1, 1975.]

Art. 20A.16. Powers of Insurers and Others

(a) An insurance company licensed in this state, pursuant to Chapter 2, 3, or 15 of the Insurance Code,¹ or a group hospital service corporation authorized to do business in this state, may either directly or through a subsidiary or affiliate organize and operate a health maintenance organization under the provisions of this Act. Notwithstanding any other law which may be inconsistent herewith, any two or more such insurance companies or group hospital service corporations, or subsidiaries or affiliates thereof, may jointly organize and operate a health maintenance organization under the provisions of this Act.

(b) Notwithstanding any provision of insurance or group hospital service corporation laws, an insurer or group hospital service corporation may contract with a health maintenance organization to provide insurance or similar protection against the cost of care provided by a health maintenance organization and to provide coverage in the event of failure of a health maintenance organization to meet its obligations. Among other things, under such contracts, the insurer or group hospital service corporation may make benefit payments to a health maintenance organization for health care services rendered by physicians or providers pursuant to health care plans.

[Acts 1975, 64th Leg., p. 523, ch. 214, § 16, eff. Dec. 1, 1975.]

¹ Articles 2.01 et seq., 3.01 et seq., 15.01 et seq.

Art. 20A.17. Examinations

(a) The commissioner may make an examination of the affairs of any health maintenance organization as it is deemed necessary, but not less frequently than once every three years.

(b) The board may make an examination concerning the quality of health care services of any health maintenance organization and providers with whom such organization has contracts, agreements, or other arrangements as often as it deems it necessary, but not less frequently than once every three years.

(c)(1) Every health maintenance organization shall make its books and records relating to its operation available for such examinations and in every way facilitate the examinations. Every physician and provider so examined need only make available for examination that portion of its books and records relevant to its relationship with the health maintenance organization.

(2) Medical, hospital and health records of enrollees and records of physicians and providers providing service under independent contract with a health maintenance organization shall only be subject to such examination as is necessary for an ongoing quality of health assurance program concerning health care procedures and outcome in accordance with an approved plan as provided for in this Act. Said plan shall provide for adequate protection of confidentiality of medical information and shall only be disclosed in accordance with applicable law and this Act and shall only be subject to subpoena upon a showing of good cause.

(3) For the purpose of examinations, the commissioner and board may administer oaths to and examine the officers and agents of the health maintenance organization and the principals of such physicians and providers concerning their business.

(d) Article 1.19, as amended, of the Insurance Code shall be construed to apply to health maintenance organizations, except to the extent that the commissioner determines that the nature of the examination of a health maintenance organization renders such clearly inappropriate.

[Acts 1975, 64th Leg., p. 523, ch. 214, § 17, eff. Dec. 1, 1975.]

Art. 20A.18. Management and Exclusive Contracts

(a) No health maintenance organization may enter into an exclusive agency contract or management contract, unless the contract is first filed with the commissioner and approved under this section within 30 days after filing or such reasonable extended period as the commissioner may specify by notice given within the 30 days.

(b) The commissioner shall disapprove a contract submitted under Subsection (a) of this section if he finds that:

(1) it subjects the health maintenance organization to excessive charges;

(2) the contract extends for an unreasonable period of time;

(3) the contract does not contain fair and adequate standards of performance;

(4) the persons empowered under the contract to manage the health maintenance organization are not sufficiently trustworthy, competent, experienced, and free from conflict of interest to manage the health maintenance organization with due regard for the interests of its enrollees, creditors, or the public; or

(5) the contract contains provisions which impair the interests of the organization's enrollees, creditors, or the public in this state.

[Acts 1975, 64th Leg., p. 524, ch. 214, § 18, eff. Dec. 1, 1975.]

Art. 20A.19. Hazardous Financial Condition

(a) Whenever the financial condition of any health maintenance organization indicates a condition such that the continued operation of the health maintenance organization might be hazardous to its enrollees, creditors, or the general public, then the commissioner of insurance may, after notice and hearing, order the health maintenance organization to take such action as may be reasonably necessary to rectify the existing condition, including but not necessarily limited to one or more of the following steps:

- (1) to reduce the total amount of present and potential liability for benefits by reinsurance;
- (2) to reduce the volume of new business being accepted;
- (3) to reduce expenses by specified methods;
- (4) to suspend or limit the writing of new business for a period of time; or
- (5) to increase the health maintenance organization's capital and surplus by contribution.

(b) The commissioner is authorized, by rules and regulations, to fix uniform standards and criteria for early warning that the continued operation of any health maintenance organization might be hazardous to its enrollees, creditors, or the general public, and to fix standards for evaluating the financial condition of any health maintenance organization, which standards shall be consistent with the purposes expressed in Subsection (a) of this section.

[Acts 1975, 64th Leg., p. 524, ch. 214, § 19, eff. Dec. 1, 1975.]

Art. 20A.20. Suspension or Revocation of Certificate of Authority

(a) The commissioner may suspend or revoke any certificate of authority issued to a health maintenance organization under this Act if the commissioner finds that any of the following conditions exist:

(1) The health maintenance organization is operating significantly in contravention of its basic organizational documents, its health care plan, or in a manner contrary to that described in and reasonably inferred from any other information submitted under Section 4 of this Act, unless amendments to such submissions have been filed with and approved by the commissioner.

(2) The health maintenance organization issues evidence of coverage or uses a schedule of charges for health care services which does not comply with the requirements of Section 9 of this Act.

(3) The health care plan does not provide or arrange for basic health care services.

(4) The board certifies to the commissioner that:

(A) the health maintenance organization does not meet the requirements of Section 5(a)(2) of this Act; or

(B) the health maintenance organization is unable to fulfill its obligation to furnish health care services as required under its health care plan.

(5) The health maintenance organization is no longer financially responsible and may be reasonably expected to be unable to meet its obligations to enrollees or prospective enrollees.

(6) The health maintenance organization has failed to implement a mechanism affording the enrollees an opportunity to participate in matters of policy and operation under Section 7(b) of this Act.

(7) The health maintenance organization has failed to implement the complaint system required by Section 12 of this Act in a manner to resolve reasonably valid complaints.

(8) The health maintenance organization, or any person on its behalf, has advertised or merchandised its services in an untrue, misrepresentative, misleading, deceptive, or unfair manner.

(9) The continued operation of the health maintenance organization would be hazardous to its enrollees.

(10) The health maintenance organization has otherwise failed to comply substantially with this Act, and any rule and regulation thereunder.

(b) A certificate of authority shall be suspended or revoked only after compliance with this section.

(c) When the certificate of authority of a health maintenance organization is suspended, the health maintenance organization shall not, during the period of such suspension, enroll any additional enrollees except newborn children, or newly acquired dependents of existing enrollees, and shall not engage in any advertising or solicitation whatsoever.

(d) When the certificate of authority of a health maintenance organization is revoked, such organization shall proceed, immediately following the effective date of the order of revocation, to wind up its affairs, and shall conduct no further business except as may be essential to the orderly conclusion of the affairs of such organization. It shall engage in no further advertising or solicitation whatsoever. The commissioner may, by written order, permit such further operation of the organization, as he may find to be in the best interest of the enrollees, to the end that the enrollees will be afforded the greatest practical opportunity to obtain continuing health care coverage.

[Acts 1975, 64th Leg., p. 525, ch. 214, § 20, eff. Dec. 1, 1975.]

Art. 20A.21. Rehabilitation, Liquidation, or Conservation of Health Maintenance Organizations

All rehabilitation, liquidation, or conservation of a health maintenance organization shall be considered to be rehabilitation, liquidation, or conservation of an insurance company and shall be conducted under the supervision of the commissioner pursuant to Articles 21.28, as amended, 21.28-A, and 21.28-B of the Insurance Code. The commissioner may also order the conservation, liquidation, or rehabilitation of a health maintenance organization if the commissioner is of the opinion that the continued operation of the health maintenance organization would be hazardous either to the enrollees or to the people of the state.

[Acts 1975, 64th Leg., p. 526, ch. 214, § 21, eff. Dec. 1, 1975.]

Art. 20A.22. Rules and Regulations

The commissioner may, after notice and hearing, promulgate such reasonable rules and regulations as are necessary and proper to carry out the provisions of this Act.

[Acts 1975, 64th Leg., p. 526, ch. 214, § 22, eff. Dec. 1, 1975.]

Art. 20A.23. Appeals

(a) Any person who is affected by any rule, ruling, or decision of the commissioner or board shall have the right to have such rule, ruling, or decision reviewed by the State Board of Insurance by making an application to the State Board of Insurance. Such application shall state the identities of the person, the rule, ruling, or decision complained of, the interest of the person in such rule, ruling, or decision, the grounds of such objection, the action sought of the State Board of Insurance, and the reasons and grounds for such action by the State Board of Insurance. The original shall be filed with the chief clerk of the State Board of Insurance together with a certification that a true and correct copy of such application has been filed with the commissioner. Within 30 days after the application is filed, and after 10 days' written notice to all parties of record, the State Board of Insurance shall review the action complained of in a public hearing and render its decision at the earliest possible date thereafter. The State Board of Insurance shall make such other rules and regulations with respect to such applications and their consideration as it considers to be advisable, not inconsistent with this Act. Said application shall have precedence over all other business of a different nature pending before said State Board of Insurance.

(b) In the public hearing, any and all evidence and matters pertinent to the appeal may be submitted to the State Board of Insurance whether included in the application or not.

(c) If any person who is affected by any rule, ruling, or decision of the State Board of Insurance be dissatisfied with any rule, ruling, or decision adopted by the commissioner, board, or State Board of Insurance, that person, after failing to get relief from the State Board of Insurance, may file a petition setting forth the particular objection to such rule, ruling, or decision, or either or all of them, in the district court of Travis County, Texas, and not elsewhere, against the State Board of Insurance as a defendant. Said action shall have precedence over all other causes on the docket of a different nature. Said appeal shall be filed within 20 days after the State Board of Insurance has entered an order. The decision of the State Board of Insurance shall not be enjoined or stayed except on application to such district court after notice to the State Board of Insurance. The proceedings on appeal shall be under the substantial evidence rule, and such appeal shall be taken to a district court in Travis County, Texas. Either party to said action may appeal to the appellate court having jurisdiction of said cause and said appeal shall at once be returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The State Board of Insurance shall not be required to give any appeal bond in any cause arising hereunder.

[Acts 1975, 64th Leg., p. 526, ch. 214, § 23, eff. Dec. 1, 1975.]

Art. 20A.24. Violation of Act

A person or an agent or an officer of a health maintenance organization who wilfully violates this Act or the rules promulgated pursuant to this Act or who knowingly makes a false statement with respect to a report or a statement required by this Act is guilty of a Class B misdemeanor.

[Acts 1975, 64th Leg., p. 527, ch. 214, § 24, eff. Dec. 1, 1975.]

Art. 20A.25. Confidentiality of Medical and Health Information

Any data or information pertaining to the diagnosis, treatment, or health of any enrollee or applicant obtained from such person or from any physician or provider by any health maintenance organization shall be held in confidence and shall not be disclosed to any person except to the extent that it may be necessary to carry out the purposes of this Act; or upon the express consent of the enrollee or applicant; or pursuant to a statute or court order for the production of evidence or to discovery therefor; or in the event of claim or litigation between such person and the health maintenance organization wherein such data or information is pertinent. The health maintenance organization shall be entitled to claim such statutory privilege against such disclosure which the physician or provider who furnishes such information to the health maintenance organization is entitled to claim.

[Acts 1975, 64th Leg., p. 527, ch. 214, § 25, eff. Dec. 1, 1975.]

Art. 20A.26. Statutory Construction in Relationship to Other Laws

(a) Except as otherwise provided in this Act, provisions of the insurance law and provisions of the group hospital service corporation laws shall not be applicable to any health maintenance organization granted a certificate of authority under this Act. This provision shall not apply to an insurance company or a group hospital service corporation licensed and regulated pursuant to the insurance laws or the group hospital service corporation laws of this state except with respect to its health maintenance organization's activities authorized and regulated pursuant to this Act.

(b) Solicitation of enrollees by health maintenance organizations granted a certificate of authority, or their representatives or agents, shall not be construed to violate any provision of law relating to solicitation or advertising by providers or physicians.

(c) Nothing in this Act shall be construed as permitting the practice of medicine as defined by the laws of this state. Nothing in this Act shall be construed to repeal, modify, or amend Section 3, Chapter 627, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4505, Vernon's Texas Civil Statutes), and no health maintenance organization shall be exempt from same.

(d) The provision of factually accurate information regarding coverage, rates, location and hours of service, and names of affiliated institutions, physicians, and providers by health maintenance organizations or its personnel to potential enrolled participants shall not be construed to be violative of any provision of law relating to solicitation or advertising by physicians or providers. Such information with respect to providers or physicians shall in no manner be contrary to or in conflict with any law or ethics regulating the practice of practitioners of any professional service rendered through or in connection with such providers or physicians.

(e) Any health maintenance organization authorized under this Act which contracts with a health facility or enters into an independent contractual arrangement with physicians or providers organized on a group practice or individual practice basis shall not by virtue of any contracts or arrangements be deemed to have entered into a conspiracy in restraint of trade in violation of Sections 15.01 through 15.34 of the Business & Commerce Code.

(f)(1) This Act shall not be applicable to any person licensed to practice medicine in this state, nor to any professional association organized under the Texas Professional Association Act, as amended (Article 1528f, Vernon's Texas Civil Statutes), nor to any nonprofit corporation organized and complying with Section 4, Chapter 627, Acts of the 62nd Legislature, Regular Session, 1971 (Article 4509a, Vernon's Texas Civil Statutes), so long as that person,

professional association, or nonprofit corporation is engaged in the delivery of health or medical care that is within the definition of the practice of medicine as defined in Section 2(k) of this Act.

(2) Any person, professional association, or nonprofit corporation referred to above, which shall employ or enter into a contractual arrangement with a provider or group of providers to furnish basic health care services as defined in Section 2(a) of this Act, would be subject to the provisions of this Act, and shall be required to obtain a certificate of authority from the commissioner.

(3) Notwithstanding any other law, any person, professional association, or nonprofit corporation referred to above, which conducts activities permitted by law but which do not require a certificate of authority under this Act, and in the process contracts with one or more physicians, professional associations, or nonprofit corporations referred to above, shall not, by virtue of such contract or arrangement, be deemed to have entered into a conspiracy in restraint of trade in violation of Sections 15.01 through 15.34 of the Business & Commerce Code.

(4) Notwithstanding any other law, provisions of the insurance law and the provisions of the group hospital service corporation law shall not be applicable to the above persons, professional associations, or nonprofit corporations.

(g)(1) No health maintenance organization shall be exempt from any statute that provides for the regulation and certification of need of health care facility construction, expansion, or other modification, or the institution of a health care service through the issuance of a certificate of need, if at the time of establishment of operation or during the course of operation of the health maintenance organization it becomes subject to the provisions of that statute.

(2) If the proposed plan of operation of the health maintenance organization includes the provision of any facility and/or service that makes the health maintenance organization subject to the statute mentioned in Subdivision (1) of this subsection, the commissioner may not issue a certificate of authority until the commissioner has received a certified copy of the certificate of need granted to the health maintenance organization by the agency responsible for the issuance of the certificate of need.

[Acts 1975, 64th Leg., p. 527, ch. 214, § 26, eff. Dec. 1, 1975.]

Art. 20A.27. Public Record

All applications, filings, and reports required under this Act shall be treated as public documents, except that examination reports shall be considered confidential documents which may be released if, in the opinion of the commissioner, it is in the public interest.

[Acts 1975, 64th Leg., p. 529, ch. 214, § 27, eff. Dec. 1, 1975.]

Art. 20A.28. Authority to Contract

The commissioner or board, in carrying out their obligations under this Act, may contract with other state agencies or, after notice and hearing, with other qualified persons to make recommendations concerning the determinations to be made by the commissioner or board.

[Acts 1975, 64th Leg., p. 529, ch. 214, § 28, eff. Dec. 1, 1975.]

Art. 20A.29. Physician-Patient Relationship

This Act shall not be construed to:

(a) authorize any person, other than a duly licensed physician or practitioner of the healing arts, acting within the scope of his or her license, to engage, directly or indirectly, in the practice of medicine or any healing art, or

(b) authorize any person to regulate, interfere, or intervene in any manner in the practice of medicine or any healing art.

[Acts 1975, 64th Leg., p. 529, ch. 214, § 29, eff. Dec. 1, 1975.]

Art. 20A.30. Officers and Employees Bond

Each health maintenance organization shall, by resolution adopted and entered on its minute book, a copy of which properly certified to by the president, secretary, or general manager shall be filed with the commissioner, designate therein some officer who shall be responsible in the handling of the funds of the health maintenance organization. Said health maintenance organization shall make and file for such officer a surety bond with a corporate surety company authorized to write surety bonds in this state, as surety, satisfactory and payable to the State Board of Insurance in the sum of not less than \$25,000 for the use and benefit of said corporation, which said bond shall obligate the principal and surety to pay such pecuniary loss as the health maintenance organization shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, or wilful misapplication on the part of such officer, either directly or alone or in connivance with others, while employed as such officer or exercising powers of such office. In lieu of any such bond, any such officer may deposit with the commissioner cash, or securities approved by the commissioner, which cash or securities shall be in the amount and subject to the same conditions as provided for in said bond.

In addition to the bond required in the preceding paragraph, each health maintenance organization shall procure for all other office employees, or other persons who may have access to any of its funds, separate bonds or blanket bonds with some surety licensed by the State Board of Insurance to do business in Texas, in an amount or amounts fixed by the commissioner with a minimum of \$1,000 and a maximum of \$10,000, satisfactory and payable to the commissioner for the use and benefit of the health

maintenance organization obligating the principal and surety to pay each pecuniary loss as the health maintenance organization shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction, or wilful misapplication on the part of such persons, either directly and alone, or in connivance with others. Successive recoveries on any of the bonds provided from this article may be had on such bonds until same are exhausted.

[Acts 1975, 64th Leg., p. 529, ch. 214, § 30, eff. Dec. 1, 1975.]

Art. 20A.31. Injunctions

When it appears to the commissioner that a health maintenance organization is violating or has violated this Act or any rule or regulation issued pursuant to this Act, the commissioner may bring suit in a district court of Travis County to enjoin the violation and for such other relief as the court may deem appropriate.

[Acts 1975, 64th Leg., p. 529, ch. 214, § 31, eff. Dec. 1, 1975.]

Art. 20A.32. Fees

Every organization subject to this chapter shall pay to the commissioner the following fees:

(a) for filing a copy of its original application for certificate of authority or amendment thereto, \$250;

(b) for filing each annual report pursuant to Section 10 of this Act, \$100;

(c) the expenses of any examinations conducted pursuant to this Act; and

(d) for every other filing required by this Act, \$25.

[Acts 1975, 64th Leg., p. 530, ch. 214, § 32, eff. Dec. 1, 1975.]

Art. 20A.33. Taxation

(a) To defray the expense of carrying out the provisions of this Act, there shall be annually assessed and collected by the State of Texas, through the State Board of Insurance, from each corporation operating under this Act, in addition to all other taxes now imposed, or which may hereafter be imposed by law, a tax of one percent of all revenues received by such corporation in return for issuance of health maintenance certificates or contracts in this state, according to the reports made to the State Board of Insurance as required by law. Said taxes, when collected, shall be placed in a separate fund with the State Treasurer which shall be kept separate and apart from other funds and money in his hands, and shall be known as the Health Maintenance Organization Fund, said fund to be expended during the current and succeeding years, or so much thereof as may be necessary, in carrying out such provisions. Such expenditures shall not exceed in the aggregate the sum assessed and collected from such corporations; and should there be an unexpended balance at the end of any year, the State Board

of Insurance shall reduce the assessment for the succeeding year so that the amount produced and paid into the State Treasury together with said unexpended balance in the treasury will be sufficient to pay all expenses of carrying out the provisions of this Act, which funds shall be paid out and filed by a majority of the State Board of Insurance when the comptroller shall issue warrants therefor. Any amount remaining in said fund at the end of any year shall be carried over and expended in accordance with the provisions of this article during the subsequent year or years. Provided, that no expenditures shall be made from said fund except under the authority of the legislature as set forth in the general appropriations bill.

(b) Each corporation complying with requirements of this Act shall on or before the first day of March of each year file its annual statement showing the gross amount of revenues collected during the year ending December 31 preceding, and each such corporation if organized under the laws of this state shall pay an annual tax for the gross amounts of revenues collected for the issuance of health maintenance certificates or contracts in accordance with Article 7064a, Revised Civil Statutes of Texas, 1925, as amended; if such corporation is not organized under Texas laws, said corporations shall pay an annual tax for the gross amounts of revenues collected for the issuance of health maintenance certificates or contracts in accordance with Article 4769, Revised Civil Statutes of Texas, 1925, as amended.

Upon receipt of the sworn statement above provided, the State Board of Insurance shall certify to the State Treasurer the amount of taxes due by such corporation which shall be paid to the State Treasurer on or before March 15 following, and the State Treasurer shall issue his receipt therefor as evidence of the payment of such tax. Such taxes shall be for and on account of business transacted within this state during the calendar year ending December 31 in which such payments were collected, or for that portion of the year during which the corporation transacted business in this state.

(c) Each such corporation shall be subject to the provisions of Articles 7074 through 7078 of the Revised Civil Statutes of Texas, 1925, as amended. [Acts 1975, 64th Leg., p. 530, ch. 214, § 33, eff. Dec. 1, 1975.]

CHAPTER TWENTY-ONE. GENERAL PROVISIONS

SUBCHAPTER E. MISCELLANEOUS PROVISIONS

- Article
- 21.32A. Legality of Dividend [NEW].
- 21.35A. Coverage Under Group Insurance and Group Hospital Plans for Psychological Services [NEW].
- 21.39-B. Restriction on Transactions with Funds and Assets [NEW].
- 21.49-3. Texas Medical Liability Insurance Underwriting Association Act [NEW].

- Article
- 21.49-4. Self-Insurance Trusts [NEW].
- 21.49-5. [Blank].
- 21.49-6. Self-Insurance Trusts for Banks [NEW].
- 21.52. Right to Select Practitioner under Health and Accident Policies [NEW].

SUBCHAPTER A. AGENTS AND AGENTS' LICENSES

Art. 21.05. Who May Not Be Agents

No stock company shall be licensed or granted a certificate of authority as the agent or representative of any life insurance company in soliciting, selling or in any manner placing life insurance policies or contracts in the State.

[Amended by Acts 1977, 65th Leg., p. 1421, ch. 579, § 1, eff. Aug. 29, 1977.]

Art. 21.07. Licensing of Agents

Applicability of Act

Sec. 1. No person or corporation shall act as an agent of any (i) local mutual aid association, (ii) local mutual burial association, (iii) statewide mutual assessment corporation, (iv) stipulated premium company, (v) county mutual insurance company, (vi) casualty company writing accident and health insurance, or (vii) any other type of insurance carrier licensed to do business in the State of Texas and which insurance carrier's agents are required to be licensed under the provisions of Article 21.07, Texas Insurance Code, 1951, as amended, on the date that this Act shall become effective, unless he or it shall have first procured a license from the State Board of Insurance as in this Article 21.07, as amended hereby, is provided, and no such insurance carrier shall appoint any person or corporation to act as its agent unless such person or corporation shall have obtained a license under the provisions of this Article, and no such person or corporation who obtains a license shall engage in business as an agent until he or it shall have been appointed to act as an agent by some duly authorized insurance carrier designated by the provisions of this Article 21.07 and authorized to do business in the State of Texas. Any person or corporation desiring to act as an agent of any insurance carrier licensed to do business in the State of Texas and writing health and accident insurance may obtain a separate license as an agent to write health and accident insurance provided such person or corporation complies with the provisions of this Article and has been appointed to act as an agent by some duly authorized insurance carrier authorized to do health and accident insurance business in the State of Texas.

Application for License; To Whom License May Be Issued

Sec. 2. (a) Hereafter, when any person or corporation shall desire to become a agent for a (i) local mutual aid association, (ii) a local mutual burial

association, (iii) a statewide mutual assessment corporation, (iv) a stipulated premium company, (v) a county mutual insurance company, (vi) a casualty company writing accident and health insurance, or (vii) any other type of insurance carrier licensed to do business in the State of Texas and which insurance carrier's agents are required to be licensed under the provisions of Article 21.07, Texas Insurance Code, 1951, as amended, such person or corporation shall, in such form and giving such information as may be reasonably required, make application to the State Board of Insurance for a license to act as an agent. The application shall be accompanied by a certificate on forms to be prescribed and furnished by the State Board of Insurance and signed by an officer or properly authorized representative of the insurance carrier the applicant proposes to represent, stating that the insurance carrier has investigated the character and background of the applicant and is satisfied that he or its officers, directors, and shareholders are trustworthy and qualified to hold himself or the corporation out in good faith to the general public as an insurance agent, and that the insurance carrier desires that the applicant act as an insurance agent to represent it in this state.

(b) The Board shall issue a license to a corporation if the Board finds:

(1) That the corporation is a Texas corporation organized or existing under the Texas Business Corporation Act having its principal place of business in the State of Texas and having as one of its purposes the authority to act as an agent covered by this Article;

(2) That every officer, director, and shareholder of the corporation is individually licensed under the provisions of this Article; and

(3) That such corporation will have the ability to pay any sums up to \$25,000 which it might become legally obligated to pay on account of any claim made against it by any customer and caused by any negligent act, error, or omission of the corporation or any person for whose acts the corporation is legally liable in the conduct of its business under this Article. The term "customer" means any person, firm, or corporation to whom such corporation sells or attempts to sell a policy of insurance, or from whom such corporation accepts an application for insurance. Such ability shall be proven in one of the following ways:

(A) an errors and omissions policy issued by an insurance company licensed to do business in the State of Texas insuring such corporation against errors and omissions in at least the sum of \$50,000 with no more than a \$2,500 deductible feature;

(B) a bond executed by such corporation as principal and a surety company authorized to do business in this State, as surety, in the principal sum of \$25,000, payable to the State Board of Insurance for the use and benefit of customers of such corporation, conditioned that such corporation shall pay any final judgment recovered against it by any customer; or

(C) a deposit of cash or securities of the class authorized by Articles 2.08 and 2.10, Insurance Code, as amended, having a fair market value of \$25,000 with the State Treasurer. The State Treasurer is directed to accept and receive such deposit and hold it exclusively for the protection of any customer of such corporation recovering a final judgment against such corporation. Such deposit may be withdrawn only upon filing with the Board evidence satisfactory to it that the corporation has withdrawn from business and has no unsecured liabilities outstanding, or that such corporation has provided for the protection of its customers by furnishing an errors and omissions policy or a bond as provided. Securities so deposited may be exchanged from time to time for other qualified securities.

A binding commitment to issue such a policy or bond, or the tender of such securities, shall be sufficient in connection with any application for license.

Nothing contained herein shall be construed to permit any unlicensed employee or agent of any corporation to perform any act of an agent under this Article without obtaining a license.

If at any time, any corporation holding an agent's license does not maintain the qualifications necessary to obtain a license, the license of such corporation to act as an agent shall be cancelled or denied in accordance with the provisions of Sections 10 and 11 of this Article; provided, however, that should any person who is not a licensed agent under this Article acquire shares in such a corporation by devise or descent, he shall have a period of 90 days from date of acquisition within which to obtain a license or to dispose of the shares of a person licensed under this Article.

Should such an unlicensed person acquire shares in a corporation and not dispose of them within a period of 90 days to a licensed agent, then they must be purchased by the corporation for their book value, that is, the value of said shares of stock as reflected by the regular books and records of said corporation, as of the date of the acquisition of said shares by said unlicensed person. Should the corporation fail or refuse to so purchase such shares, its license shall be cancelled.

Any such corporation shall have the power to redeem the shares of any shareholder, or the shares of a deceased shareholder, upon such terms as may be agreed upon by the board of directors and such shareholder or his personal representative, or at a price and upon such terms as may be provided in the articles of incorporation, the bylaws, or an existing contract entered into between the shareholders of the corporation.

Each corporation licensed as an agent under this Article shall file, under oath, a list of the names and addresses of all of its officers, directors, and shareholders with its yearly application for renewal license.

Each corporation shall immediately notify the State Board of Insurance upon any change in its officers, directors, or shareholders.

No other corporation may own any interest in a corporation licensed under this Article, and each owner of an interest in a corporation licensed under this Article shall be a natural person who holds a valid license issued under this Article.

Issuance of License Under Certain Circumstances

Sec. 3. After the State Board of Insurance has determined that such applicant is of good character and trustworthy, the State Board of Insurance shall issue a license to such person or corporation in such form as it may prepare authorizing such applicant to write the types of insurance authorized by law to be issued by applicant's appointing insurance carrier, except that such applicant shall not be authorized to write health and accident insurance unless: (i) applicant, if not a corporation, shall have first passed a written examination as provided for in this Article 21.07, as amended, or (ii) applicant will act only as a ticket-selling agent of a public carrier with respect to accident life insurance covering risks of travel or as an agent selling credit life, health and accident insurance issued exclusively in connection with credit transactions, or (iii) applicant will write policies or riders to policies providing only lump sum cash benefits in the event of the accidental death, or death by accidental means, or dismemberment, or providing only ambulance expense benefits in the event of accident or sickness.

Examination of Applicant for License to Write Health and Accident Insurance

Sec. 4. (a) Each applicant for a license under the provisions of this Article 21.07, Texas Insurance Code, 1951, as amended, who desires to write health and accident insurance, other than as excepted in Section 3 of this Article 21.07, within this State shall submit to a personal written examination prescribed and administered in the English or Spanish language by the State Board of Insurance to determine his competency with respect to health and accident in-

surance and his familiarity with the pertinent provisions of the laws of the State of Texas relating to health and accident insurance, and shall pass the same to the satisfaction of the State Board of Insurance; except that no written examination shall be required of:

(i) An applicant for the renewal of a license issued by the State Board of Insurance pursuant to Article 21.07, Texas Insurance Code, 1951, as amended, which is currently in force at the effective date of this Act;

(ii) An applicant whose license expired less than one year prior to the date of application may, in the discretion of the State Board of Insurance, be issued a license without written examination, provided such prior license granted such applicant the right to sell health and accident insurance; or

(iii) An applicant that is a corporation.

(b)(i) The State Board of Insurance shall, within sixty (60) days from the effective date of this Act, establish reasonable rules and regulations with respect to the scope, type and conduct of such written examination and the times and places within this State where such examinations shall be held; applicants, shall, however, be permitted to take such examinations at least once in each week at the office of the State Board of Insurance. The rules and regulations of the State Board of Insurance shall designate text books, manuals and other materials to be studied by applicants in preparation for examination pursuant to this Section. Such text books, manuals and other materials may consist of matter available to applicants by purchase from the publisher or may consist of matter prepared at the direction of the State Board of Insurance and distributed to applicants upon request therefor and payment of the reasonable cost thereof. All examination questions shall be prepared from the contents of the text books, manuals and other materials designated or prepared by the State Board of Insurance pursuant to this Section and such questions shall be limited to and substantially similar to the questions relating to health and accident insurance contained in the written examination prescribed by the State Board of Insurance pursuant to Article 21.07-1 of this Insurance Code. The State Board of Insurance shall charge each applicant a fee of \$10.00 for the privilege of taking such written examination and which fee shall not be returned under any circumstance other than for failure to appear and take the examination after the applicant has given at least 24 hours' notice of an emergency situation to the State Board of Insurance and received board approval. A new examination fee shall be paid for each and every examination.

[See Compact Edition, Volume 2 for text of 4(b)(ii) to (e)]

Failure of Applicant to Qualify for License

Sec. 5. If the State Board of Insurance is not satisfied that the applicant for a license is trustworthy and of good character, or, if applicable, that the applicant, if required to do so, has not passed the written examination to the satisfaction of the State Board of Insurance, the State Board of Insurance shall forthwith notify the applicant and the insurance carrier in writing that the license will not be issued to the applicant, and return to said agent the \$25.00 fee for application for license and the \$8.00 fee for appointment.

Agent May Be Licensed to Represent Additional Insurers

Sec. 6. Any agent licensed under this Article may represent and act as an agent for more than one insurance carrier at any time while his or its license is in force, if he or it so desires. Any such agent and the insurance carrier involved must give notice to the State Board of Insurance of any additional appointment or appointments authorizing him or it to act as agent for an additional insurance carrier or carriers. Such notice must set forth the insurance carrier or carriers which the agent is then licensed to represent, and shall be accompanied by a certificate from each insurance carrier to be named in each additional appointment, that said insurance carrier desires to appoint the applicant as its agent. This notice shall also contain such other information as the State Board of Insurance may require. The agent shall be required to pay a fee of \$8.00 for each additional appointment applied for, which fee shall accompany the notice.

Expiration and Renewal of License

Sec. 7. (a) Each license issued to an agent shall expire two years following the date of issue, unless prior thereto it is suspended or revoked by the State Board of Insurance or the authority of the agent to act for the insurance carrier is terminated.

(b) Licenses which have not expired or which have not been suspended or revoked may be renewed upon request in writing of the agent.

[See Compact Edition, Volume 2 for text of (c)]

(d) The appointment or appointments given under any Section of this Article authorizing the agents to act as an agent for an insurance carrier shall continue in full force and effect without the necessity of renewal until terminated and withdrawn by the insurance carrier in accordance with Section 9 of this Article 21.07 or otherwise terminated in accordance with this Article 21.07, and each renewal license issued to the agent shall authorize him or it to represent and act for the insurance carriers for

which he or it holds an appointment until the appointment is so terminated, and the agent shall prima facie be deemed, for the purpose of this Article 21.07, to be the agent of the appointing insurance carriers, provided that on or before April 1st of each and every calendar year, commencing on or before April 1, 1970, each such insurance carrier so appointing such agent shall file with the State Board of Insurance a certificate, upon forms promulgated by the State Board of Insurance, certifying that such insurance carrier desires to continue the appointment of such agent, and if such insurance carrier shall for any reason fail to file such certificate for any year as relates to such agent, it shall be deemed and considered for all purposes that such insurance carrier has terminated the appointment of such agent in like manner as if compliance had been made by such insurance carrier with Section 9 of this Article.

[See Compact Edition, Volume 2 for text of 8 and 9]

Denial, Refusal, Suspension or Revocation of Licenses

Sec. 10. (a) A license may be denied, or a license duly issued may be suspended or revoked or the renewal thereof refused by the State Board of Insurance if, after notice and hearing as hereafter provided, it finds that the applicant, individually or through any officer, director, or shareholder, for, or holder of, such license:

- (1) Has wilfully violated any provision of the insurance laws of this State: or
- (2) Has intentionally made a material misstatement in the application for such license; or
- (3) Has obtained, or attempted to obtain, such license by fraud or misrepresentation; or
- (4) Has misappropriated or converted to his or its own use or illegally withheld money belonging to an insurance carrier or an insured or beneficiary; or
- (5) Has otherwise demonstrated lack of trustworthiness or competence to act as an agent; or
- (6) Has been guilty of fraudulent or dishonest practices; or
- (7) Has materially misrepresented the terms and conditions of any insurance policy or contract; or
- (8) Has made or issued, or caused to be made or issued, any statement misrepresenting or making incomplete comparisons regarding the terms or conditions of any insurance contract legally issued by any insurance carrier, for the purpose of inducing or attempting to induce the owner of such contract to forfeit or surrender such contract or allow it to lapse for the purpose of replacing such contract with another; or
- (9) Is not of good character or reputation.

(b) Before any license shall be denied (except for failure to pass a required written examination), or suspended or revoked, or the renewal thereof refused hereunder, the Board shall give notice of its intention so to do, by registered mail, to the applicant for, or holder of, such license and the insurance carrier whom he or it represents or who desires that he or it be licensed, and shall set a date not less than twenty days from the date of mailing such notice when the applicant or licensee and a duly authorized representative of the insurance carrier may appear to be heard and produce evidence. In the conduct of such hearing, the Board or any regular salaried employee specially designated by it for such purpose shall have power to administer oaths, to require the appearance of and examine any person under oath, and to require the production of books, records or papers relevant to the inquiry upon its own initiative or upon the request of the applicant or licensee. Upon termination of such hearings, findings shall be reduced to writing and, upon approval by the Board, shall be filed in its office and notice of the findings sent by registered mail to the applicant or licensee and the insurance carrier concerned.

(c) No applicant or licensee whose license has been denied, refused or revoked hereunder (except for failure to pass a required written examination) shall be entitled to file another application for a license as an agent within one year from the effective date of such denial, refusal or revocation, or, if judicial review of such denial, refusal or revocation is sought, within one year from the date of final court order or decree affirming such action. Such application, when filed after one year, may be refused by the Board unless the applicant shows good cause why the denial, refusal or revocation of his or its license shall not be deemed a bar to the issuance of a new license.

Judicial Review of Acts of State Board of Insurance

Sec. 11. If the said Board shall refuse an application for any license provided for in this Article, or shall suspend, revoke or refuse to renew any such license or permit at said hearing, then any such applicant or accused may appeal from said order by filing suit against the State Board of Insurance as defendant in any of the District Courts of Travis County, Texas, or in any District Court in the county of the applicant's residence or principal place of business, and not elsewhere, within twenty (20) days from the date of the order of said State Board of Insurance.

Said action shall have precedence over all other causes of a different nature on the docket. The action shall not be limited to questions of law and shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court.

Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The State Board of Insurance shall not be required to give any appeal bond in any cause arising hereunder.

Penalty

Sec. 12. Any person or officer, director, or shareholder of a corporation required to be licensed by this Article who individually, or as an officer or employee of an insurance carrier, or other corporation, wilfully violates any of the provisions of this Article shall, in addition to any other penalty specifically provided, be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500.00 or imprisoned not more than six (6) months, or both, each such violation being a separate offense hereunder. In addition, if such offender or the corporation of which he is an officer, director, or shareholder holds a license as an agent, such license shall automatically expire upon such conviction.

[See Compact Edition, Volume 2 for text of 13]

Fees and Use of Funds

Sec. 14. (a) It shall be the duty of the State Board of Insurance to collect from every agent of any insurance carrier writing insurance in the State of Texas under the provisions of this Article, a licensing fee and an initial appointment fee, as provided in Subsection (b) of this section, for each and every appointment by any insurance carrier, which fees shall constitute a fund to be used by the State Board of Insurance to enforce the provisions of this Article 21.07 and all laws of this State governing and regulating agents for such insurance carriers, as provided in Subsection (b) of this section.

(b) For those agents subject to licensing under the provisions of this Act, the license fee shall be Twenty-five Dollars (\$25) and Eight Dollars (\$8) for each appointment.

[See Compact Edition, Volume 2 for text of 14(c)]

Dual Licensing

Sec. 15. Any person or corporation that holds a license under the provisions of Article 21.07-1, Texas Insurance Code, 1951, as amended, shall be entitled to receive a license under this Article 21.07, and be authorized to write health and accident insurance without being required to pass the examination as required under this Article 21.07. Any person or corporation that holds a license under the provisions of Article 21.14, Texas Insurance Code, 1951, as amended, shall be entitled to write health and acci-

dent insurance written by those companies for whom he or it is licensed under Article 21.14 without being required to pass the examination required under this Article 21.07.

[See Compact Edition, Volume 2 for text of 16 and 17]

[Amended by Acts 1975, 64th Leg., p. 2372, ch. 731, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 386, ch. 192, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 387, ch. 193, §§ 1 to 4, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1421, ch. 579, §§ 2, 3, 4, eff. Aug. 29, 1977.]

Art. 21.07-1. Legal Reserve Life Insurance Agents; Examination; Licenses

Legal Reserve Life Insurance Agent Defined

Sec. 1.

[See Compact Edition, Volume 2 for text of 1(a)]

(b) The term "life insurance agent" for the purpose of this Act means any person or corporation that is an authorized agent of a legal reserve life insurance company, and any person who is a sub-agent of such agent, who acts as such in the solicitation of, negotiation for, or procurement of, or collection of premiums on, an insurance or annuity contract with a legal reserve life insurance company; except that the term "life insurance agent" shall not include:

[See Compact Edition, Volume 2 for text of 1(b)(1) to (5), (c) to (g)]

Acting for Unauthorized Companies Prohibited

Sec. 2. (a) No person or corporation shall, within this State, solicit, procure, receive, or forward applications for life insurance or annuities, or issue or deliver policies for, or in any manner secure, help, or aid in the placing of any contract of life insurance or annuity for any person other than himself, or itself, directly or indirectly, with any legal reserve life insurance company not authorized to do business in this State.

[See Compact Edition, Volume 2 for text of 2(b)]

Acting as Agent Without License Prohibited; No Commissions To Be Paid to Unlicensed Persons

Sec. 3. (a) No person or corporation shall act as a life insurance agent within this State until he or it shall have procured a license as required by the laws of this State.

(b) No insurer or licensed life insurance agent doing business in this State shall pay directly or indirectly any commission, or other valuable consideration, to any person or corporation for services as a life insurance agent within this State, unless such person or corporation shall hold a currently valid license to act as a life insurance agent as required by the laws of this State; nor shall any person or

corporation, other than a duly licensed life insurance agent, accept any such commission or other valuable consideration; provided, however, that the provisions of this Section shall not prevent the payment or receipt of renewal or other deferred commissions to or by any person solely because such person or corporation has ceased to hold a license to act as a life insurance agent.

Application for License; To Whom License May Be Issued

Sec. 4. (a) Each applicant for a license to act as a life insurance agent within this State shall file with the Insurance Commissioner his or its written application on forms furnished by the Commissioner. The application shall be signed and duly sworn by the applicant. The prescribed form shall require the applicant to state his full name; residence; age; occupation and place of business for five years preceding date of the application; whether applicant has ever held a license to solicit life, or any other insurance in any State; whether he has been refused, or has had suspended or revoked a license to solicit life, or any other insurance in any State; what insurance experience, if any, he has had; what instruction in life insurance and in the insurance laws of this State he has had or expects to have; whether any insurer or general agent claims applicant is indebted under any agency contract, and if so, the name of the claimant, the nature of the claim and the applicant's defense thereto; whether applicant has had an agency contract cancelled and, if so, when, by what company or general agent and the reasons therefor; whether applicant will devote all or part of his efforts to acting as a life insurance agent, and, if part only, how much time he will devote to such work, and in what other business or businesses he is engaged or employed; whether, if applicant is a married woman, her husband has ever applied for or held a license to solicit life, or any other insurance in any State and whether such license has been refused, suspended, or revoked; and such other information pertinent to the licensing of such agent as the Insurance Commissioner in his discretion may prescribe. It is not intended that the Insurance Commissioner shall be authorized to deny a license to an applicant on the sole ground that he will act only part time as a life insurance agent.

(b) The application shall be accompanied by a certificate on forms furnished by the Insurance Commissioner and signed by an officer or properly authorized representative of the legal reserve life insurance company he or it proposes to represent, stating that the insurer has investigated the character and background of the applicant and is satisfied that he or the officers, directors, and shareholders of the corporation are trustworthy and qualified to hold himself or itself out in good faith to the general public as a life insurance agent, that the applicant has completed the educational requirements as pro-

vided in sub-section (e), Section 4 of this Act, and that the insurer desires that the applicant be licensed as a life insurance agent to represent it in this State.

(c) The application, when filed, shall be accompanied by a filing fee in the amount of \$25.00 and, in the case of applicants required to take an examination administered by the Commissioner of Insurance as hereafter prescribed, by an examination fee in the amount of \$10.00. In the event an applicant fails to qualify for, or is refused a license, the filing fee shall be returned; the examination fee shall not be returned for any reason other than for failure to appear and take the examination after the applicant has given at least 24 hours' notice of an emergency situation to the Commissioner of Insurance and received the commissioner's approval. A new examination fee shall be paid for each and every examination.

(d) The Insurance Commissioner shall issue a license to a corporation if he finds:

(1) That the corporation is a Texas corporation organized or existing under the Texas Business Corporation Act having its principal place of business in the State of Texas and having as one of its purposes the authority to act as agent under this Act;

(2) That every officer, director, and shareholder of the corporation is individually licensed as an agent under the provisions of this Act; and

(3) That such corporation will have the ability to pay any sums up to \$25,000.00 which it might become legally obligated to pay on account of any claim made against it by any customer and caused by any negligent act, error, or omission of the corporation or any person for whose acts the corporation is legally liable in the conduct of its business as under this Act. The term "customer" as used herein shall mean any person, firm, or corporation to whom such corporation sells or attempts to sell a policy of insurance or from whom such corporation accepts an application for insurance. Such ability shall be proven in one of the following ways:

(A) An errors and omissions policy issued by an insurance company licensed to do business in the State of Texas insuring such corporation against errors and omissions in at least the sum of \$50,000.00, with no more than a \$2,500.00 deductible feature; or

(B) A bond executed by such corporation as principal and a surety company authorized to do business in this State, as surety, in the principal sum of \$25,000.00, payable to the State Board of Insurance for the use and benefit of customers of such corpora-

tion, conditioned that such corporation shall pay any final judgment recovered against it by any customer; or

(C) A deposit of cash or securities of the class authorized by Articles 2.08 and 2.10 of the Insurance Code, having a fair market value of \$25,000.00 with the State Treasurer. The State Treasurer is hereby authorized and directed to accept and receive such deposit and hold it exclusively for the protection of any customer of such corporation recovering a final judgment against such corporation. Such deposit may be withdrawn only upon filing with the Insurance Commissioner evidence satisfactory to it that the corporation has withdrawn from business and has no unsecured liabilities outstanding, or that such corporation has provided for the protection of its customers by furnishing an errors and omissions policy or a bond as hereinbefore provided. Securities so deposited may be exchanged from time to time for other qualified securities.

A binding commitment to issue such a policy or bond, or the tender of such securities, shall be sufficient in connection with any application for license.

Nothing contained herein shall be construed to permit any unlicensed employee or agent of any corporation to perform any act of an agent under this Act without obtaining a license.

If at any time, any corporation holding a license under this Act does not maintain the qualifications necessary to obtain a license, the license of such corporation to act as an agent shall be cancelled or denied in accordance with the provisions of Sections 12 and 13 of this Act; provided, however, that should any person who is not an agent licensed under this Act acquire shares in such a corporation by devise or descent, they shall have a period of 90 days from date of acquisition within which to obtain a license as an agent or to dispose of the shares to an agent licensed under this Act.

Should such an unlicensed person acquire shares in such a corporation and not dispose of them within said period of 90 days to a licensed agent, then they must be purchased by the corporation for their book value, that is, the value of said shares of stock as reflected by the regular books and records of said corporation as of the date of the acquisition of said shares by said unlicensed person. Should the corporation fail or refuse to so purchase such shares, its license shall be cancelled.

Any such corporation shall have the power to redeem the shares of any shareholder, or the shares of a deceased shareholder, upon such terms as may be agreed upon by the board of directors and such shareholder or his personal representative, or at such

price and upon such terms as may be provided in the articles of incorporation, the bylaws, or an existing contract entered into between the shareholders of the corporation.

Each corporation licensed as an agent under this Act shall file, under oath, a list of the names and addresses of all of its officers, directors, and shareholders with its yearly application for renewal license.

Each corporation licensed as an agent under this Act shall immediately notify the State Board of Insurance upon any change in its officers, directors, or shareholders.

No other corporation may own any interest in a corporation licensed under this Act, and each owner of an interest in a corporation licensed under this Act shall be a natural person who holds a valid license issued under this Act.

No association, partnership, or any legal entity of any nature, other than an individual person or corporation, may be licensed as a life insurance agent.

(e) Each applicant, prior to sitting for the written examination as provided for in Section 5 of this Act, shall complete, under the supervision of such sponsoring insurer, an educational program that shall include:

(1) such texts as may be prescribed by the Commissioner of Insurance on the recommendation of the Advisory Board as provided in Sub-section (c) of Section 5 of this Act; and

(2) materials that will provide the applicant with the basic knowledge of:

(A) the broad principles of insurance, licensing, and regulatory laws of this State; and

(B) the obligations and duties of a life insurance agent.

Examination of Applicant for License

Sec. 5. (a) Each applicant for a license to act as a life insurance agent within this State shall submit to a personal written examination administered in the English or Spanish language, and as shall be prescribed by the State Board of Insurance, to determine his competence with respect to insurance and annuity contracts and his familiarity with the pertinent provisions of the laws of this State, and shall pass the same to the satisfaction of the State Board of Insurance; except that no such written examination shall be required of:

(1) An applicant for the renewal of a license issued by the State Board of Insurance pursuant to Article 21.07, Texas Insurance Code, 1951, which is currently in force at the time of the effective date of this Act;

(2) An applicant whose license as a life insurance agent expired less than one year prior to the date of application may, in the discretion of the State Board of Insurance, be issued a license without written examination;

(3) A person who holds the designation Chartered Life Underwriter (CLU);

(4) An applicant that is a corporation.

(b) The Commissioner shall establish rules and regulations with respect to the scope, type and conduct of such written examinations and the times and places within this State where they shall be held; provided, that applicants shall be permitted to take such examinations at least once in each week at the office of the Commissioner, and at least once in each month in the county court house of the residence of the applicant. The rules and regulations of the Commissioner shall designate text books, manuals and other materials to be studied by applicants in preparation for examinations pursuant to this Section. Such text books, manuals or other materials may consist of matter available to applicants by purchase from the publisher or may consist of matter prepared at the direction of the Commissioner and distributed to applicants upon request therefor and payment of the reasonable cost thereof. All examination questions shall be prepared from the contents of the text books, manuals and other materials designated or prepared by the Commissioner pursuant to this Section.

(c) The Commissioner shall appoint an Advisory Board consisting of eight persons of whom two shall be holders of licenses issued under this Article, two shall be employed by and familiar with the operations of legal reserve life insurance companies, two shall be general agents and managers, and two shall be citizens of the State of Texas who are neither agents, general managers, nor employees of legal reserve life insurance companies, which shall make recommendations to him with respect to the scope, type, and conduct of written examinations and the times and places within the State where they shall be held. This Advisory Board shall make such recommendations not less frequently than once every four years. The members of the Advisory Board shall serve without pay but shall be reimbursed for their reasonable expenses in attending meetings of the Advisory Board.

(d) An applicant other than a corporation for a license to act as a combination life insurance agent for a combination company, or as an industrial life agent for an industrial company, may, in lieu of taking and passing to the satisfaction of the Insurance Commissioner a personal written examination as provided in Sub-section (a) of this Section 5, submit to a personal written examination given by the combination or industrial insurer for which he is

to be licensed, subject to the following definitions and conditions:

[See Compact Edition, Volume 2 for text of 5(d)(1)]

(2) Any combination or industrial insurer desiring to qualify to administer the examination to its agents shall file with the Commissioner a complete outline and explanation of the course of study and instruction to be given such applicants and the nature and manner of conducting the examinations of applicants and, after official approval thereof by the Commissioner, may administer such examinations.

[See Compact Edition, Volume 2 for text of 5(d)(3)]

(4) It shall be the duty of the Commissioner to investigate the manner and method of instruction and examination of each combination and industrial insurer as often as deemed necessary by the Commissioner and the Commissioner may, in his discretion, withdraw from any insurer the privilege of examining agents in lieu of the examination administered by the Commissioner pursuant to Sub-section (a) of this Section 5.

[See Compact Edition, Volume 2 for text of 5(d)(5), 6 and 7]

Agent May Be Licensed to Represent Additional Insurers

Sec. 8. (a) Any life insurance agent licensed in this state may represent and act as a life insurance agent for more than one legal reserve life insurance company at any time while his or its license is in force, if he or it so desires. Any such life insurance agent and the company involved must give notice to the Commissioner of Insurance of any additional appointment or appointments authorizing him or it to act as a life insurance agent for an additional legal reserve life insurance company or companies. Such notice must set forth the insurer or insurers which the agent is then licensed to represent, and shall be accompanied by a certificate from each insurer to be named in each additional appointment, that said insurer desires to appoint the applicant as its agent. This notice shall also contain such other information as the Commissioner may require. The agent shall be required to pay a fee of \$8.00 for each additional appointment applied for, which fee shall accompany the notice. Any insurer may file a request with the Insurance Commissioner for notification in the event any agent licensed to represent such insurer has given the Commissioner of Insurance notice of an additional appointment to represent another insurer; and in such event the Commissioner shall notify the insurer filing such request.

(b) Any life insurance agent licensed in this state may place excess or rejected risks with any legal

reserve life insurance company lawfully doing business in this state other than an insurer such agent is licensed to represent; provided, however, that such life insurance agent shall procure an additional appointment to represent such other insurer before receiving commissions or other compensation for his or its services.

Expiration and Renewal of License

Sec. 9. (a) Each license issued to a life insurance agent shall expire two years following the date of issue, unless prior thereto it is suspended or revoked by the Insurance Commissioner or the authority of the agent to act for the insurer is terminated.

(b) Licenses which have not expired or which have not been suspended or revoked, may be renewed upon request in writing of the agent.

(c) Each request for renewal of license shall show whether the agent devotes all or part of his or its efforts to acting as a life insurance agent, and if part only, how much time he or it devotes to such work.

(d) Upon the filing of a request for renewal of license, and payment of a renewal fee of \$25.00 for such license, prior to the date of expiration, the current license shall continue in force until the renewal license is issued by the Commissioner or until the Commissioner has refused, for cause, to issue such renewal license, as provided in Section 12, of this Act, and has given notice of such refusal in writing to the insurer and the agent.

(e) The appointment or appointments given under Section 4 or Section 8 of this Act authorizing the agents to act as a life insurance agent for a legal reserve life insurance company or companies, shall continue in full force and effect, without the necessity of renewal, until terminated and withdrawn by the companies in accordance with Section 11 of this Act, or otherwise terminated in accordance with this Act, and each renewal license issued to the agent shall authorize him or it to represent and act for the companies for which he or it holds an appointment until the appointment is so terminated, and the agent shall prima facie be deemed, for the purpose of this Article, to be the agent of the appointing companies, provided that on or before April 1st of each and every calendar year, commencing on or before April 1, 1968, each such company so appointing such life insurance agent shall file with the Commissioner a certificate, upon forms promulgated by the Commissioner, certifying that such legal reserve life insurance company desires to continue the appointment of such life insurance agent, and if such company shall for any reason fail to file such certificate for any year as relates to such agent, it shall be deemed and considered for all purposes that such company has terminated the appointment of such life insurance agent in like manner as if compliance

has been made by such company with Section 11 of this Act.

Temporary License

Sec. 10. The Life Insurance Commissioner, if he is satisfied with the honesty and trustworthiness of the applicant, may issue a temporary life insurance agent's license, effective for ninety days, without requiring the applicant to pass a written examination, as follows:

[See Compact Edition, Volume 2 for text of 10(a) to (b)(3)]

(4) that such person will complete, under such insurer's supervision, at least forty hours of training as prescribed by sub-section (c) of Section 10 of this Act within fourteen days from the date on which the application and certificate were delivered or mailed to the Commissioner.

(5) The Commissioner shall have the authority to cancel, suspend, or revoke the temporary appointment powers of any life insurance company, if, after notice and hearing, he finds that such company has abused such temporary appointment powers. In considering such abuse, the Commissioner may consider, but is not limited to, the number of temporary appointments made by a company, the percentage of appointees sitting for the examination as life insurance agents under this Article as it may be in violation of sub-section (d) of this Section, and the number of appointees successfully passing said examination. Appeals from the Commissioner's decision shall be made in accordance with Section 13 hereof.

(c) At least forty hours of training must be administered to any applicant for a temporary license as herein defined within fourteen days from the date on which the application and certificate were delivered or mailed to the Commissioner. Such training program shall be constructed so as to provide an applicant with the basic knowledge of:

(1) the broad principles of insurance, licensing, and regulatory laws of this State; and

(2) the obligations and duties of a life insurance agent.

The Commissioner of Insurance may, in his discretion, require that such training program shall be filed with the State Board of Insurance for approval in the event he finds an abuse of temporary appointment powers under sub-section (b)(5) of this Section.

(d) Each insurer is responsible for requiring at least 70 percent of such insurer's applicants for temporary licenses during a fiscal year to sit for the examination as defined in Section 5 of this Act.

[See Compact Edition, Volume 2 for text of 11]

Denial, Refusal, Suspension, or Revocation of Licenses

Sec. 12. (a) A license may be denied, or a license duly issued may be suspended or revoked or the renewal thereof refused by the Insurance Commissioner if, after notice and hearing as hereafter provided, he finds that the applicant, individually or through any officer, director, or shareholder, for, or holder of such license:

[See Compact Edition, Volume 2 for text of 12(a)(1) to (3)]

(4) Has misappropriated or converted to his or its own use or illegally withheld money belonging to an insurer or an insured or beneficiary; or

[See Compact Edition, Volume 2 for text of 12(a)(5) to (8)]

(9) Has obtained, or attempted to obtain such license, not for the purpose of holding himself or itself out to the general public as a life insurance agent, but primarily for the purpose of soliciting, negotiating or procuring life insurance or annuity contracts covering himself or himself or members of his family or his or its business associates; or

[See Compact Edition, Volume 2 for text of 12(a)(10)]

(b) Before any license shall be denied (except for failure to pass a required written examination), or suspended or revoked, or the renewal thereof refused hereunder, the Insurance Commissioner shall give notice of his intention so to do, by registered mail, to the applicant for, or holder of such license and the insurer whom he or it represents or who desires that he or it be licensed, and shall set a date not less than twenty days from the date of mailing such notice when the applicant or licensee and a duly authorized representative of the insurer may appear to be heard and produce evidence. In the conduct of such hearing, the Commissioner or any regular salaried employee specially designated by him for such purpose shall have power to administer oaths, to require the appearance of and examine any person under oath, and to require the production of books, records or papers relevant to the inquiry upon his own initiative or upon the request of the applicant or licensee. Upon termination of such hearing, findings shall be reduced to writing and, upon approval by the Commissioner, shall be filed in his office and notice of the findings sent by registered mail to the applicant or licensee and the insurer concerned.

(c) No applicant or licensee whose license has been denied, refused or revoked hereunder (except for failure to pass a required written examination) shall be entitled to file another application for a license as a life insurance agent within one year from the effective date of such denial, refusal or revocation, or, if judicial review of such denial, refusal or revocation is sought, within one year from the date of final court order or decree affirming such action. Such application, when filed after one year, may be refused by the Commissioner unless the applicant shows good cause why the denial, refusal or revocation of his or its license shall not be deemed a bar to the issuance of a new license.

Judicial Review of Acts of Commissioner

Sec. 13. If the said Insurance Commissioner shall refuse an application for any license provided for in this Act, or shall suspend, revoke or refuse to renew any such license or permit at said hearing, then any such applicant or accused may appeal from said order by filing suit against the Insurance Commissioner as defendant in any of the District Courts of Travis County, Texas, or in any District Court in the county of the applicant's residence or principal place of business, and not elsewhere, within twenty (20) days from the date of the order of said Insurance Commissioner.

Said action shall have precedence over all other causes of a different nature on the docket. The action shall not be limited to questions of law and shall be tried and determined upon a trial de novo to the same extent as now provided for in the case of an appeal from the justice court to the county court. Either party to said action may appeal to the appellate court having jurisdiction of said cause, and said appeal shall be at once returnable to said appellate court having jurisdiction of said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. The Board shall not be required to give any appeal bond in any cause arising hereunder.

Penalty

Sec. 14. Any person or officer, director, or shareholder of a corporation required to be licensed by this Act who individually, or as an officer or employee of a legal reserve life insurance company, or other corporation, violates any of the provisions of this Act shall, in addition to any other penalty specifically provided, be guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500.00 or imprisoned not more than six months, or both, each such violation being a separate offense hereunder. In addition, if such offender or corporation of which he is an officer, director, or shareholder holds a license as a life insurance agent, such license shall automatically expire upon such conviction.

[See Compact Edition, Volume 2 for text of 15]
[Amended by Acts 1975, 64th Leg., p. 2372, ch. 731, § 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 383, ch. 191, §§ 1 to 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 386, ch. 192, § 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 388, ch. 193, §§ 5 to 7, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1427, ch. 579, §§ 5 to 9, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2124, ch. 849, § 1, eff. Aug. 29, 1977.]

Art. 21.07-3. Managing General Agent's Licensing Act

[See Compact Edition, Volume 2 for text of 1 and 2]

Acting Without License Prohibited

Sec. 3. It shall be unlawful for any person, firm or corporation to act as a managing general agent in behalf of any insurance company or carrier without having in force the license provided for herein, except that no license shall be required if the applicant is a business corporation authorized to do business in Texas, all of whose outstanding stock is solely owned by an insurance company or carrier licensed to do business in Texas, whose business affairs are completely controlled by such insurance company or carrier and the principal purpose for which the corporation exists is to facilitate the accumulation of commissions from the insurance company or carrier and its subsidiaries and affiliates for the account of and payment to an agent who could otherwise lawfully receive such commission direct from the insurance company or carrier and its subsidiaries and affiliates and the corporation does no other act of a managing general agent as provided for in this article; provided, however, that any contracts entered into with agents shall be executed by the managing general agent in behalf of the insurance company or carrier.

[See Compact Edition, Volume 2 for text of 4 to 21]

[Amended by Acts 1975, 64th Leg., p. 1094, ch. 414, § 2, eff. Sept. 1, 1975.]

Art. 21.07-4. Licensing of Insurance Adjusters

[See Compact Edition, Volume 2 for text of 1 to 13]

Fees for License and Examination; Insurance Adjusters' Fund

Sec. 14. (a) The commissioner shall collect in advance the following fees for an adjuster's license and examination:

[See Compact Edition, Volume 2 for text of (a)(1) to (b)]

(c) When collected, the fees provided for by this section shall be placed with the state treasurer in a separate fund, which shall be known as the insurance adjusters' fund, provided that no expenditure shall be made from said fund except under authority

of the Legislature as set forth in the general appropriations bill.

[Amended by Acts 1975, 64th Leg., p. 656, ch. 273, § 1, eff. Sept. 1, 1975.]

Art. 21.14. Licensing of Local Recording Agents and Solicitors; Life, Health and Accident Insurance Excepted; Other Exceptions

[See Compact Edition, Volume 2 for text of 1 and 2]

Application for License; To Whom License May Be Issued
Sec. 3.

[See Compact Edition, Volume 2 for text of 3(a) and (b)]

(c) The Board shall issue a license to a corporation if the Board finds:

[See Compact Edition, Volume 2 for text of 3(c)(1) and (2)]

(3) That such corporation will have the ability to pay any sums up to Twenty-Five Thousand Dollars (\$25,000.00) which it might become legally obligated to pay on account of any claim made against it by any customer and caused by any negligent act, error or omission of the corporation or any person for whose acts the corporation is legally liable in the conduct of its business as a local recording agent. The term "customer" as used herein shall mean any person, firm or corporation to whom such corporation sells or attempts to sell a policy of insurance, or from whom such corporation accepts an application for insurance. Such ability shall be proven in one of the following ways:

(a) An errors and omissions policy issued by an insurance company licensed to do business in the State of Texas insuring such corporation against errors and omissions in at least the sum of One Hundred Thousand Dollars (\$100,000.00), with no more than a Five Thousand Dollars (\$5,000.00) deductible feature; or

[See Compact Edition, Volume 2 for text of 3(c)(3)(b) and (c), 4 to 6]

Death, Disability or Insolvency; Emergency License
Without Examination

Sec. 6a. In event of death or disability of a local recording agent or in event a local recording agent is found to be insolvent and unable to pay for premiums coming to his hands as such local recording agent, the Board may issue to an applicant for local recording agent's license an emergency local recording agent's license for a period of ninety (90) days in any twelve (12) consecutive months and at the Board's option, an additional period up to ninety (90) days without an examination provided the other

requirements of this article are met and if it is established to the satisfaction of the Board that such emergency license is necessary for the preservation of the agency assets of a deceased or disabled local recording agent or of an insolvent local recording agent.

Conduct of Examinations; Notice; Manual of Questions and Answers

Sec. 7. All examinations provided by this article shall be conducted by the State Board of Insurance, and shall be held not less frequently than one each sixty (60) days every year at times and places prescribed by the State Board of Insurance, of which applicants shall be notified by the State Board of Insurance in writing, ten (10) days prior to the date of such examinations, and shall be conducted in writing in either the English or Spanish language, except that the applicant upon notice to the State Board of Insurance shall be entitled to be examined in the county seat of the county of his residence. Provided, further, that printed copies of a manual of questions and answers thereto pertaining to the examination published under the direction of the State Board of Insurance shall be made available to all companies, general agents, and managers for the use of their prospective agents, to all agents for the use of their prospective solicitors in preparing for such examination. The questions to be asked on such examination shall be based upon the questions and answers contained in the manual.

Expiration of License; Renewal

Sec. 8. Every license issued to a local recording agent shall expire two years from the date of its issue, unless an application to qualify for the renewal of any such license shall be filed with the Board of Insurance Commissioners and fee paid on or before such date, in which event the license sought to be renewed shall continue in full force and effect until renewed or renewal is denied. Every license issued to a solicitor for a local recording agent shall expire on the same date that the license of the local recording agent expires, unless an application to qualify for the renewal of the local recording agent's license and the solicitor's license shall be filed with the Board of Insurance Commissioners and fee paid on or before such date, in which event the solicitor's license sought to be renewed shall continue in full force and effect until renewed or renewal is denied.

Fees Payable Before Examination

Sec. 9. Applicants required to be examined shall, at time and place of examination, pay prior to being examined the following fees: For a local recording agent's license a fee of Twenty-five dollars (\$25.00) and for a solicitor's license a fee of Ten Dollars (\$10.00). The fees paid under this section shall not be returned for any reason other than failure to appear and take the examination after the applicant

has given at least 24 hours' notice of an emergency situation to the State Board of Insurance and received board approval. A new fee shall be paid before each and every examination.

Renewal Fees

Sec. 10. An applicant for the renewal of a local recording agent's license shall pay, at the time the renewal application is filed, a fee of Twenty-five Dollars (\$25.00). An applicant for the renewal of a solicitor's license shall pay, at the time the renewal application is filed, a fee of Ten Dollars (\$10.00).

[See Compact Edition, Volume 2 for text of 11 to 26]

[Amended by Acts 1975, 64th Leg., p. 2373, ch. 731, § 3, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 359, ch. 176, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 386, ch. 192, § 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 389, ch. 193, § 8, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 834, ch. 310, § 1, eff. Aug. 29, 1977.]

SUBCHAPTER B. MISREPRESENTATION
AND DISCRIMINATION

Art. 21.21A. Misrepresentations of Policy Terms; Penalty

Sec. 1. No insurer or agent thereof may make any contract of insurance or agreement as to such contract other than as expressed in the policy issued thereon, nor may any such insurer or any officer, agent, solicitor or representative thereof, pay, allow or give, or offer to pay, allow or give, directly or indirectly as an inducement to insurance, any rebate of premium payable on the policy, or any special favor or advantage in the dividends or other benefits to accrue thereon or any paid employment or contract for service of any kind, or any thing of value or inducement whatever, not specified in the policy; or give, sell or purchase, or offer to give, sell or purchase, as an inducement to insurance or in connection therewith, any stocks, bonds or other securities of any insurer or other corporation, association or partnership, or any dividends or profits to accrue thereon, or anything of value whatsoever not specified in the policy, or issue any policy containing any special or board contract or similar provision by the terms of which said policy will share or participate in any special fund derived from a tax or a charge against any portion of the premium on any other policy.

Sec. 2. No life, health, or casualty insurance corporation including corporations operating on the cooperative or assessment plan, mutual insurance companies, and fraternal benefit associations or societies, and any other societies or associations authorized to issue insurance policies in this state, and no officer, director, representative, or agent therefor or thereof, or any other person, corporation, or copart-

nership may issue or circulate or cause or permit to be issued or circulated any illustrated circular or statement of any sort misrepresenting the terms of any policy issued by any such corporation or association or any certificate of membership issued by any such society or corporation, or other benefits or advantages permitted thereby, or any misleading statement of the dividends or share of surplus to be received thereon, or may use any name or title of any policy or class of policy or class of policies, or certificate of membership or class of such certificate misrepresenting the true nature thereof. Nor may any such corporation, society, or association, or officer, director, agent, or representative thereof, or any other person, make any misleading representations or incomplete comparisons of policies or certificates of membership to any person insured in such corporation, association, or society, or member thereof, for the purpose of inducing or tending to induce such person to lapse, forfeit, or surrender said insurance or membership therein.

Sec. 3. If any person violates any of the provisions of this Article, the person shall, in addition to any other penalty specifically provided, be guilty of a Class A misdemeanor.

Sec. 4. The commissioner, upon giving 10 days' notice of hearing by certified mail, and upon hearing, may suspend or cancel the certificate, charter, permit, or license to engage in the business of insurance of any society, association, corporation, or person violating the provisions of this Article.

[Amended by Acts 1977, 65th Leg., p. 2084, ch. 834, § 1, eff. Aug. 29, 1977.]

Art. 21.21B. Repealed by Acts 1977, 65th Leg., p. 2085, ch. 834, § 2, eff. Aug. 29, 1977

SUBCHAPTER D. CONSOLIDATION, LIQUIDATION,
REHABILITATION, REORGANIZATION
OR CONSERVATION OF INSURERS

Art. 21.25. Mergers and Consolidations of Stock Insurers

[See Compact Edition, Volume 2 for text of 1 to 6]

Purchase of Outstanding Stock: Conditions and Limitations

Sec. 7. One life insurance corporation may purchase or contract to purchase all or part of the outstanding stock of another life insurance corporation for purposes of merger or consolidation. The provisions contained in Article 3.39 of the Insurance Code which limit investments in the corporate stock of another corporation shall not apply provided that such purchase or contract to purchase shall be subject to the following conditions or limitations:

[See Compact Edition, Volume 2 for text of 7(a)]

(b) The purchasing corporation shall either (1) initially purchase or contract to purchase at least the number of shares of the stock of the other insurance corporation necessary to vote an approval of such merger or consolidation under the laws of the state in which such other insurance corporation was organized, (2) offer to purchase, make a tender offer for, request or invite tenders of, or otherwise seek to acquire, in the open market or otherwise, at least the number of shares of the stock of the other insurance corporation necessary to vote an approval of such merger or consolidation under the laws of the state in which such other corporation was organized, or (3) by any combination of the provisions of (1) and (2) hereof, obtain or seek to obtain the number of shares of stock of the other insurance corporation necessary to vote an approval of such merger or consolidation under the laws of the state in which such other insurance corporation was organized; and

(c) No such purchase of stock, offer to purchase, tender offer, request or invitation to purchase stock in excess of the limits of Article 3.39 of the Insurance Code may be made until such proposed purchase, offer to purchase, tender offer, request or invitation to purchase has been filed with and approved by the commissioner in accordance with the provisions of Article 21.49-1 of this code; and

(d) Following the date of the contract to purchase such shares or the date of the commissioner's approval of such purchase, offer to purchase, tender offer, request or invitation to purchase such stock, whichever shall first occur, the corporation whose stock is being purchased shall not purchase or contract to purchase any of its own shares as treasury stock, issue or contract to issue any of its authorized but unissued stock, nor shall such corporation make any investments in or loans to the purchasing corporation or any of its affiliates unless such investment or loan is otherwise authorized and approved in advance by the commissioner under the provisions of Article 21.49-1, as amended, of the Insurance Code; and

(e) The merger or consolidation shall become effective on or before December 31st in the second year following the year in which the initial purchase of such stock is made or the initial contract to purchase is executed, whichever shall occur first, unless the commissioner for good cause shown shall extend such time for the effective date of the merger or consolidation; and

(f) If the merger or consolidation fails to become effective within such time as may be

finally determined and extended by the commissioner, the purchasing corporation must sell or otherwise dispose of such purchased shares which are in excess of the investment limitations of Article 3.39 of this code within six months of such final effective date; and

(g) In no event shall any sums actually paid out by the purchasing corporation for the purchase of stock acquired or obtained hereunder include the minimum capital, minimum surplus, and policy reserves required by law for such corporation.

[See Compact Edition, Volume 2 for text of 8]

[Amended by Acts 1977, 65th Leg., p. 222, ch. 107, § 1, eff. May 4, 1977.]

Art. 21.26. Purchase of Stock for Total Assumption Reinsurance

Sec. 1. Nothing in this Act or in the Insurance Code shall be construed as in any way affecting or limiting the right of a life insurance corporation organized or operating under Chapter Three (3) or Chapter Eleven (11) of the Insurance Code of the State of Texas to purchase or to contract to purchase all or part of the outstanding shares of another life insurance corporation, domestic or foreign, doing a similar line of business for the purpose of reinsuring all of the business of such other insurance corporation and assuming all of the liabilities and taking over all of the assets of such other corporation. The provisions contained in Article 3.39 of the Insurance Code limiting investments in the purchase of the corporate shares of another corporation shall not apply to such purchase or contract to purchase provided that:

[See Compact Edition, Volume 2 for text of 1(a)]

(b) The reinsuring corporation shall either (1) initially purchase or contract to purchase the number of shares of the stock of the other insurance corporation necessary to vote an approval of a total assumption reinsurance agreement under the laws of the state in which such other insurance corporation was organized, (2) offer to purchase, make a tender offer for, request or invite tenders of, or otherwise seek to acquire, in the open market at least the number of shares of the stock of the other insurance corporation necessary to vote an approval of such reinsurance agreement under the laws of the state in which such other corporation was organized, or (3) by any combination of the provisions of (1) and (2) hereof, obtain or seek to obtain the number of shares of stock of the other insurance corporation necessary to vote an approval of such reinsurance agreement under the laws of the state in which such other insurance corporation was organized; and

(c) No such purchase of stock, offer to purchase, tender offer, request or invitation to purchase stock in excess of the limits of Article 3.39 of the Insurance Code may be made until such proposed purchase, offer to purchase, tender offer, request or invitation to purchase has been filed with and approved by the commissioner in accordance with the provisions of Article 21.49-1 of this code; and

(d) Following the date of the contract to purchase such shares or the date of the commissioner's approval of such purchase, offer to purchase, tender offer, request or invitation to purchase such stock, whichever shall first occur, the corporation whose stock is being purchased shall not purchase or contract to purchase any of its own shares as treasury stock, issue or contract to issue any of its authorized but unissued stock, nor shall such corporation make any investments in or loans to the purchasing corporation or any of its affiliates unless such investment or loan is otherwise authorized and approved in advance by the commissioner under the provisions of Article 21.49-1, Insurance Code as amended, of the Insurance Code; and

(e) The reinsurance agreement shall become effective on or before December 31st in the second year following the year in which the initial purchase of such stock is made or the initial contract to purchase is executed, whichever shall occur first, unless the commissioner for good cause shown shall extend such time for the effective date of the reinsurance agreement; and

(f) If the reinsurance agreement fails to become effective within such time as may be finally determined and extended by the commissioner, the purchasing corporation must sell or otherwise dispose of such purchased shares which are in excess of the investment limitations of Article 3.39 of this code within six months of such final effective date; and

(g) In no event shall any sums actually paid out by the purchasing corporation for the purchase of stock acquired or obtained hereunder include the minimum capital, minimum surplus, and policy reserves required by law for such corporation.

[See Compact Edition, Volume 2 for text of 2 and 3]

[Amended by Acts 1977, 65th Leg., p. 223, ch. 107, § 2, eff. May 4, 1977.]

Art. 21.28-C. Property and Casualty Insurance Guaranty Act

[See Compact Edition, Volume 2 for text of 1 and 2]

Scope

Sec. 3. This Act shall apply to all kinds of insurance written by stock and mutual fire insurance

companies, casualty insurance companies and fire and casualty insurance companies licensed to do business in this State; and shall also include all kinds of insurance written by county mutual insurance companies, Lloyd's and reciprocal exchanges licensed to do business in this State; but shall not apply to insurance written by farm mutual insurance companies or title insurance companies or title insurance written by any insurer; and shall not apply to mortgage guaranty insurance companies or mortgage guaranty insurance, nor to ocean marine insurance, nor to home warranty insurance; and shall not apply to Mexican casualty insurance companies or to policies of insurance issued by Mexican casualty insurance companies.

[See Compact Edition, Volume 2 for text of 4]

Definitions

Sec. 5. As used in this Act

[See Compact Edition, Volume 2 for text of 5(1)]

(2) "Covered claim" is an unpaid claim of an insured or third party liability claimant which arises out of and is within the coverage and not in excess of the applicable limits of an insurance policy to which this Act applies, issued or assumed (whereby an assumption certificate is issued to the insured) by an insurer licensed to do business in this State, if such insurer becomes an "impaired insurer" after the effective date of this Act and (a) the third party claimant or liability claimant or insured is a resident of this State at the time of the insured event; or (b) the property from which the claim arises is permanently located in this State. "Covered claim" shall also include seventy-five percent (75%) of unearned premiums but in no event shall a "covered claim" for unearned premiums exceed Five Hundred Dollars (\$500). Individual "covered claims" shall be limited to Fifty Thousand Dollars (\$50,000) and shall not include any amount in excess of Fifty Thousand Dollars (\$50,000). "Covered claim" shall not include any amount due any reinsurer, insurer, insurance pool or underwriting association, as subrogation recoveries or otherwise. "Covered claim" shall not include supplementary payment obligations, including but not limited to adjustment fees and expenses, attorneys fees and expenses, court costs, interest and bond premiums, incurred prior to the determination that an insurer is an "impaired insurer" under this Act. With respect to a "covered claim" for unearned premiums, both persons who were residents of this State at the time the policy was issued and persons who are residents of this State at the time the company is found to be an "impaired insurer" shall be considered to have "covered claims" under this Act.

(3) "Insurer" and "member insurer" includes all stock and mutual fire insurance companies, casualty insurance companies and fire and casualty insurance companies licensed to do business in this State; and also includes all county mutual insurance companies, Lloyd's and reciprocal exchanges licensed to do business in this State; but shall not include farm mutual insurance companies, title insurance companies, mortgage guaranty insurance companies or Mexican casualty insurance companies.

(4) "Impaired insurer" is (a) a member insurer which, after the effective date of this Act, is placed in temporary or permanent receivership under an order of a court of competent jurisdiction based on a finding of insolvency, and which has been designated an "impaired insurer" by the Commissioner; or (b) after the effective date of this Act, a member insurer placed in conservatorship after it has been deemed by the Commissioner to be insolvent and which has been designated an "impaired insurer" by the Commissioner.

[See Compact Edition, Volume 2 for text of 5(5) to (7)]

(8) "Association" means the Texas Property and Casualty Insurance Guaranty Association created under Section 14 of this article.

(9) "Account" means one of the four accounts created under Section 14 of this article.

(10) "Board" or "board of directors" means the board of directors of the Texas Property and Casualty Insurance Guaranty Association created under Section 14 of this article.

[See Compact Edition, Volume 2 for text of 6]

Assessments

Sec. 7. Whenever the Commissioner determines that an insurer has become an impaired insurer the receiver appointed in accordance with Article 21.28 of the Insurance Code or the conservator appointed under the authority of Article 21.28-A of the Insurance Code shall promptly estimate the amount of additional funds, by lines of business, needed to supplement the assets of the impaired insurer immediately available to the receiver or the conservator for the purpose of making payment of all covered claims. The receiver or conservator shall advise the board of directors of the association of such estimates, and the board shall make available from the account maintained by the association for each line of business funds sufficient to enable the receiver or conservator to carry out an efficient program of paying the covered claims of the impaired insurer. The board shall make additional funds available as the actual need therefor arises for each impaired insurer.

When the board of directors shall determine that additional funds are needed in any of the three accounts, they shall advise the Commissioner who shall make such assessments as may be needed to produce the necessary funds. The Commissioner in determining the proportionate amount to be paid by individual insurers under an assessment shall take into consideration the lines of business written by the impaired insurer and shall assess individual insurers in proportion to the ratio that the total net direct written premium collected in the State of Texas by the insurer for such line or lines of business during the next preceding year bears to the total net direct written premium collected by all insurers (except impaired insurers) in the State of Texas for such lines of business. Assessments during a calendar year may be made up to, but not in excess of, two percent (2%) of each insurer's net direct written premium for the preceding calendar year in the lines of business for which the assessments are being made. If the maximum assessment in any calendar year does not provide an amount sufficient for payment of covered claims of impaired insurers, assessments may be made in the next and successive calendar years.

Insurers designated as impaired insurers by the Commissioner shall be exempt from assessment from and after the date of such designation and until the Commissioner determines that such insurer is no longer an impaired insurer.

It shall be the duty of each insurer to pay the amount of its assessment to the association within thirty (30) days after the Commissioner gives notice of the assessment, and assessments may be collected on behalf of the association by the conservator or receiver through suits brought for that purpose. Venue for such suits shall lie in Travis County, Texas, and actions to collect such assessments shall have precedence over all other causes on the docket of a different nature. Either party to said action may appeal to the appellate court having jurisdiction over said cause and said appeal shall be at once returnable to said appellate court having jurisdiction over said cause and said action so appealed shall have precedence in said appellate court over all causes of a different character therein pending. Neither the receiver, the conservator, nor the association shall be required to give an appeal bond in any cause arising hereunder.

Funds advanced by the association under the provisions of the Act shall not become assets of the impaired insurer but shall be deemed a special fund loaned to the receiver or the conservator for payment of covered claims, which loan shall be repayable to the extent available from the funds of such impaired insurer, as herein provided.

Income from the investment of any of the funds of the association may be transferred to the administrative account authorized in Section 14A(1) of this article. The funds in this account may be used by the association for the purpose of meeting administrative costs and other general expenses of the association. Upon notification by the association of the amount of any additional funds needed for the administrative account the Commissioner shall assess member insurers to obtain the needed funds in the same manner as hereinbefore set out, provided, that he shall take into consideration the net direct written premium collected in the State of Texas for all lines of business covered by this article.

Penalty for Failure to Pay Assessments

Sec. 8. The Commissioner may suspend or revoke, after notice and hearing, the certificate of authority to transact business in this State of any insurer who fails to pay an assessment when due, and the association shall promptly report to the Commissioner any such failure.

Any insurer whose certificate of authority to do business in this State is cancelled or surrendered shall be liable for any unpaid assessments made prior to the date of such cancellation or surrender.

Accounting for and Repayment of Assessments

Sec. 9. Upon receipt from an insurer of payment of an assessment or partial assessment, the association shall provide the insurer with a participation receipt which shall create a liability against the account for the line or lines of business for which the assessment was made. The account from which an advance is made to an impaired insurer for the payment of covered claims shall be regarded as a general creditor of the impaired insurer for the amount of funds so advanced; provided, however, that with reference to the remaining balance of any advances received by the receiver or conservator and not expended in payment of "covered claims" the claim of such account shall have preference over other general creditors. The receiver or conservator of any impaired insurer shall adopt accounting procedures reflecting the expenditure and use of all funds received from the association and shall make a final report of the expenditure and use of such funds to the Commissioner and to the association, which final report shall set forth the remaining balance, if any, from the moneys advanced. The receiver or conservator shall also make any interim reports concerning such accounting as may be required by the Commissioner or requested by the association. Upon completion of the final report, the receiver or conservator shall, as soon thereafter as is practicable, refund by line of business the remaining balance of such advances to the accounts maintained by the association.

Should the association at any time determine that there exist moneys in the account for any line of business in excess of those reasonably necessary for efficient future operation under the terms of this Act, it shall cause such excess moneys to be returned pro rata to the holders of any participation receipts on which there is a balance outstanding after deducting any credits taken against premium taxes as authorized in Section 15 of this article, which receipts were issued for an assessment on the same line of business as that for which the excess moneys are found to exist. If after such a distribution the association finds that an excess amount still exists in any such fund, or if there are no such participation receipts on which there is an outstanding balance, it shall cause such excess amount to be deposited with the State Treasurer for credit to the general fund of this State.

Payment of Covered Claims

Sec. 10. When an insurer has been designated by the Commissioner as an impaired insurer, the receiver or conservator, as the case may be, shall marshal all assets of the impaired insurer, including but not limited to those which are designated as or that constitute reserve assets offsetting reserve liabilities for all liabilities falling within the definition of "covered claim" as defined in this Act. The receiver or conservator shall apply all of such assets to the payment of covered claims, but may utilize funds received from the association in the payment of claims, pending orderly liquidation or disposition of such assets. When all covered claims have been paid or satisfied by the receiver or conservator, any balance remaining from the liquidation or disposition of such assets shall first be applied in repayment of funds expended from those advanced by the association. Such repayments shall be credited as remaining balances and be refunded as provided in Section 9 of this Act.

In addition to authorization to make actual payment of covered claims, the receiver or conservator is specifically authorized to utilize such marshalled assets and funds derived from the association for the purpose of negotiating and consummating contracts of reinsurance or assumption of liabilities or contracts of substitution to provide for outstanding liabilities of covered claims. This Act shall not be construed to impose restrictions or limitations upon the authority granted or authorized the Commissioner, the conservator or the receiver elsewhere in the Insurance Code and other statutes of this State but shall be construed and authorized for use in conjunction with other portions of the Insurance Code dealing with delinquency proceedings or threatened insolvencies or supervisions or conservatorships.

Approval of Covered Claims

Sec. 11. Covered claims against an impaired insurer placed in temporary or permanent receivership under an order of liquidation, rehabilitation or conservation by a court of competent jurisdiction shall be processed and acted upon by the receiver or ancillary receiver in the same manner as other claims as provided in Article 21.28 of the Insurance Code and as ordered by the court in which such receivership is pending; provided, however, that funds received from the association shall be liable only for the difference between the amount of the covered claims approved by the receiver and the amount of the assets marshalled by the receiver for payment to holders of covered claims; and provided further, that in ancillary receiverships in this State, funds received from the association shall be liable only for the difference between the amount of the covered claims approved by the ancillary receiver and the amount of assets marshalled by the receivers in other states for application to payment of covered claims within this State. Such funds received from the association shall not be liable for any amount over and above that approved by the receiver for a covered claim, and any action brought by the holder of such covered claim appealing from the receiver's action shall not increase the liability of such funds; provided, however, that the receiver may review his action in approving a covered claim and for just cause modify such approval at any time during the pendency of the receivership.

If a conservator is appointed to handle the affairs of an impaired insurer the conservator shall determine whether or not covered claims should or can be provided for in whole or in part by reinsurance, assumption or substitution. Upon determination by the conservator that actual payment of covered claims should be made the conservator shall give notice of such determination to claimants falling within the class of "covered claims." The conservator shall mail such notice to the latest address reflected in the records of the impaired insurer. If the records of the impaired insurer do not reflect the address of a claimant, the conservator may give notice by publication in a newspaper of general circulation. Such notice shall state the time within which the claimant must file his claim with the conservator, which time shall in no event be less than ninety (90) days from the date of the mailing or publication of such notice. The conservator may require, in whole or in part, that sworn claim forms be filed and may require that additional information or evidence be filed as may be reasonably necessary for the conservator to determine the legality or the amount due under a covered claim. When an impaired insurer has been placed in conservatorship, the funds received from the association shall be liable only for the difference between the amount of

the covered claim approved by the conservator and the amount of assets marshalled by the conservator for payment to holders of covered claims. Any action brought by the holder of such covered claim against the impaired insurer shall not increase the liability of such funds; provided, however, that the conservator may review his action in approving a covered claim and may for just cause modify such approval at any time during the pendency of the conservatorship.

Upon determination by the conservator that actual payment of covered claims should be made or upon order of the court to the receiver to give notice for the filing of claims, any person who has a cause of action against an insured of the impaired insurer under a liability insurance policy issued or assumed by such insurer shall (if such cause of action meets the definition of "covered claim") have the right to file a claim with the receiver or the conservator, regardless of the fact that such claim may be contingent, and such claim may be approved as a "covered claim" (1) if it may be reasonably inferred from the proof presented upon such claim that such person would be able to obtain a judgment upon such cause of action against such insured; and (2) if such person shall furnish suitable proof that no further valid claims against such insurer arising out of his cause of action other than those already presented can be made; and (3) if the total liability of such insurer to all claimants arising out of the same act of its insured shall be no greater than its total liability would be were it not in liquidation, rehabilitation or conservation. In the proceedings of considering "covered claims" no judgment against an insured taken after the date of the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as evidence of liability, or of the amount of damages, and no judgment against an insured taken by default or by collusion prior to the commencement of the delinquency proceedings or the appointment of a conservator shall be considered as conclusive evidence either (1) of the liability of such insured to such person upon such cause of action, or (2) of the amount of damages to which such person is therein entitled.

The acceptance of payment from the receiver or conservator by the holder of a covered claim or the acceptance of the benefits of contracts negotiated by the receiver or conservator providing for reinsurance or assumption of liabilities or for substitution shall constitute an assignment to the impaired insurer of any cause of action or right of the holder of such covered claim arising from the occurrence upon which the covered claim is based. Such assignment shall be to the extent of the amount accepted or the value of the benefits provided by such contracts of reinsurance or assumption of liabilities or substitution.

[See Compact Edition, Volume 2 for text of 12]

Release from Conservatorship or Receivership

Sec. 13. An impaired insurer placed in conservatorship or receivership for which advances have been made under the provisions of this Act shall not be authorized, upon release from conservatorship or receivership, to issue new or renewal insurance policies until such time as the impaired insurer has repaid in full to the association the funds advanced by it; provided, however, the Commissioner may, upon application of the association and after hearing, permit the issuance of new policies in accordance with a plan of operations by the released insurer for repayment of advances. The Commissioner may, in approving such plan, place such restrictions upon the issuance of new or renewal policies as he deems necessary to the implementation of the plan.

Advisory Association

Sec. 14. A. Creation of the Association. (1) There is hereby created a nonprofit legal entity to be known as the Texas Property and Casualty Insurance Guaranty Association. All member insurers shall be and remain members of the association as a condition precedent to their authority to transact insurance in this State. The association shall perform its functions under the plan of operation established and approved as set out below and shall exercise its powers through a board of directors established as set out below. For the purposes of administration and assessment, the board shall establish four accounts:

- (a) the administrative account;
- (b) the workmen's compensation account;
- (c) the automobile account; and
- (d) the other lines of insurance account.

(2) The association shall come under the immediate supervision of the Commissioner and shall be subject to the applicable provisions of the insurance laws of this State.

B. Board of Directors. (1) The association shall exercise its powers through a board of directors consisting of eight (8) persons who shall be chosen from employees or officers of the member insurers and who shall be chosen to give fair representation to all member insurers giving due consideration to the various categories of premium income, geographical location, and segments of the industry represented in Texas. Members of the board shall be elected for overlapping four-year terms, with the terms of two of the members expiring each year. The initial membership of the board of directors shall consist of the industry representatives in the Texas Property and Casualty Advisory Association as it exists under this Act prior to the time this amendment takes effect, and those members shall serve out the terms for which they were elected to

the advisory association. Their replacements shall be elected by the member insurers under procedures to be established in the plan of operation. All directors shall be eligible to succeed themselves in office.

(2) Directors shall not receive any remuneration or emolument of office, but they shall be entitled to reimbursement for their actual expenses incurred in performing their duties as directors.

C. Powers and Duties of Association. In addition to the powers and duties enumerated in other sections of this article, the association:

(1) May render assistance and advice to the Commissioner, upon his request, concerning rehabilitation, payment of claims, continuations of coverage, or the performance of other contractual obligations of any impaired insurer;

(2) Shall have the standing to appear before any court in this State with jurisdiction over an impaired insurer concerning which the association is or may become obligated under this Act;

(3) May enter into such contracts as are necessary or proper to carry out the provisions and purposes of this article;

(4) May sue or be sued, including taking any legal actions necessary or proper for recovery of any unpaid assessments;

(5) May employ or retain such persons as are necessary to handle the financial transactions of the association, and to perform such other functions as become necessary or proper under this Act;

(6) May negotiate and contract with any liquidator, rehabilitator, conservator, receiver, or ancillary receiver to carry out the powers and duties of the association; and

(7) May take such legal action as may be necessary to avoid the payment of improper claims.

D. Plan of Operation. (1)(a) The association shall submit to the Commissioner a plan of operation and any amendment thereto necessary or suitable to assure the fair, reasonable, and equitable administration of the association. The plan of operation and any amendments thereto shall become effective upon approval in writing by the Commissioner.

(b) If the association fails to submit a suitable plan of operation within one hundred and eighty (180) days following the effective date of this Act, or if at any time thereafter the association fails to submit suitable amendments to the plan, the Commissioner may, after notice and hearing, adopt and promulgate such reasonable rules as are necessary or advisable to effectuate the provisions of this Act. Such rules shall continue in force until modified by the Commissioner or superseded by a plan submitted by the association and approved by the Commissioner.

(2) All member insurers shall comply with the plan of operation.

(3) The plan of operation shall, in addition to requirements enumerated elsewhere in this Act:

(a) establish procedures for handling the assets of the association;

(b) establish the amount and method of reimbursing members of the board of directors under this section;

(c) establish regular places and times for meetings of the board of directors;

(d) establish procedures for records to be kept of all financial transactions of the association, its agents and the board of directors;

(e) establish any additional procedures for assessments under Section 7 of this article; and

(f) contain additional provisions necessary or proper for the execution of the powers and duties of the association.

E. Prevention of Impairments. To aid in the detection and prevention of insurer impairments:

(1) The board of directors shall, upon majority vote, notify the Commissioner of any information indicating any member insurer may be unable or potentially unable to fulfill its contractual obligations and may request appropriate investigation and action by the Commissioner who may, in his discretion, make such investigation and take such action as he deems appropriate.

(2) The board of directors shall advise and counsel with the Commissioner upon matters relating to the solvency of insurers. The Commissioner shall call a meeting of the board of directors when he determines that an insurer is insolvent or impaired and may call a meeting of the board of directors when he determines that a danger of insolvency or impairment of an insurer exists. Such meetings shall not be open to the public and only members of the board of directors, members of the State Board of Insurance, the Commissioner, and persons authorized by the Commissioner shall attend such meetings. The board of directors shall, upon majority vote, notify the Commissioner of any information indicating that an insurer may be unable or potentially unable to fulfill its contractual obligations and request a meeting with the Commissioner. At such meetings the Commissioner may divulge to the board of directors any information in his possession and any records of the State Board of Insurance, including examination reports or preliminary reports from examiners relating to such insurer. The Commissioner may summon officers, directors, and employees of an insolvent or impaired insurer (or an insurer the Commissioner considers to be in danger

of insolvency or impairment) to appear before the board of directors for conference or for the taking of testimony. Members of the board of directors shall not reveal information received in such meetings to anyone unless authorized by the Commissioner or the State Board of Insurance or when required as witness in court. Board members and all of such meetings and proceedings under this section shall be subject to the same standard of confidentiality as is imposed upon examiners under Article 1.18 of the Insurance Code, as amended, except that no bond shall be required of a board member.

The board of directors shall, upon request by the Commissioner, attend hearings before the Commissioner and meet with and advise the Commissioner, liquidator, or conservator appointed by the Commissioner, on matters relating to the affairs of an impaired insurer and relating to action that may be taken by the Commissioner, liquidator, or conservator appointed by the Commissioner to best protect the interests of persons holding covered contractual obligations against an impaired insurer and relating to the amount and timing of partial assessments and the marshalling of assets and the processing and handling of contractual obligations.

(3) The board of directors may, upon majority vote, make reports and recommendations to the Commissioner upon any matter germane to the solvency, liquidation, rehabilitation, or conservation of any member insurer. Such reports and recommendations shall not be considered public documents. Reports or recommendations made by the board of directors to the Commissioner, liquidator, or conservator shall not be considered public documents, and there shall be no liability on the part of and no cause of action against a member of the board of directors or the board of directors for any report, individual report, recommendation, or individual recommendation by the board of directors or members to the Commissioner, liquidator, or conservator.

(4) The board of directors may, upon majority vote, make recommendations to the Commissioner for the detection and prevention of member insurer impairments.

(5) The board of directors shall, at the conclusion of any member insurer impairment in which the association carried out its duties under this article or exercised any of its powers under this article, prepare a report on the history and causes of such impairment, based on the information available to the association, and submit a report on same to the Commissioner.

(6) Any insurer that has an officer, director, or employee serving as a member of the board

of directors shall not lose the right to negotiate for and enter into contracts of reinsurance or assumption of liability or contracts of substitution to provide for liabilities for contractual obligations with the receiver or conservator of an impaired insurer. The entering into any such contract shall not be deemed a conflict of interest.

(7) The association or any insurer assessed under this article shall be an interested party under Section 3(h) of Article 21.28 of the Insurance Code, as amended.

Recognition of Assessments in Premium Tax Offset

Sec. 15. Any assessment paid by an insurer under this Act shall be allowed to such insurer as a credit against its premium tax under Article 7064, Revised Civil Statutes of Texas, 1925, as amended. The tax credit referred to herein shall be allowed at a rate of twenty percent (20%) per year for five (5) successive years following the date of assessment and at the option of the insurer may be taken over an additional number of years, and the balance of any assessment paid by the insurer and not claimed as such tax credit may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in annual statements pursuant to Article 6.12 of this Code.

[See Compact Edition, Volume 2 for text of 16 and 17]

Advertising Prohibited

Sec. 17a. It shall be unlawful for any insurer required to participate in the association to advertise or use in any manner for promotional purposes the fact that its policies are protected under this Act, and such acts of advertisement or promotion shall constitute unfair methods of competition or unfair or deceptive acts or practices under Article 21.21, Insurance Code, and shall be subject to the provisions thereof.

[See Compact Edition, Volume 2 for text of 18]

Certain Evidence Not Admissible; Unfair Practices

Sec. 19. (1) In any lawsuit brought by a conservator or receiver of an impaired insurer for the purpose of recovering assets of the impaired insurer, the fact that claims against the impaired insurer have been or will be paid under the provisions of this article shall not be admissible for any purposes and shall not be placed before any jury either by evidence or argument.

(2) The use in any manner of the protection afforded by this article by any person in the sale of insurance shall constitute unfair competition and unfair practices under Article 21.21 of the Insurance

Code, as amended, and shall be subject to the provisions thereof.

Control Over Conflicts

Sec. 20. The provisions of this Act and the powers and functions authorized by this Act are to be exercised to the end that its purposes are accomplished. This Act is cumulative of existing laws, but in the event of conflict between this Act and any other law relating to the subject matter of this Act or its application, the provisions of this Act shall control.

Unconstitutional Application Prohibited

Sec. 21. This Act and law does not apply to any insurer or other person to whom, under the Constitution of the United States or the Constitution of the State of Texas, it cannot validly apply.

Severance Clause

Sec. 22. If any provision of this Act or the application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Amended by Acts 1975, 64th Leg., p. 56, ch. 32, § 3, eff. April 3, 1975; Acts 1975, 64th Leg., p. 1094, ch. 414, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1950, ch. 775, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2110, ch. 845, §§ 1 to 12, eff. Aug. 29, 1977.]

Section 13 of Acts 1977, 65th Leg., p. 2120, ch. 845, provided: "If any provision of this Act or the application thereof to any person or circumstance is held invalid by any court of competent jurisdiction, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable."

SUBCHAPTER E. MISCELLANEOUS PROVISIONS

Art. 21.32A. Legality of Dividend

For the purpose of determining the legality of a dividend to shareholders paid by stock domestic insurance companies authorized to transact life, accident, and health insurance business in Texas, all stock foreign and alien life, health, and accident insurance companies, stock insurance companies authorized to transact property and casualty business and fire insurance business and domestic Lloyds', reciprocals, and title insurance companies under the laws of the State of Texas, the "earned surplus" or "surplus profits arising from the business" of the insurance company may include the acquired "earned surplus" of an insurance subsidiary which has been acquired by the insurance company, to the extent allowed by an order of the commissioner made in accordance with the rules of the board but only to the extent that the "earned surplus" of the acquired subsidiary on the date of acquisition, and in existence on the date of the order, is not otherwise reflected in the "earned surplus" of the insurance company.

[Added by Acts 1977, 65th Leg., p. 844, ch. 315, § 1, eff. Aug. 29, 1977.]

Art. 21.35A. Coverage Under Group Insurance and Group Hospital Plans for Psychological Services

Any person who is covered by a policy, contract, or certificate of group insurance or of a group hospital plan including but not limited to coverage issued by a company operating under Chapter 20, Insurance Code, as amended, and whose policy, contract, or certificate provides for services or partial or total reimbursement for services that are within the scope of practice of a licensed psychologist, is entitled to obtain these services or receive reimbursement for these services regardless of whether the services are performed by a licensed doctor of medicine or a licensed psychologist. This article applies to all policies, contracts, and certificates issued, renewed, modified, altered, amended, or reissued on or after the effective date of this article.

[Added by Acts 1977, 65th Leg., p. 1389, ch. 556, § 1, eff. Aug. 29, 1977.]

Art. 21.39-B. Restriction on Transactions with Funds and Assets

Sec. 1. Any director, member of a committee, or officer, or any clerk of a domestic company, who is charged with the duty of handling or investing its funds, shall not:

(1) deposit or invest such funds, except in the corporate name of such company, provided, however, that securities kept under a custodial agreement or trust agreement with a bank or trust company may be issued in the name of a nominee of such bank or trust company if such bank or trust company has corporate trust powers and is duly authorized to act as a custodian or trustee and is organized under the laws of the United States of America or any state thereof and either is a member of the Federal Reserve System or is a member of the Federal Deposit Insurance Corporation;

(2) borrow the funds of such company;

(3) be interested in any way in any loan, pledge, security, or property of such company, except as stockholder; or

(4) take or receive to his own use any fee, brokerage, commission, gift, or other consideration for, or on account of, a loan made by or on behalf of such company.

Sec. 2. The State Board of Insurance may promulgate such regulations as may be deemed necessary to carry out the provisions of this article.

Sec. 3. The provisions of this article are applicable to all domestic insurance companies subject to regulation by the Insurance Code, as amended, and any provision of exemption or any provision of inapplicability or applicability limiting such regulation in

any chapter of the code are not in limitation of the provisions of this article, and in the event of conflict between this article and any other article of the code or in the event of any ambiguity, the provisions of this article shall govern.

As used herein, the term "insurance companies" includes stock companies, reciprocals or inter-insurance exchanges, Lloyds associations, fraternal benefit societies, stipulated premium companies, and mutual companies of all kinds, including state-wide mutual assessment corporations, local mutual aids, burial associations, and county mutual insurance companies and farm mutual insurance companies and all other organizations, corporations, or persons transacting an insurance business, unless such insurance companies are by statute specifically, by naming this article, exempted from the operation of this article.

[Added by Acts 1975, 64th Leg., p. 464, ch. 198, § 1, eff. May 15, 1975.]

Art. 21.43. Foreign Insurance Corporations

[See Compact Edition, Volume 2 for text of (a)]

(b) No foreign insurance corporation of a type provided for in any Chapter of this Code shall be denied permission to do business in this state for the reason that the name of such corporation is the same as, or deceptively similar to, the name of any domestic corporation existing under the laws of this state or of any foreign corporation authorized to transact business in this state, provided such foreign insurance corporation files an assumed name certificate setting forth a different name, with the State Board of Insurance and with any county clerks as provided by Sections 36.10 and 36.11 of the Business & Commerce Code. No such foreign insurance corporation shall transact or conduct any business in this state except under the assumed name.

[See Compact Edition, Volume 2 for text of (c)]

[Amended by Acts 1977, 65th Leg., p. 1101, ch. 403, § 3, eff. Aug. 29, 1977.]

Art. 21.48A. Prohibiting Certain Practices Relating to Insurance of Real or Personal Property

Definitions

Sec. 1. (1) "Lender" means any person, partnership, corporation, association, or other entity, or any agent, loan agent, servicing agent, or any loan or mortgage broker, who lends money and receives or otherwise acquires a mortgage, lien, deed of trust, or any other security interest in or upon any real or personal property as security for such loan.

(2) "Borrower" means any person, partnership, corporation, association, or other entity, who has or acquires a legal or equitable interest in real or

personal property which is or becomes subject to a mortgage, lien, security agreement, deed of trust, or other security instrument.

Prohibited Practices

Sec. 2. (a) No Lender shall require a fee of over Ten Dollars (\$10.00) for the substitution by the Borrower of an insurance policy for another insurance policy still in effect, or require any fee for the furnishing by the Borrower of an insurance policy for an existing policy upon termination of the existing policy, when such insurance policy is provided through an insurance company duly licensed to do business in the State of Texas pursuant to the provisions of this Insurance Code.

(b) No Lender shall directly or indirectly impose or require as a condition of any financing or lending of money or the renewal or the extension thereof, that the purchaser or borrower or his successors, shall procure any policy of insurance or the renewal or extension thereof, covering the property involved in the transaction, from or through any particular agent or agents, solicitor or solicitors, insurer or insurers, or any other person or persons, or from or through any particular type or class of any of the foregoing.

(c) No Lender shall use or permit the use of any of the information taken from a policy of insurance insuring the property of a Borrower for the purpose of soliciting insurance business from the Borrower, or make any of such information available to any other person for any purpose, unless such Lender has first been furnished specific written authority from the Borrower permitting or directing such particular use or disclosure; provided, however, this paragraph shall not prevent a Lender who is a licensed local recording agent from selling insurance to a Borrower.

(d) No Lender may require a Borrower to furnish evidence of insurance more than fifteen (15) days prior to the termination date of an existing policy.

Exceptions

Sec. 3. Nothing contained in Section 2 hereof shall be deemed to prevent such Lender from:

(a) requiring evidence, to be produced prior to the commencement or renewal of the risk, that insurance with a fixed termination date providing adequate coverage has been obtained in an amount sufficient to cover the debt or loan and that it will not be cancelled without reasonable notice to the lender;

(b) requiring insurance in an insurer authorized to do business and having a licensed resident agent in this state;

(c) refusing to accept or approve insurance in any particular insurer on reasonable and nondis-

criminary grounds relating to its financial soundness, or its facility to service the policy;

(d) providing adequate insurance coverage to protect the Lender's security interest in any property in accordance with the terms of the mortgage, security agreement, deed of trust, or other security instrument should the Borrower fail to furnish an insurance policy meeting the requirements established by the Lender as authorized by this article within fifteen (15) days prior to the termination date of an existing policy, and in such instance the Lender shall be entitled to use any information contained in the existing policy for the purpose of determining adequate insurance coverage;

(e) requiring at or before the time of delivery of an insurance policy to the Lender by a local recording agent or insurer a statement in writing from the Borrower designating such agent or insurer as his agent for such purpose; provided, however, such statement shall not be required when an agent or insurer is furnishing a renewal of an existing expiring policy provided by such agent or insurer;

(f) furnishing to any person, firm, or corporation who is or becomes the owner or holder of any note or obligation secured by a mortgage, security agreement, deed of trust, or other security instrument the policy of insurance or any information contained therein covering property which is security for such loan; or

(g) processing a claim under the terms of the insurance policy.

Violations, Enforcement, and Civil Remedies

Sec. 4. (a) The attorney general or the commissioner or board may institute any injunction or other proceeding to enforce the provisions of this article and to enjoin any person, partnership, corporation, association, or other entity from engaging or attempting to engage in any activity in violation of this article or any of its provisions. The provisions of this section are cumulative of the other penalties or remedies provided for by law.

(b) A Borrower may recover from any Lender who violates any of the provisions of this article civil damages in an amount equal to three (3) times the annual premium for the policy of insurance in force upon the mortgaged property. In the event that such policy of insurance be for a period of more than one (1) year, the annual premium shall be calculated by dividing the number of years of the duration of such policy into the total premium specified therein for such entire period.

Application to Title Insurance

[See Compact Edition, Volume 2 for text of 5]
[Amended by Acts 1977, 65th Leg., p. 349, ch. 171, § 1, eff. Aug. 29, 1977.]

**Art. 21.49-1. Insurance Holding Company System
Regulatory Act**

*[See Compact Edition, Volume 2 for text of 1
and 2]*

Registration of Insurers

Sec. 3.

[See Compact Edition, Volume 2 for text of 3(a)]

(b) Information and Form Required. Every insurer subject to registration shall file a registration statement on a form provided by the commissioner, which shall contain current information about:

*[See Compact Edition, Volume 2 for text
of 3(b)(1) and (2)]*

(3) the following agreements in force, relationships subsisting, and transactions currently outstanding between such insurer and its holding company, its subsidiaries, or its affiliates:

*[See Compact Edition, Volume 2 for text
of 3(b)(3)(i) to (iv)]*

(v) all management and service contracts and all cost-sharing arrangements; and

*[See Compact Edition, Volume 2 for text of
3(b)(3)(vi) to (5), 4]*

Acquisition or Retention of Control of or Merger with Domestic
Insurer

Sec. 5. (a) Filing Requirements of Public Tenders or Offers. (1) Except as otherwise provided in Subsection (b) of this Section, no person other than the issuer shall make a public tender offer for, solicitation or a request or invitation for tenders of, or enter into any agreement to exchange securities for, seek to acquire, or acquire, in the open market or otherwise, from the shareholders, any voting security of a domestic insurer if, after the consummation thereof, such person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer, and no person shall enter into an agreement to merge with or otherwise to acquire control of a domestic insurer unless, at the time any such offer, request, or invitation is made or any such agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is entered into, or prior to the acquisition of such securities if no offer or agreement is involved, such person has filed with the commissioner and has sent to such insurer, and such insurer has sent to its shareholders, a statement containing the information required by this section and such offer, request, invitation, agreement, or acquisition has been approved by the commissioner in the manner hereinafter prescribed.

*[See Compact Edition, Volume 2 for text
of 5(a)(2)]*

(b) Filing Requirements of Negotiated Agreements. No person who has executed or entered into a privately negotiated agreement or contract directly with shareholders of a domestic insurer to acquire any voting security of such insurer by which, after the consummation thereof, such person would, directly or indirectly, or by conversion or by exercise of any right to acquire, be in control of such insurer, shall consummate or make effective any such agreement or control, or acquire any further right, title, or interest in such voting security, or exercise any control over such insurer, until and unless such person has filed with the commissioner a statement containing the information required by Subsection (c) of this section and such agreement, contract, and acquisition has been approved by the commissioner in the manner hereinafter prescribed. The statement filed under this Subsection (b) shall be subject to public inspection at the office of the commissioner, and a copy thereof shall be sent to the insurer but shall not be required to be sent to the insurer's shareholders.

(c) Content of Statement. The statement to be filed with the commissioner hereunder shall be made under oath or affirmation and shall contain the following information:

(1) the name and address of each person by whom or on whose behalf the merger or other acquisition of control referred to in either Subsection (a) or (b) is to be effected (hereinafter called "acquiring party"), and

(i) if such person is an individual, his principal occupation and all offices and positions held during the past five years, and any conviction of crimes other than minor traffic violations during the past 10 years; and

(ii) if such person is not an individual, a report of the nature of its business operations during the past five years or for such lesser period as such person and any predecessors thereof shall have been in existence; an informative description of the business intended to be done by such person and such person's subsidiaries; and a list of all individuals who are or who have been selected to become directors or executive officers of such person, or who perform or will perform functions appropriate to such positions. Such list shall include for each such individual the information required by Paragraph (i) of this subsection;

(2) the source, nature, and amount of the consideration used or to be used in effecting the merger or other acquisition of control, a descrip-

tion of any transaction wherein funds were or are to be obtained for any such purpose, and the identity of persons furnishing such consideration, provided, however, that where a source of such consideration is a loan made in the lender's ordinary course of business, the identity of the lender shall remain confidential, if the person filing such statement so requests;

(3) fully audited financial information as to the earnings and financial condition of each acquiring party for the preceding five fiscal years of each such acquiring party (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than 90 days prior to the filing of the statement, unless such acquiring party is an individual person in which case he shall provide such personal financial information as required by the commissioner;

(4) any plans or proposals which each acquiring party may have to liquidate such insurer, to sell its assets or merge or consolidate it with any person, or to make any other material change in its business or corporate structure or management;

(5) the number of shares of any security referred to in either Subsection (a) or (b), which each acquiring party proposes to acquire, and the terms of the offer, request, invitation, agreement, or acquisition referred to in either Subsection (a) or (b), and a statement as to the method by which the fairness of the proposal was arrived at;

(6) the amount of each class of any security referred to in either Subsection (a) or (b) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by each acquiring party;

(7) a full description of any contracts, arrangements, or understanding with respect to any security referred to in either Subsection (a) or (b) in which any acquiring party is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements or understandings have been entered into;

(8) a description of the purchase of any security referred to in either Subsection (a) or (b) during the 12 calendar months preceding the filing of the statement by any acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor;

(9) a description of any recommendations to purchase any security referred to in either Subsection (a) or (b) made during the 12 calendar months preceding the filing of the statement, by any acquiring party, or by anyone based upon interviews or at the suggestion of such acquiring party;

(10) copies of all tender offers for, requests or invitations for tenders of, exchange offers for, and contracts or agreements to acquire or exchange any securities referred to in either Subsection (a) or (b), and (if distributed) of additional soliciting material relating thereto;

(11) the terms of any agreement, contract or understanding made with any broker-dealer as to solicitation of securities referred to in either Subsection (a) or (b) for tender, and the amount of any fees, commissions or other compensation to be paid to broker-dealers with regard thereto;

(12) such additional information as the commissioner may by rule or regulation prescribe as necessary or appropriate for the protection of policyholders and securityholders of the insurer or in the public interest.

If the person required to file the statement referred to in either Subsection (a) or (b) is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by Clauses (1) through (12) shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, or person is a corporation or the person required to file the statement referred to in either Subsection (a) or (b) is a corporation, the commissioner may require that the information called for by Clauses (1) through (12) shall be given with respect to such corporation, each officer and director of such corporation, and each person who is directly or indirectly the beneficial owner of more than 10 percent of the outstanding voting securities of such corporation.

If any material change occurs in the facts set forth in the statement filed with the commissioner and sent to such insurer pursuant to this section, an amendment setting forth such change, together with copies of all documents and other material relevant to such change, shall be filed with the commissioner and sent to such insurer within two business days after the person learns of such change.

(d) Alternative Filing Materials. If any offer, request, invitation, contract, agreement, or acquisition referred to in either Subsection (a) or Subsection (b) is proposed to be made by means of a registration statement under the Securities Act of 1933, as amended, or in circumstances requiring the disclosure of similar information under the Securities Exchange Act of 1934, as amended, or under a

State law requiring similar registration or disclosure, the person required to file the statement referred to in either Subsection (a) or Subsection (b) may utilize such documents in furnishing the information called for by that statement.

(e) Approval by Commissioner; Hearings. (1) The commissioner shall approve any such acquisition of control referred to in either Subsection (a) or Subsection (b) unless, after a public hearing thereon, he finds that:

(i) after the change of control the domestic insurer referred to in either Subsection (a) or Subsection (b) would not be able to satisfy the requirements for the issuance of a license to write the line or lines of insurance for which it is presently licensed;

(ii) the effect of such acquisition of control would be substantially to lessen competition in insurance in this State or tend to create a monopoly therein;

(iii) the financial condition of any acquiring party is such as might jeopardize the financial stability of the insurer, or prejudice the interest of its policyholders or the interests of any remaining security holders who are unaffiliated with such acquiring party;

(iv) the terms of the offer, request, invitation, agreement, or acquisition referred to in Subsection (a) are unfair and unreasonable to the securityholders of the insurer;

(v) the plans or proposals which the acquiring party has to liquidate the insurer, sell its assets or consolidate or merge it with any person, or to make any other material change in its business or corporate structure or management, are unfair, prejudicial, hazardous, or unreasonable to policyholders or stockholders of the insurer and not in the public interest;

(vi) the competence, trustworthiness, experience, and integrity of those persons who would control the operation of the insurer are such that it would not be in the interest of policyholders of the insurer and of the public to permit the merger or other acquisition of control; or

(vii) such acquisition or merger would violate any law of this or any other state or of the United States.

(2) The public hearing referred to in Clause (1) hereof shall be held within 30 days after the statement required by either Subsection (a) or Subsection (b) is filed, and at least 20 days' notice thereof shall be given by the commissioner to the person filing the statement and to the domestic insurer. Not less

than 10 days' notice of such public hearing shall be given by the person filing the statement to such other persons as may be designated by the commissioner. The insurer shall give prompt notice of the hearing to its securityholders as prescribed in Subsection (f) hereof. The commissioner shall make a determination within 30 days after the conclusion of such hearing. At such hearing, the person filing the statement, the insurer, any person to whom notice of hearing was sent, and any other person whose interests may be affected thereby shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments in connection therewith.

(f) Mailings to Shareholders; Payment of Expenses. Except as provided in Subsection (b), all statements, amendments, or other material filed pursuant to Subsection (a), (b), or (c), and all notices of public hearings held pursuant to Subsection (e), shall be mailed by the insurer to its shareholders within five business days after the insurer has received such statements, amendments, other material, or notices. The expenses of mailing shall be borne by the person making the filing. As security for the payment of such expenses, such person shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

(g) Exemptions. The provisions of this section shall not apply to:

(1) any offers, requests, invitations, agreements, or acquisitions by the person referred to in Subsection (a) who is a broker-dealer under state or federal securities laws of any voting security referred to in Subsection (a) which, immediately prior to consummation of such offer, request, invitation, agreement, or acquisition, was not issued and outstanding and which acquisition is solely for resale under a plan approved by the commissioner that will not reasonably result in acquisition of control on resale and where during the period prior to resale no actual positive act of control by virtue of those shares is committed;

(2) any transaction which is subject to the provisions of: (i) Article 21.25, Sections 1 through 5, of this code, dealing with the merger or consolidation of two or more insurers and complying with the terms of such article until the plan of merger or consolidation has been filed by the insurer with the Commissioner of Insurance in accordance with such Article 21.25. After the filing of such plan of merger or consolidation the transaction shall be subject to the approval provisions of Subsection (e) of Section 5 of this article, but the Commissioner may exempt such transaction from any or all of the other provisions and requirements of Section 5 of this article if he finds that the notice, proxy

statement, and other materials furnished to shareholders and security holders in connection with such merger or consolidation contained reasonable and adequate factual and financial disclosure, material and information relating to such transaction, (ii) Article 11.20 of this code, (iii) Article 11.21 of this code, (iv) Article 14.13 of this code, (v) Article 14.61 of this code, (vi) Article 14.63 of this code, (vii) Article 21.26 of this code, provided that the requirements of said article are fully complied with, (viii) Article 22.15 of this code, and (ix) Article 22.19 of this code, provided that the reinsurance is a total direct reinsurance agreement; or

(3) any offer, request, invitation, agreement, or acquisition which the commissioner by order shall exempt therefrom as (i) not having been made or entered into for the purpose and not having the effect of changing or influencing the control of a domestic insurer, or (ii) as otherwise not comprehended within the purposes of this section.

(h) Retention of Control. (1) The following conditions affecting any controlled insurer, regardless of when such control has been acquired, are violations of this article: (i) the violation of this article, or other demonstration of untrustworthiness, by the insurer, its holding company or any controlling person, or any of the officers or directors of either; or (ii) the violation of any provision of Chapter 15 of the Business and Commerce Code, Chapter 785, Acts of the 60th Legislature, 1967, as amended, or any other antitrust law of this State by the insurer, the holding company or any affiliate. If, after notice and an opportunity to be heard the commissioner determines that any of the foregoing violations exists, he shall reduce his findings to writing and shall issue an order based thereon and cause the same to be served upon the insurer and upon all persons affected thereby directing any person found to be in violation hereof to take appropriate action to cure such violation. Upon the failure of any such person to comply with such order, Section 3 of Article 1.14 of this code shall become applicable to such person, as well as any other provisions of this article.

(2) The commissioner may require the submission of such information as he deems necessary to determine whether any retention of control complies with this article and may require, as a condition of approval of such retention of control, that all or any portion of such information be disclosed to the insurer's stockholders.

(i) Duty of Insurer. Unless subject to registration under Section 3, or unless it is a foreign insurer not subject to disclosure requirements and standards adopted by statute or regulation in the jurisdiction of its domicile which are substantially similar to those contained in this article, or unless acquisition

of its control is subject to Subsections (a), (b), (c), and (d) hereof, every authorized insurer shall, on or before November 1, 1971, or within 30 days after any event requiring notice hereunder, whichever is later, notify the commissioner in writing of the identity of any person whom the insurer then knows, or has reason to believe, controls or has taken any action, other than preliminary negotiations or discussions, to acquire control of the insurer.

(j) Violations. The following shall be violations of this section:

(1) the failure to file any statement, amendment, or other material required to be filed pursuant to this section; or

(2) the effectuation or any attempt to effectuate an acquisition of control of, or merger with, a domestic insurer unless the commissioner has given his approval thereto.

(k) Jurisdiction; Consent to Service of Process. The courts of this State are hereby vested with jurisdiction over every person not resident, domiciled, or authorized to do business in this State who files a statement with the commissioner under this section, and over all actions involving such person arising out of violations of this section, and each such person shall be deemed to have performed acts equivalent to and constituting an appointment by such person of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such person at his last known address.

Subsidiaries of Insurers

Sec. 6. (a) Any domestic insurer, either by itself or in cooperation with one or more persons, may organize, acquire, invest in or make loans to one or more subsidiaries, and may loan to or invest in affiliates, as permitted by the investment provisions of the Insurance Code.

(b) Additional investment authority. In addition to investments in common stock, preferred stock, debt obligations, and other securities permitted under all other sections of the Insurance Code, a domestic insurer may also:

(1) invest in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries and affiliates organized for any lawful purpose amounts which in the aggregate do not exceed the lesser of five percent of the insurer's assets or 50 percent of the insurer's surplus as regards policyholders, but after such investments the insurer's surplus as regards policyholders must be reasonable in relation to the

insurer's outstanding liabilities and adequate to its financial needs. In calculating the amount of such investments, there must be included (i) total net money or other consideration expended and obligations assumed in the acquisition or formation of a subsidiary, including all organizational expenses and contributions to capital and surplus of the subsidiary whether or not represented by the purchase of capital stock or issuance of other securities, and (ii) all amounts expended in acquiring additional common stock, preferred stock, debt obligations, and other securities and all contributions to the capital or surplus of a subsidiary subsequent to its acquisition or formation;

(2) if the insurer's total liabilities, as calculated for National Association of Insurance Commissioners annual statement purposes, are less than 10 percent of assets, invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries and affiliates organized for any lawful purpose, but after such investment the insurer's surplus as regards policyholders, considering such investment as if it were a nonadmitted asset, must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs;

(3) invest any amount in common stock, preferred stock, debt obligations, and other securities of one or more subsidiaries and affiliates organized for any lawful purpose, provided that such subsidiary or affiliate agrees to limit its investments in any particular asset so that such investments will not cause the amount of the total investment of the insurer to exceed the amount the insurer could have directly invested in such asset. For the purpose of this clause, "the total investment of the insurer" will include (i) any direct investment by the insurer in an asset and (ii) the insurer's proportionate share of any investment in such asset by any subsidiary or affiliate of the insurer, which must be calculated by multiplying the amount of the subsidiary's or affiliate's investment by the percentage of the insurer's ownership of such subsidiary or affiliate; and

(4) with the prior approval of the commissioner, invest any amount in common stock, preferred stock, debt obligations, or other securities of one or more subsidiaries and affiliates, but after such investment the insurer's surplus as regards policyholders must be reasonable in relation to the insurer's outstanding liabilities and adequate to its financial needs.

(c) Exemption from Investment Restrictions. Investments in common stock, preferred stock, debt obligations, or other securities of subsidiaries and affiliates made under Subsection (b) hereof are not

subject to any of the otherwise applicable restrictions or prohibitions contained in this code applicable to such investment of a company subject to this code, but such investments are subject to all of the provisions of Section 4 of this Act.

(d) Qualification of Investment. Whether any investment under Subsection (b) hereof meets the applicable requirements thereof is to be determined on a pro forma basis as of the time immediately after such investment is made, taking into account the insurer's assets, liabilities, and surplus as regards policyholders, the then outstanding principal balance of all previous investments in debt obligations of subsidiaries and affiliates, and the value of all previous investments in equity securities of subsidiaries and affiliates.

(e) Cessation of Control. If an insurer ceases to control a subsidiary, it must dispose of any investment therein made under Subsection (b) within three years from the time of the cessation of control or within such further time as the commissioner may prescribe and approve, unless at any time after the investment is made the investment otherwise meets the requirements of and qualifies for investment under any other section of this code, and the insurer has notified the commissioner thereof.

Valuation of Investment in a Subsidiary or Affiliate

Sec. 6A. (a) Valuation of an investment by an insurer in a subsidiary or affiliate of an insurer, which is not itself an insurer, shall be valued, subject to the additional provisions of this section, on the basis of the greater of:

(1) the net stockholder equity value owned by the insurer in the subsidiary or affiliate, adjusted to include the value of only such of the assets of such subsidiary as would constitute lawful investments for the insurer if acquired or held directly by the insurer; or

(2) one of the following bases appropriate to each type of subsidiary or affiliate owned by it, provided, however, that an insurer shall not be required to value the stock of all its subsidiaries or affiliates on the same basis:

(i) the net worth of the subsidiary or affiliate determined in accordance with generally accepted accounting principles as of the end of its most recent fiscal year, provided, subject to the other provisions of this section, that the financial statements of the subsidiary or affiliate for its most recent fiscal year have been audited by an independent certified public accountant in accordance with generally accepted auditing standards; or

(ii) a value equal to the cost of the stock of the subsidiary or affiliate, provided such value is determined and adjusted to reflect subsequent operating results in accordance

with generally accepted accounting principles; or

(iii) the market value of the stock of the subsidiary or affiliate, if the stock is listed on a national securities exchange; or

(iv) the value, if any, placed on the stock of such subsidiary or affiliate by the National Association of Insurance Commissioners; or

(v) any other value which the insurer can substantiate to the satisfaction of the commissioner as being a reasonable value.

(b) Within 60 days after the effective date of this section, an insurer shall file with the commissioner relevant information identifying, supporting, and justifying the value of and basis of valuation used in accordance with the provisions of Subsection (a) hereof for each of its noninsurer subsidiaries and affiliates.

(c) Within 30 days after the acquisition of a noninsurer subsidiary or affiliate, an insurer shall file with the commissioner relevant information identifying, supporting, and justifying the value of and the basis of valuation used in accordance with the provisions of Subsection (a) for such subsidiary or affiliate.

(d) A valuation basis used for a subsidiary or affiliate shall thereafter be consistently used unless a change is substantiated as reasonable and on that basis is approved in writing by the commissioner.

(e) If a subsidiary or affiliate is valued on the basis of Subsection (a)(2)(i) and the books of the subsidiary or affiliate are not audited at the time the valuation is included in the insurer's annual statement, the insurer shall thereafter report and explain the difference, if any, between the value of the subsidiary or affiliate as reported in the annual statement and the value as determined by audit. Such report and explanation shall be made as soon as possible following such audit.

(f) If any subsidiary or affiliate, which is not itself an insurance company, is valued other than on a basis of market value as defined in Subsection (a)(2)(iii), there shall be deducted from otherwise determined value a sum equal to the value claimed for any of its assets which would not constitute admitted assets for the insurer if held directly by the insurer, if such assets

(1) are held by the subsidiary or affiliate but used, under a lease agreement or otherwise, significantly in the conduct of the insurer's business; or

(2) were acquired from or purchased for the benefit or use of the insurer by the subsidiary or affiliate under specific circumstances that, in the opinion of the commissioner, support a rea-

sonable finding that the primary purpose of such acquisition or purchase was the evasion or avoidance of the Insurance Code.

(g) The commissioner may, after notice and opportunity to be heard, determine that the basis used for valuation of the stock of any subsidiary or affiliate does not, under the specific circumstances of the case, reflect the value of the subsidiary or affiliate and may order either an adjustment in valuation or the use of one of the other specified bases of valuation.

[See Compact Edition, Volume 2 for text of 7 to 15]

Rescission, Revocation, and Reversal of Unauthorized Transactions

Sec. 16. Whenever it appears to the commissioner that any person has entered into any transaction or act without having first complied with the provisions of this article applicable to such transaction or act, and in violation hereof, or has obtained his approval of or acquiescence in a transaction or act subject to this article based upon a material fraudulent misrepresentation, misstatement, or omission, the commissioner may, after giving notice and an opportunity to be heard, determine and order that such transaction or act be set aside, rescinded, revoked, reversed, and rendered void and of no force or effect, and that the parties to such transaction or act shall be returned to the position they would have occupied had not such transaction or act occurred in violation of this article.

[See Compact Edition, Volume 2 for text of 17 and 18]

[Amended by Acts 1977, 65th Leg., p. 2195, ch. 868, §§ 1 to 5, eff. May 11, 1977.]

Art. 21.49-3. Medical Liability Insurance Underwriting Association Act

Short Title

Sec. 1. This Act shall be known as the "Texas Medical Liability Insurance Underwriting Association Act."

Definitions

Sec. 2. (1) "Medical liability insurance" means primary and excess insurance coverage against the legal liability of the insured and against loss, damage, or expense incident to a claim arising out of the death or injury of any person as the result of negligence in rendering or the failure to render professional service by a health care provider or physician who is in one of the categories eligible for coverage by the association.

(2) "Association" means the joint underwriting association established pursuant to the provisions of this article.

(3) "Net direct premiums" means gross direct premiums written on automobile liability and liability other than auto insurance written pursuant to the provisions of the Insurance Code, less policyholder dividends, return premiums for the unused or unabsorbed portion of premium deposits and less return premiums upon cancelled contracts written on such liability risks.

(4) "Board" means the State Board of Insurance of the State of Texas.

(5) "Physician" means a person licensed to practice medicine in this state.

(6) "Health care provider" means any person, partnership, professional association, corporation, facility, or institution duly licensed or chartered by the State of Texas to provide health care as defined in Section 1.03(2), Medical Liability Insurance Improvement Act of Texas,¹ as a registered nurse, hospital, dentist, podiatrist, pharmacist, chiropractor, optometrist, or not-for-profit nursing home, or a radiation therapy center that is independent of any other medical treatment facility and which is licensed by the Texas State Radiation Control Agency pursuant to the provisions of Chapter 72, Acts of the 57th Legislature, Regular Session, 1961, as amended (Article 4590f, Vernon's Texas Civil Statutes), and which is in compliance with the regulations promulgated by the Texas State Radiation Control Agency, a blood bank that is a nonprofit corporation chartered to operate a blood bank and which is accredited by the American Association of Blood Banks, or a nonprofit corporation which is organized for the delivery of health care to the public and which is certified under Article 4509a, Revised Civil Statutes of Texas, 1925, or an officer, employee, or agent of any of them acting in the course and scope of his employment.

¹ Civil Statutes, art. 4590i.

Joint Underwriting Association

Sec. 3. (a) A joint underwriting association is hereby created, consisting of all insurers authorized to write and engaged in writing, within this state, on a direct basis, automobile liability and liability other than auto insurance on or after January 1, 1975, as provided in the Insurance Code, specifically including and applicable to Lloyds and reciprocal or interinsurance exchanges, but excluding farm mutual insurance companies as authorized by Chapter 16 of this code, and county mutual insurance companies as authorized by Chapter 17 of this code. Every such insurer shall be a member of the association and shall remain a member as a condition of its authority to continue to transact such kind of insurance in this state. The purpose of the association shall be to provide medical liability insurance on a self-supporting basis. The association shall not be a licensed insurer within the meaning of Article 1.14-2, Insurance Code.

(b) The association shall, pursuant to the provisions of this article and the plan of operation with respect to medical liability insurance, have the power on behalf of its members:

(1) to issue, or to cause to be issued, policies of insurance to applicants, including primary, excess, and incidental coverages and subject to limits as specified in the plan of operation; provided that no individual or organization may be insured by policies issued by the association for an amount exceeding a total of \$750,000 per occurrence and \$1.5 million aggregate per annum;

(2) to underwrite such insurance and to adjust and pay losses with respect thereto, or to appoint service companies to perform those functions;

(3) to either or both accept and refuse the assumption of reinsurance from its members; and

(4) to cede and purchase reinsurance.

(c)(1) The board shall, after consultation with the joint underwriting association, representatives of the public, the Texas Medical Association, the Texas Podiatry Association, the Texas Hospital Association, and other affected individuals and organizations, promulgate a plan of operation consistent with the provisions of this article, to become effective and operative no later than 90 days after the effective date of this Act.

(2) The plan of operation shall provide for economic, fair, and nondiscriminatory administration and for the prompt and efficient provision of medical liability insurance, and shall contain other provisions including, but not limited to, preliminary assessment of all members for initial expenses necessary to commence operations, establishment of necessary facilities, management of the association, assessment of members and assessment of policyholders to defray losses and expenses, administration of the policyholder's stabilization reserve fund, commission arrangements, reasonable and objective underwriting standards, acceptance, assumption, and cession of reinsurance, appointment of servicing carriers, and procedures for determining amounts of insurance to be provided by the association.

(3) The plan of operation shall provide that any balance remaining in the funds of the association at the close of its fiscal year, meaning its then excess of revenue over expenditures after reimbursement of members' contributions in accordance with Section 4(b)(5) of this article by the association shall be added to the reserves of the association.

(4) Amendments to the plan of operation may be made by the directors of the association, subject to the approval of the board, or shall be made at the direction of the board.

Eligibility for Coverage

Sec. 3A. The board shall establish by order the categories of physicians and health care providers who are eligible to obtain coverage from the association and may, from time to time, revise its order to include or exclude from eligibility particular categories of such physicians and health care providers.

Procedures

Sec. 4. (a)(1) Any health care provider or physician included in one of the categories of health care providers eligible for coverage by the association shall, on or after the effective date of the plan of operation, be entitled to apply to the association for such coverage. Such application may be made on behalf of an applicant by an agent authorized pursuant to Article 21.14 of this code.

(2) If the association determines that the applicant meets the underwriting standards of the association as prescribed in the plan of operation and there is no unpaid, uncontested premium, policyholder stabilization reserve fund charge, or assessment due from the applicant for prior insurance (as shown by the insured having failed to pay or make written objection to such charges within 30 days after billing) then the association, upon receipt of the premium and the policyholder stabilization reserve fund charge, or such portion thereof as is prescribed in the plan of operation, shall cause to be issued a policy of medical liability insurance for a term of one year.

(b)(1) The rates, rating plans, rating rules, rating classifications, territories, and policy forms applicable to the insurance written by the association and statistics relating thereto shall be subject to Subchapter B of Chapter 5 of the Insurance Code, as amended,¹ giving due consideration to the past and prospective loss and expense experience for medical professional liability insurance within and without this state of all of the member companies of the association, trends in the frequency and severity of losses, the investment income of the association, and such other information as the board may require; provided, that if any article of the above subchapter is in conflict with any provision of this Act, this Act shall prevail.

(2) Within such time as the board shall direct, the association shall submit, for the approval of the board pursuant to Article 5.15 of the Insurance Code, an initial filing, in proper form, of policy forms, classifications, rates, rating plans, and rating rules applicable to medical liability insurance to be written by the association.

(3) Any deficit sustained by the association in any one year shall be recouped, pursuant to the plan of operation and the rating plan then in effect, by one or more of the following procedures in this sequence:

First, a contribution from the policyholder's stabilization reserve fund until the same is exhausted.

Second, an assessment upon the policyholders pursuant to section 5(a) of this article;

Third, an assessment upon the members pursuant to Section 5(b) of this article. To the extent a member has paid one or more assessments and has not received reimbursement from the association in accordance with Subdivision (5) of this subsection, a credit against premium taxes under Article 7064, Revised Civil Statutes of Texas, 1925, as amended shall be allowed. The tax credit shall be allowed at a rate of 20 percent per year for five successive years following the year in which said deficit was sustained and at the option of the insurer may be taken over an additional number of years.

(4) After the initial year of operation, rates, rating plans, and rating rules, and any provision for recoupment should be based upon the association's loss and expense experience, together with such other information based upon such experience as the board may deem appropriate. The resultant premium rates shall be on an actuarially sound basis and shall be calculated to be self-supporting.

(5) In the event that sufficient funds are not available for the sound financial operation of the association, in addition to assessments paid pursuant to the plan of operation in accordance with Section 3(c)(2) of this article and contributions from the policyholder's stabilization reserve fund, all members shall, on a basis authorized by the board, as long as the board deems it necessary, contribute to the financial requirements of the association in the manner provided for in Section 5. Any assessment or contribution shall be reimbursed to the members with interest at a rate to be approved by the board. Pending recoupment or reimbursement of assessments or contributions paid to the association by a member, the unrepaid balance of such assessments and contributions may be reflected in the books and records of the insurer as an admitted asset of the insurer for all purposes, including exhibition in annual statements pursuant to Article 6.12 of this code.

(c) Excess insurance coverage written for a health care provider or a physician by the association under this article shall be written on a following form basis to the primary insurance coverage of that health care provider.

¹ Article 5.13 et seq.

Policyholder's Stabilization Reserve Fund

Sec. 4A. There is hereby created a policyholder's stabilization reserve fund which shall be administered as provided herein and in the plan of operation of the association. Each policyholder shall pay an-

nually into the stabilization reserve fund a charge, the amount of which shall be established annually by advisory directors chosen by health care providers and physicians eligible for insurance in the association in accordance with the plan of operation. The charge shall be in proportion to each premium payment due for liability insurance through the association. Such charge shall be separately stated in the policy, but shall not constitute a part of premiums or be subject to premium taxation, servicing fees, acquisition costs, or any other such charges. The policyholder's stabilization reserve fund shall be collected and administered by the association and shall be treated as a liability of the association along with and in the same manner as premium and loss reserves. The fund shall be valued annually by the board of directors as of the close of the last preceding year. Collections of the stabilization reserve fund charge shall continue until such time as the net balance of the stabilization reserve fund is not less than the projected sum of premiums to be written in the year following valuation date. The fund shall be credited with all stabilization reserve fund charges collected from policyholders and shall be charged with any deficit from the prior year's operation of the association.

Participation

Sec. 5. (a) Each policyholder shall have contingent liability for a proportionate share of any assessment of policyholders made under the authority of this article. Whenever a deficit, as calculated pursuant to the plan of operation, is sustained by the association in any one year, its directors shall levy an assessment only upon those policyholders who held policies in force at any time within the two most recently completed calendar years in which the association was issuing policies preceding the date on which the assessment was levied. The aggregate amount of the assessment shall be equal to that part of the deficit not recouped from the stabilization reserve fund. The maximum aggregate assessment per policyholder shall not exceed the annual premium for the liability policy most recently in effect. Subject to such maximum limitation, each policyholder shall be assessed for that portion of the deficit reflecting the proportion which the earned premium on the policies of such policyholder bears to the total earned premium for all policies of the association in the two most recently completed calendar years.

(b) All insurers which are members of the association shall participate in its writings, expenses, and losses in the proportion that the net direct premiums, as defined herein, of each such member, excluding that portion of premiums attributable to the operation of the association, written during the preceding calendar year bears to the aggregate net direct premiums written in this state by all members

of the association. Each insurer's participation in the association shall be determined annually on the basis of such net direct premiums written during the preceding calendar year, as reported in the annual statements and other reports filed by the insurer that may be required by the board. No member shall be obligated in any one year to reimburse the association on account of its proportionate share in the deficit from operations of the association in that year in excess of one percent of its surplus to policyholders and the aggregate amount not so reimbursed shall be reallocated among the remaining members in accordance with the method of determining participation prescribed in this subdivision, after excluding from the computation the total net direct premiums of all members not sharing in such excess deficit. In the event that the deficit from operations allocated to all members of the association in any calendar year shall exceed one percent of their respective surplus to policyholders, the amount of such deficit shall be allocated to each member in accordance with the method of determining participation prescribed in this subdivision.

Directors

Sec. 6. The association shall be governed by a board of nine directors, to be elected annually by the members of the association. On or before 15 days after the effective date of this Act, the State Board of Insurance shall appoint a temporary board of directors of the association which shall consist of nine members who are representatives of the association, selected so as to fairly represent various classes of member insurers and organizations of insurers. Such temporary board of directors shall serve until the first annual meeting of the members of the association or until their successors have been elected in accordance with this section. The first elected board shall be elected at the annual meeting of the members, or their authorized representatives, which shall be held at a time and place designated by the board.

Appeals

Sec. 7. (a) Any person insured or applying for insurance pursuant to this Act, or his duly authorized representative, or any affected insurer who may be aggrieved by an act, ruling, or decision of the association, may, within 30 days after such act, ruling, or decision, appeal to the board of directors of the association. The board of directors of the association shall hear said appeal within 30 days after receipt of such request or appeal and shall give not less than 10 days' written notice of the time and place of hearing to the person making such request or the duly authorized representative. Within 10 days after such hearing, the board of directors of the association shall affirm, reverse, or modify its previous action or the act, ruling, or decision appealed to the board of directors of the association.

(b) In the event any person insured or applying for insurance is aggrieved by the final action of the board of directors of the association or in the event the association is aggrieved by the action of the board with respect to any ruling, order, or determination of the board of directors of the association or the board, the aggrieved party may, within 30 days after such action, make a written request to the board for a hearing thereon. The board shall hear the association, or the appeal from an act, ruling, or decision of the association, within 30 days after receipt of such request or appeal and shall give not less than 10 days' written notice of the time and place of hearing to the association making such request or the person, or his duly authorized representative, appealing from the act, ruling, or decision of the board of directors of the association. Within 30 days after such hearing, the board shall affirm, reverse, or modify its previous action or the act, ruling, or decision appealed to the board. Pending such hearing and decision thereon, the board may suspend or postpone the effective date of its previous rule or of the act, ruling, or decision appealed to the board. The association, or the person aggrieved by any order or decision of the board, may thereafter appeal in accordance with Article 1.04(f) of the Insurance Code of Texas.

Privileged Communications

Sec. 8. There shall be no liability on the part of, and no cause of action of any nature shall arise against the association, its agents or employees, an insurer, any licensed agent, or the board or its authorized representatives, for any statements made in good faith by them in any reports or communications, concerning risks insured or to be insured by the association, or at any administrative hearings conducted in connection therewith.

Annual Statements

Sec. 9. The association shall file in the office of the board, annually on or before the first day of March, a statement which shall contain information with respect to its transactions, condition, operations, and affairs during the preceding calendar year. Such statement shall contain such matters and information as are prescribed and shall be in such form as is approved by the board. The board may, at any time, require the association to furnish additional information with respect to its transactions, condition, or any matter connected therewith considered to be material and of assistance in evaluating the scope, operation, and experience of the association.

Examinations

Sec. 10. The board shall make an examination into the affairs of the association at least annually. Such examination shall be conducted, the report thereon filed, and expenses borne and paid for, in

the manner prescribed in Articles 1.15 and 1.16 of the Insurance Code.

Dissolution of the Association

Sec. 11. Upon the effective date of this article, the board shall, after consultation with the joint underwriting association, representatives of the public, the Texas Medical Association, the Texas Podiatry Association, the Texas Hospital Association, and other affected individuals and organizations, promulgate a plan of dissolution consistent with the provisions of this article, to become effective and operative on December 31, 1979, unless the board determines before that time that the association is no longer needed to accomplish the purposes for which it was created and orders its dissolution, in which case, the plan of dissolution shall become effective on the date of dissolution ordered by the board. The plan of dissolution shall contain provisions for maintaining reserves for losses which may be reported subsequent to the expiration of all policies in force. If, at the expiration of five years and annually thereafter, if necessary, from December 31, 1979, or the date of dissolution ordered by the board, the board finds, after notice and hearing, that all known claims have been paid or otherwise disposed of by the association, then the board may wind up the affairs of the association by paying to a special fund created by the statutory liquidator of the board a reasonable reserve to be administered by said liquidator for unknown claims; reimbursing assessments and contributions of members in accordance with Section 4(b)(5) of this article, and distributing the remainder to the policyholders ratably in proportion to premiums and assessments paid during or after the last two years in which the association was issuing policies. If such reserve fund administered by the statutory liquidator proves inadequate, the association shall be treated as an insolvent insurer in respect to the application of the provisions of Article 21.28-C, Property and Casualty Insurance Guaranty Act, Insurance Code. Notice of claim shall be made upon the board.

Authority of the Board Over Dissolution

Sec. 12. Before December 31, 1979, if the board finds that the association is no longer needed to accomplish the purposes for which it was created, the board may issue an order dissolving the association as of a certain date stated in the order.

Termination of Policies

Sec. 13. After December 31, 1979, if no earlier dissolution date is ordered by the board, or after the date ordered for dissolution by the board, no policies will be issued by the association. All then issued policies shall continue in force until terminated in accordance with the terms and conditions of such policies.

[Added by Acts 1975, 64th Leg., p. 867, ch. 331, § 1, eff. June 3, 1975; Acts 1977, 65th Leg., p. 129, ch. 59, §§ 1, 2, eff. April 13, 1977; Acts 1977, 65th Leg., p. 2057, ch. 817, §§ 31.03 to 31.12, eff. Aug. 29, 1977.]

Section 2 of the 1975 Act provided:

"(a) There is created a medical professional liability study commission to consist of the following members:

- (1) the lieutenant governor, or his designee;
- (2) the speaker of the Texas House of Representatives, or his designee;
- (3) one senator who shall be a member of the Senate Economic Development Committee, to be appointed by the lieutenant governor;
- (4) one representative who shall be a member of the House Insurance Committee, to be appointed by the speaker;
- (5) two representatives of the joint underwriting association established in this bill, to be appointed by the chairman of the board of directors;
- (6) two persons licensed to practice medicine in Texas, to be appointed or designated by the president of the Texas Medical Association;
- (7) two persons licensed to practice law in Texas, to be appointed or designated by the president of the State Bar of Texas;
- (8) two licensed insurance agents, one to be appointed or designated by the president of the Texas Association of Insurance Agents and one member to be appointed by the president of the Insurance Counselors of Texas;
- (9) two hospital administrators, to be appointed or designated by the Texas Hospital Association;
- (10) two individuals not associated with any of the above associations, to be appointed by the governor; and
- (11) two members representing the two insurers which would have the largest assessment under Section 5 of this Act.

"(b) The commission shall meet and organize before August 1, 1975. Appointments or designations shall be made by an authorized official or public official by notifying in writing the chairman of the board of directors of the association, with a copy to the Secretary of State of Texas. The lieutenant governor or his designee or a member of the commission appointed by the lieutenant governor shall serve as chairman. The commission shall meet at least twice in calendar year of 1975 and at least four times annually thereafter, or more often as the commission considers necessary to carry out its purposes.

"(c) The legislative council shall provide staff assistance to the commission if necessary.

"(d) The commissioner of insurance shall provide all information and reports at his disposal which the commission requests.

"(e) No member of the commission shall be entitled to any compensation, except all reasonable travel and other expenses shall be paid to the commission members. Any commission member who is a member of the legislature shall be entitled to reimbursement of his expenses from the appropriate contingent expense fund.

"(f) The commission is authorized to employ such staff as it sees fit to carry out its functions.

"(g) The commission shall have authority to adopt reasonable rules and regulations in relation to such items as meetings, quorums, voting, and other matters relating to the orderly conduct of its business.

"(h) The commission shall make specific recommendations, including proposed legislation to the governor, lieutenant governor, speaker, legislative council, and members of the legislature on or before December 1, 1976. The report shall offer specific recommendations regarding the professional liability problem. In addition, the report shall include, but not be limited to, discussions of the following topics:

- (1) the scope and extent of the medical professional liability problem;
- (2) reasons for the increase in such claims;
- (3) effects of the rise in such claims on physicians and health care providers, including the increased use of defensive medicine and increased premium costs;
- (4) effect of claims increase on patients, including increased costs;
- (5) alternative approaches and proposed solutions to this problem;
- (6) review of comparable law on compensation commissions, arbitration panels, screening panels, and recommendations regarding use;
- (7) review of existing and proposed laws governing compensation and the amount of compensation to patients, including the time within which claims may be brought and the elements of loss for which compensation may be recovered;
- (8) the existing tort law in the area of concern and recommendations for change, if any;
- (9) any other matters or procedures which the commission considers relevant to its report.

"(c) This commission shall expire on the last day of the regular session of the 65th Legislature."

Section 3 of the 1975 Act was repealed by Acts 1977, 65th Leg., p. 2064, ch. 817, § 41.03. Prior thereto it read:

"This Act shall take effect upon its passage; provided, however, that after December 31, 1977, no new policies will be issued by the association. All then issued policies shall continue in force until their expiration."

Art. 21.49-4. Self-Insurance Trusts

(a) In this article:

- (1) "Physician" means a person licensed to practice medicine in this state.
- (2) "Dentist" means a person licensed to practice dentistry in this state.
- (3) "Health care liability claim" means a cause of action against a physician or dentist for

treatment, lack of treatment, or other claimed departure from accepted standards of health care or safety which proximately results in injury to or death of the patient, whether the patient's claim or cause of action sounds in tort or contract.

(b) An incorporated association, the purpose of which, among other things, shall be to federate and bring into one compact organization the entire profession licensed to practice medicine and surgery or dentistry in the State of Texas and to unite with similar associations of other states to form a nationwide medical association or dental association, may create a trust to self-insure physicians or dentists and by contract or otherwise agree to insure other members of the organization or association against health care liability claims and related risks on complying with the following conditions:

(1) the organization or association must have been in continuing existence for a period of at least two years prior to the effective date of this Act;

(2) establishment of a health care liability claim trust or other agreement to provide coverage against health care liability claims and related risks; and

(3) employment of appropriate professional staff and consultants for program management.

(c) The trust may purchase, on behalf of the members of the organizing association, medical professional liability insurance, specific excess insurance, aggregate excess insurance, and reinsurance, as in the opinion of the trustees are necessary. The trust fund is further authorized to purchase such risk management services as may be required and pay claims that arise under any deductible provisions.

(d) The trust investment powers and limitations shall be the same as those of any state bank with trust powers. The trust shall adopt rules and regulations to guarantee all contingent liabilities in the event of dissolution.

(e) The trust is not engaged in the business of insurance under this code and other laws of this state and the provisions of any chapters or sections of this code are declared inapplicable to a trust organized and operated under this article, provided that the State Board of Insurance may require any trust created under this article to satisfy reasonable minimum requirements to insure the capability of the trust to satisfy its contractual obligations.

[Added by Acts 1977, 65th Leg., p. 2063, ch. 817, § 31.13, eff. Aug. 29, 1977.]

Art. 21.49-5. [Blank]

Art. 21.49-6. Self-Insurance Trusts for Banks

Definitions

Sec. 1. In this article:

- (1) "Bank" means any bank chartered under the provisions of federal or state law.

(2) "Board" means the State Board of Insurance.

(3) "Trustees" means the trustees of a self-insurance trust created under this article.

Authorization to Create Trusts to Self-Insure Banks

Sec. 2. On approval of its plan of organization and operation as provided in Section 3 of this article, a group or association of banks or bankers, composed of any number of members, may create a trust to self-insure banks that are members of the group or association or any of whose officers are members of the group or association against losses resulting from dishonest acts and criminal acts of employees or losses resulting from robbery or both.

Plan of Organization and Operation

Sec. 3. Before organizing and operating a trust as provided in this article, the group or association proposing to organize the trust shall select trustees to administer the trust and shall prepare a detailed plan of organization and operation in the form and manner prescribed by the board. The plan shall be submitted to the board for examination, suggested changes, and final approval, and may be amended from time to time with the approval of the board.

Approval of Plan

Sec. 4. The board shall approve a self-insurance plan under this article only if it is satisfied that the trust has and will continue to possess the ability to pay valid claims made against it.

Creation of Trust Fund

Sec. 5. (a) The trustees of the self-insurance trust shall create a trust fund to pay claims made under the coverage provided in Section 2 of this article.

(b) The fund shall be under the administration and control of the trustees and shall be paid out on claims and shall be invested as provided in the plan.

Participation in Trust; Contributions

Sec. 6. Any bank that is a member or any of whose officers are members of the group or association organizing the trust may participate in the self-insurance trust by entering into contract or agreement with the trustees for insurance under the trust against losses resulting from dishonest acts or criminal acts of its employees or losses resulting from robbery, or both, and shall pay the required contribution to the trust fund.

Amount of Coverage

Sec. 7. The amount of coverage to be provided banks participating in the trust and the amount of contributions to be paid by those banks shall be determined by the trustees as provided in the plan.

Professional Staff and Consultants

Sec. 8. (a) The trustees shall employ appropriate professional staff and consultants for program management.

(b) Salaries for professional staff and consultants and for paying the costs of administering the trust program shall be paid from the trust fund; provided that, the total amount for payment of salaries and administration shall not exceed an amount fixed by the board but in no event to exceed 35 percent of the total amount of money in the trust fund in any one year.

Continuing Supervision

Sec. 9. A self-insurance trust approved by the board under the provisions of this article is subject to the continuing supervision of the board relating to its solvency and to approval of its policy forms, and the board may set certain minimum requirements to ensure the capability of the trust to satisfy its contractual obligations.

Rules

Sec. 10. The board may adopt necessary rules to carry out the provisions of this article.

Trust Not Engaged in Business of Insurance

Sec. 11. A self-insurance trust created under this article is not engaged in the business of insurance under this code and under other laws of this state, and the provisions of any chapters or articles of this code, including Article 21.28-C, are declared inapplicable to a trust organized and operated under this article.

[Added by Acts 1977, 65th Leg., p. 1698, ch. 674, § 1, eff. June 15, 1977.]

Art. 21.52. Right to Select Practitioner under Health and Accident Policies

Definitions

Sec. 1. As used in this article:

(a) "health insurance policy" means any individual, group, blanket, or franchise insurance policy, insurance agreement, or group hospital service contract, providing benefits for medical or surgical expenses incurred as a result of an accident or sickness; and

(b) "doctor of podiatric medicine" includes D.P.M., podiatrist, doctor of surgical chiropody, D.S.C., and chiropodist.

Application of this Article

Sec. 2. This article applies to and embraces all insurance companies, associations, and organizations, whether incorporated or not, which provide health benefits, accident benefits, or health and accident benefits for medical or surgical expenses incurred as a result of an accident or sickness. Without limiting

the foregoing, this article specifically applies to the insurance companies, associations, and organizations which come within the purview of the following designated chapters of the Insurance Code: Chapter 3, pertaining to life, health and accident insurance companies; Chapter 8, pertaining to general casualty companies; Chapter 10, pertaining to fraternal benefit societies; Chapter 11, pertaining to mutual life insurance companies; Chapter 12, pertaining to local mutual aid associations; Chapters 13 and 14, pertaining to statewide mutual assessment companies, mutual assessment companies, and mutual assessment life, health and accident associations; Chapter 15, pertaining to mutual insurance companies writing other than life insurance; Chapter 18, pertaining to underwriters making insurance on the Lloyd's Plan; Chapter 19, pertaining to reciprocal exchanges; and Chapter 22, pertaining to stipulated premium insurance companies. This article also applies to health maintenance organizations established pursuant to Chapter 214, Acts of the 64th Legislature, Regular Session, 1975 (Articles 20A.01-20A.33, Insurance Code), as now or hereafter amended.

Selection of Practitioners

Sec. 3. Any person who is issued, who is a party to, or who is a beneficiary under any health insurance policy delivered, renewed, or issued for delivery in this state more than 90 days after the effective date of this Act by any insurance company, association, or organization to which this article applies may select a licensed doctor of podiatric medicine to perform the medical or surgical services or procedures scheduled in the policy which fall within the scope of the license of that doctor, and payment or reimbursement by the insurance company, association, or organization for those services or procedures in accordance with the payment schedule or the payment provisions in the policy shall not be denied because the same were performed by a licensed doctor of podiatric medicine. There shall not be any classification, differentiation, or other discrimination in the payment schedule or the payment provisions in a health insurance policy, nor in the amount or manner of payment or reimbursement thereunder, between scheduled services or procedures when performed by a doctor of podiatric medicine which fall within the scope of his license and the same services or procedures when performed by any other practitioner of the healing arts whose services or procedures are covered by the policy. Any provision in a health insurance policy contrary to or in conflict with the provisions of this article shall, to the extent of the conflict, be void, but such invalidity shall not affect the validity of the other provisions of this policy. Any presently approved policy form containing any provision in conflict with the requirements of this Act may be brought into compliance with this

Act by the use of riders and endorsements which have been approved by the State Board of Insurance.

Certain Exemptions not Applicable

Sec. 4. The exemptions and exceptions in Articles 13.09 and 21.41 of the Insurance Code do not apply to this article.

[Added by Acts 1977, 65th Leg., p. 1102, ch. 404, § 1, eff. June 15, 1977.]

Section 2 of the 1977 Act provided:

"All laws or parts of laws in conflict with this Act are repealed to the extent of such conflict."

CHAPTER TWENTY-TWO. STIPULATED PREMIUM INSURANCE COMPANIES

Art. 22.13. Policy Form Approval

[See Compact Edition, Volume 2 for text of 1 to 4]

Reductions or Increases

Sec. 5. A. Any policy may provide for reduced benefits when death or injury occurs while the insured is engaged in military, naval, aerial service or aerial flight in time of peace or war; or in case of death of the insured by his own hand while sane or insane; or while engaged in certain hazardous occupations to be named in the policy. Attention shall be called on the front page of the policy to any reduction or exclusion of benefits provided in any life policy, and the circumstances or conditions under which reduction or exclusion of benefits are applicable shall be plainly stated in the policy.

B. In the event a policy providing natural death benefits shall contain a provision for reduction (other than for the specific reductions enumerated and authorized by Subparagraph A of Section 5 of this Article 22.13) of the highest or ultimate death benefit stated in such policy for a specified insured, such reduced death benefit for such specified insured shall at all times during the period of time such reduction in death benefit is in effect equal at least 120 percent of the total premium then paid upon such policy by such specified insured; the period of any such reduced benefit (other than as enumerated and authorized by Subparagraph A of Section 5 of this Article 22.13) shall not exceed five years from issue date. This Subparagraph A of Section 5 of this Article 22.13 shall not be applicable, however, to any policy of life insurance upon which the reduction of the death benefit is not applicable at the time of the death of such specified insured.

C. In the event a policy of life insurance shall provide, during any of the first five years of such policy, for an increase in the death benefit whereby the initial amount of the death benefit for a specified insured shall be increased one or more times during such five-year period, such amount of death

benefit for any such specified insured shall at all times during the period or periods of such increasing benefit equal at least 120 percent of the premiums paid on such policy by such specified insured during the period of such increase. This Subparagraph C of this Section 5 of this Article 22.13 shall not be applicable, however, to any policy of life insurance after it has been in force for more than five years from the policy issue date.

D. The provisions of Section 5 of this Article 22.13 shall not be applicable to family group life policies as the term "family group life policies" is defined in Section 1(b) of Article 22.11 of this Insurance Code.

E. The provisions of this Section 5 of this Article 22.13 shall not apply to health and accident policies.

[See Compact Edition, Volume 2 for text of 6]

[Amended by Acts 1975, 64th Leg., p. 1035, ch. 400, § 2, eff. Nov. 1, 1975.]

Section 1 of the 1975 Act amended art. 14.20; § 3 thereof provided: "The provisions of this Act shall be effective on November 1, 1975, and any insurer issuing a policy which has been previously approved for issuance in this state may bring it into compliance with the provisions of this Act by the use of endorsements thereon or affixed thereto, provided that any such endorsement is approved by the State Board of Insurance prior to usage."

Art. 22.23. Issuance of Life Insurance Policies and Annuity Contracts by Stipulated Premium Companies

Each stipulated premium company possessing capital and unencumbered surplus of at least the combined total sum of \$100,000.00 may issue policies of life insurance as authorized and permitted under the provisions of Chapter Three of this Insurance Code provided that:

- (1) no individual life shall be insured for more than \$5,000.00,
- (2) each such policy shall be reserved and reinsured as required under the provisions of Chapter Three of this Insurance Code, and
- (3) each such life policy shall be issued only upon an endowment or limited pay basis.

Each stipulated premium company possessing capital and unencumbered surplus of at least the combined total sum of \$100,000.00, over and above all liabilities, including contingent liabilities, may issue annuity contracts as authorized and permitted under the provisions of Chapter Three of this Insurance Code. Reserves on such contracts shall be maintained in accordance with the statutes governing reserves on equivalent contracts issued by legal reserve companies, as such laws now exist or as they may hereafter be amended. Any insurer which elects to write annuity contracts under authority of this Article shall thereafter be required to maintain capital and unencumbered surplus of at least the combined total sum of \$100,000.00, over and above all liabilities, including contingent liabilities, and any such company shall be regarded as insolvent which

fails to maintain capital and unencumbered surplus of at least a combined total sum of \$100,000.00, over and above all liabilities, including contingent liabilities.

[Amended by Acts 1975, 64th Leg., p. 1126, ch. 425, § 1, eff. June 19, 1975.]

CHAPTER TWENTY-THREE. NON-PROFIT LEGAL SERVICES CORPORATIONS [NEW]

Article

- 23.01. Incorporations; Definitions.
- 23.02. Supervision; Requirements.
- 23.03. Attorneys Under Contract.
- 23.04. Officers: Employees Bond.
- 23.05. Claims: Cancellation of Certificate of Authority.
- 23.06. Dissolution.
- 23.07. Method of Dissolution.
- 23.08. Fees; Taxes.
- 23.09. Applications.
- 23.10. Corporations Non-Profit; Funds; Investments.
- 23.11. Authority to Contract.
- 23.12. Limitations.
- 23.13. Contingent Liabilities.
- 23.14. Supervision.
- 23.15. Approval of Rates.
- 23.16. Benefit Certificates and Legal Services Contracts.
- 23.17. Blank Deposits.
- 23.18. Finance Procedures.
- 23.19. Participation Contracts: Agreements with Insurers.
- 23.20. Expenses of Directors: Meetings.
- 23.21. Examination of Books and Records.
- 23.22. Complaints.
- 23.23. Regulation of Agents.
- 23.24. Hazardous Financial Condition.
- 23.25. Management and Exclusive Agency Contracts.
- 23.26. Application of Other Laws.

Art. 23.01. Incorporation; Definitions

Any seven or more persons on application to the secretary of state for a corporate charter under the Texas Non-Profit Corporation Act as a nonmembership corporation may be incorporated for the sole purpose of establishing, maintaining, and operating non-profit legal service plans, whereby legal services may be provided by such corporation through contracting attorneys as is hereinafter provided.

As used in this chapter, the following words, unless the context of their use clearly indicates otherwise, shall have the following meanings:

(1) "Attorney" means a person currently licensed by the Supreme Court of Texas to practice law.

(2) "Applicant" means a person applying for a legal services contract for performance of legal services through a corporation qualified under this chapter.

(3) "Benefit certificate" means a writing setting forth the benefits and other required matters issued to a participant under a group contract for legal services and also an individual contract for legal services issued to a participant.

(4) "Contracting attorney" means an attorney who has entered into the contract provided by Article 23.11 of this code.

(5) "Participant" means the person entitled to performance of legal services under contract with a corporation qualified under this chapter.

(6) "State Board of Insurance" means all of the insurance regulatory officials whose duties and functions are designated by the Insurance Code of Texas as such now exists or may be amended in the future. Any duty stated by this chapter to be performed by or to be placed on the State Board of Insurance is placed upon and is to be performed by the insurance regulatory official or group of officials on whom similar duties are placed or to be performed for insurers or the business of insurance by the Insurance Code. The multimember insurance regulatory body designated by the Insurance Code as the uniform insurance rule-making authority is authorized to enact rules designating the proper insurance regulatory official to perform any duty placed by this chapter on the insurance regulatory officials where such duty is not similar to duties otherwise performed by a specific official or group of such officials.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.02. Supervision; Requirements

All corporations organized under the provisions of this chapter shall be under the direct supervision of the State Board of Insurance, and shall be subject to the following requirements:

(1) After incorporation, but as a condition of doing business other than seeking applicants and obtaining contracting attorneys, they shall have collected in advance from at least 200 applicants (unless a lesser number of applicants is found by the State Board of Insurance to be a large enough number of applicants to constitute a workable prepaid legal service plan) the application fee and at least one month's payment for services. Such funds shall, at all times prior to issuance by the State Board of Insurance of its certificate of authority as below provided, be maintained in a trust account in a bank in Texas and shall be refunded in full should such certificate of authority not be issued. It shall thereafter be a condition of continued operation that a minimum number of 200 participants or lesser number previously approved by the State Board of Insurance be maintained.

(2) They shall file a statement of their operations for the year ending December 31 each year, said statement to reach the State Board of Insurance not later than March 1 of the succeeding year. The statements shall be on such forms and shall reveal such information as shall be required by the State Board of Insurance.

(3) They shall maintain solvency in each of its funds, i. e., the admitted assets of each such fund shall exceed its liabilities (except for claim liability covered by attorney guarantees provided by Article 23.15 of this code), and it shall be a continuing condition of licensing by the State Board of Insurance that such solvency be maintained.

(4) If any such corporation files an acceptable statement showing solvency, and otherwise complies with this chapter, the State Board of Insurance shall issue it a certificate of authority authorizing it to transact business until such certificate shall be revoked for noncompliance with law, by operation of law or as provided by this chapter.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.03. Attorneys Under Contract

Each corporation complying with the requirements of this chapter before issuing any contract for prepaid legal services shall have and so long as it issues such contracts maintain such number of contracting attorneys as is sufficient in the determination of the State Board of Insurance to service the participant contracts contemplated by the corporation's plan of operation.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.04. Officers: Employees Bond

Each corporation complying with the requirements of this chapter shall, by resolution adopted and entered on its minute book, a copy of which properly certified to by the president, secretary, or general manager shall be filed with the State Board of Insurance, designate some officer or officers who shall be responsible in the handling of the funds of the corporation. Said corporation shall make and file for each such officer a surety bond or blanket bond covering all such officers with a corporate surety company authorized to write surety bonds in this state, as surety, satisfactory and payable to the State Board of Insurance in the sum of not less than \$25,000 for each officer for the use and benefit of said corporation, which said bond shall obligate the principal and surety to pay such pecuniary loss as the corporation shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of each such officer, either directly and alone or in connivance with others, while employed as such an officer or exercising powers of such office. In lieu of such bond any such officer may deposit with the State Board of Insurance cash (or securities approved by the State Board of Insurance) which cash or securities shall be in the amount and subject to the same conditions as provided for in said bond.

In addition to the bond required in the preceding paragraph, each corporation shall procure for all other office employees, or other persons who may have access to any of its funds, separate bonds or blanket bonds with some surety licensed by the State Board of Insurance to do business in Texas, in an amount or amounts fixed by the State Board of Insurance with a minimum of \$1,000 and a maximum of \$10,000 for each employee, satisfactory and payable to the State Board of Insurance for the use and benefit of the corporation obligating the principal and surety to pay each pecuniary loss as the corporation shall sustain through acts of fraud, dishonesty, forgery, theft, embezzlement, wrongful abstraction or willful misapplication on the part of such persons, either directly and alone, or in connivance with others. Successive recoveries on any of the bonds provided from this article may be had on such bonds until same are exhausted.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.05. Claims; Cancellation of Certificate of Authority

All lawful claims for payment based upon certificates issued to participants shall be paid within 120 days after receipt of due proof of claim. Written notice of claim given to a corporation complying with the requirements of this chapter shall be deemed due proof in the event the corporation fails, upon receipt of notice, to furnish the participant making claim within 15 days such forms as are usually furnished by it for filing such claims. The State Board of Insurance after public hearing on written specifications after 20 days notice shall cancel the certificate of authority of any such corporation found to be not in compliance with this chapter, operating fraudulently, or which fails to pay its valid claims in accordance with the provisions of this article.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.06. Dissolution

Any dissolution or liquidation of any corporation subject to the provisions of this chapter shall be under the supervision of the State Board of Insurance. In case of dissolution of any group formed under the provisions of this chapter, participants' claims shall be given priority over all other claims except cost of liquidation.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.07. Method of Dissolution

Any corporation operating under this chapter may be dissolved at any time by a vote of its board of directors, and after such action has been approved by the State Board of Insurance. In the case of voluntary dissolution, the disposition of the affairs of the corporation shall be made by the officers (including the settlement of all outstanding obliga-

tions to participants), and when the liquidation has been completed and a final statement, in acceptable form, filed with and approved by the State Board of Insurance, the provisions for voluntary dissolution under the Texas Non-Profit Corporation Act shall be followed to dissolve the corporation. In all other cases where a corporation operating under this chapter is found to be insolvent, or to have violated the provisions of this chapter, on a determination of this condition, and after due notice and hearing, the affairs of the corporation shall be disposed of by a liquidator appointed by and under the supervision of the State Board of Insurance, or, in appropriate cases, under the direction of a court of competent jurisdiction in Travis County.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.08. Fees; Taxes

(a) The State Board of Insurance shall charge a fee of \$50 for filing the annual statement of each corporation operating under this chapter; an application fee of \$100 for each corporation applying under this chapter; and a fee of \$25 for the issuance of each certificate of authority to the corporation.

(b) To defray the expense of carrying out the provisions of this chapter, there shall be annually assessed and collected by the State of Texas, through the State Board of Insurance, from each corporation operating under this chapter, in addition to all other taxes now imposed, or which may hereafter be imposed by law, a tax of one percent of all revenues received by such corporation in return for issuance of prepaid legal services contracts in this state, according to the reports made to the State Board of Insurance as required by law. Said taxes, when collected, shall be placed in a separate fund with the State Treasurer which shall be kept separate and apart from other funds and money in his hands, and shall be known as the Prepaid Legal Services Fund, said fund to be expended during the current and succeeding years, or so much thereof as may be necessary, in carrying out such provisions. Such expenditures shall not exceed in the aggregate the sum assessed and collected from such corporations; and should there be an unexpended balance at the end of any year, the State Board of Insurance shall reduce the assessment for the succeeding year so that the amount produced and paid into the State Treasury together with said unexpended balance in the treasury will be sufficient to pay all expenses of carrying out the provisions of this chapter, which funds shall be paid out and filed by a majority of the State Board of Insurance when the comptroller shall issue warrants therefor. Any amount remaining in said fund at the end of any year shall be carried over and expended in accordance with the provisions of this article during the subsequent year or years. Provided, that no expenditures shall be made from said fund except under authority of the legislature as set forth in the general appropriations bill.

(c) The payment of the maximum tax of one percent provided by the preceding section of this article by any corporation complying with this chapter in any year either as a maintenance tax or as a voluntary elected payment into the General Revenue Fund of the State of Texas or a combination of such payments equaling such one percent shall be deemed to be a payment in lieu of any franchise or other gross receipts tax by or under the laws of this state and such corporation shall be exempt from such franchise and other gross revenue taxes as would apply to such corporation during the period for which the one percent tax or voluntary payment or combination thereof is made.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.09. Applications

Any corporation complying with the requirements of this chapter shall be authorized to accept applicants, who upon issuance of a benefit certificate shall be entitled to legal services for such period of time as is provided therein. Such corporation shall be governed by this chapter and shall not be construed as being engaged in the business of insurance nor subject to laws respecting insurers so long as it complies with the provisions of this chapter. The provisions of this article shall not be deemed to declare the issuance of contracts for prepaid legal services when done by those entities other than corporations complying with this chapter not to be the business of insurance. The right of corporations complying with the requirements of this chapter to issue prepaid legal services contracts on individual, group, and franchise bases is recognized.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.10. Corporations Non-Profit; Funds; Investments

The corporations complying with the requirements of this chapter shall be governed and conducted as non-profit nonmembership organizations for the purpose of contracting for and obtaining legal services for their participants through contracting attorneys, in consideration of the payment by the participants of a definite sum to fund the payment of attorneys fees for the legal services to be furnished by the contracting attorneys. Provided further, that each such corporation shall have two funds, namely: the claim fund and the expense fund. The claim fund shall be composed of at least 80 percent of the regular payments by participants, and the application fees. The percentage amounts above stated may be modified by the State Board of Insurance upon showing that such is in the best interest of the then existing persons receiving legal services under contract or that such is necessary for the development of the corporation during its first year of existence. The application fees shall be paid by applicants prior to issuance of a benefit certificate,

and shall not apply as a part of the cost of receiving benefits under the benefit certificate issued. Claim fund investments may include, besides lawful money and demand deposits, only certificates of deposits, share accounts, and time deposits in public banks and savings and loan institutions whose deposits are insured by a federal governmental agency, and obligations of a state or the federal government; and the expense fund investments may include only such as are legal investments for the capital, surplus, and contingency funds of capital stock life insurance companies. The net income from the investments shall accrue to the funds, respectively, from which the investments were made. The claim fund shall be disbursed only for the payment of valid claims, taxes on income of such fund, security transfer costs, and refunds of fees paid into such fund; and to the extent approved by the State Board of Insurance, cost of settling contested claims, expenses directly incurred on or for preservation of investments of the claim fund and contracts authorized under Article 23.19 of this code.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.11. Authority to Contract

Corporations complying with the requirements of this chapter shall have authority to contract in accordance with this chapter with attorneys in such manner as to assure to each participant holding a benefit certificate of the corporation the furnishing of such legal services by attorney under contract, or who shall agree to contract, to the extent agreed upon in prepaid legal service contract between the corporation and the participant, with the right to the corporation to limit in the prepaid legal service contract and benefit certificate the types and extent of benefits and the circumstances for which such legal services shall be furnished.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.12. Limitations

The corporation complying with the requirements of this chapter shall not contract itself to practice law in any manner, nor shall the corporation control or attempt to control the relations existing between a participant and his or her attorney, but the corporation shall confine its activities to contracting as an agent on behalf of its participants for legal services to be rendered only by and through contracting attorneys, who shall never be employees of the corporation but shall at all times be independent contractors maintaining a direct lawyer and client relationship with the participants. Such corporation must agree to contract under Article 23.11 of this code with any attorney licensed by the Supreme Court to practice law in Texas. Contracting attorneys shall maintain such professional liability, and errors and omissions insurance as the corporation shall deem proper and the State Board of Insurance

may by uniform rule declare a minimum amount of each such coverage to be maintained.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.13. Contingent Liabilities

Any person may advance to the corporation on contingent liability basis such funds as are necessary for the purposes of its business or to enable it to comply with any requirements of this chapter and such money and interest thereon as may have been agreed upon shall be repayable and shall be repaid only on prior approval of the State Board of Insurance.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.14. Supervision

Every corporation complying with the requirements of this chapter shall, before accepting applications for participation in said non-profit legal service plan, have sufficient money in its expense fund to cover initial operations and shall submit to the State Board of Insurance a plan of operation together with a rate schedule of its charges to participants and a schedule and projections of costs of legal services to be contracted for on behalf of the participants; which plan, rate schedule, and the sufficiency of expense fund shall first be approved by the State Board of Insurance as adequate, fair, and reasonable and not excessive before such corporation shall engage in business. The State Board of Insurance shall have continuing control over the plan of operation of such corporation and its rate schedule of charges to participants. No change in such plan or rate schedule shall be effectuated without its first being filed and approved by the State Board of Insurance.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.15. Approval of Rates

The State Board of Insurance shall likewise approve the ratio of benefits to be paid to anticipated revenues from the rate schedule proposed to be used if such be found to be actuarially sound. No prepaid legal services contract or benefit certificate thereunder shall be issued by corporations complying with this chapter without such finding. The contracting attorneys shall guarantee to the participants the services stated under the benefit certificates and shall agree to perform such services which they agree to render to the participants under the benefit certificates without there being any liability for the cost thereof to the participants beyond the funds of such corporation held for their benefit in accordance with the plan of operation of the corporation. Such corporations may issue prepaid legal service contracts without such guarantees and providing for indemnity for costs of attorney services where the attorney is not a contracting attorney under such rules and regulations as may be approved by the

State Board of Insurance provided that the State Board of Insurance be satisfied that the plan of operation, financial standing and experience of the corporation (including but not limited to a proper amount of free surplus) is adequate to assure the performance of such contracts.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.16. Benefit Certificates and Legal Services Contracts

Every corporation shall issue to its applicants that are covered by a contract for prepaid legal services benefit certificates setting forth the benefits to which they are or may become entitled. Such certificates, application forms, and contracts made between the corporation and the participants' employer or group representative shall be in form approved by the State Board of Insurance prior to issuance. The State Board of Insurance shall be authorized to issue rules and regulations concerning such forms to provide that they shall properly describe their benefits and not be unjust, misleading, or deceptive.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.17. Blank Deposits

All funds collected from applicants and participants of a corporation complying with this chapter shall be deposited to the account of the corporation in a public bank, which is a state depository having Federal Deposit Insurance Corporation protection of its deposits.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.18. Finance Procedures

A corporation complying with the requirements of this chapter shall not pay any of the claim funds collected from participants to any attorney except for legal services rendered by such attorney to the participants.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.19. Participation Contracts; Agreements with Insurers

Corporations complying with the requirements of this chapter shall be authorized to contract with other organizations complying with this chapter and insurers licensed to do business in Texas for joint participation through mutualization contract agreements or guaranty treaties or otherwise cede or accept legal services obligations from such companies on the whole or any part of such legal service obligations, provided that such contract forms, documents, treaties, or agreement forms are filed with and approved by the State Board of Insurance to be in accordance with the plan of operation of the corporation prior to their effectiveness.

The State Board of Insurance shall be authorized to issue rules and regulations concerning such partic-

ipation contracts and agreements with insurers as provided by this article in accordance with and in carrying out its purposes.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.20. Expenses of Directors: Meetings

No director of any corporation created under this chapter shall receive any salary, wages, or compensation for his services, but shall be allowed reasonable and necessary expenses incurred in attending any meeting called for the purpose of managing or directing the affairs of the corporation.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.21. Examination of Books and Records

Every corporation complying with this chapter shall keep complete books and records, showing all funds collected and disbursed, and all books and records shall be subject to examination by the State Board of Insurance, the expense of such examination to be borne by said corporation.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.22. Complaints

The State Board of Insurance shall refer any complaints received by it concerning the performance of any attorney connected with any corporation complying with this chapter to the Supreme Court of the State of Texas or to any person designated by the Supreme Court to receive attorney grievances from the public.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.23. Regulation of Agents

The State Board of Insurance may after notice and hearing promulgate such reasonable rules and regulations as are necessary to license and control agents of corporations complying with this chapter. An agent means a natural person who solicits legal services contracts or enrolls applicants.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.24. Hazardous Financial Condition

(a) Whenever the financial condition of any corporation complying with the requirements of this chapter indicates a condition such that the continued operation of such corporation might be hazardous to its participants, creditors, or the general public, then the State Board of Insurance may, after notice and hearing, order such corporation to take such action as may be reasonably necessary to rectify the existing condition, including but not necessarily limited to one or more of the following steps:

(1) to reduce the total amount of present and potential liability for benefits by use of Article 23.19 of this code;

(2) to reduce the volume of new business being accepted;

(3) to reduce expenses by specified methods; or

(4) to suspend or limit the writing of new business for a period of time.

Where none of the foregoing remedies is effective and the hazardous condition is determined to be a shortage of money in the expense fund the State Board of Insurance may after further notice and hearing order funds sufficient to cure the hazardous condition to be placed in the expense fund. The State Board of Insurance shall not have authority hereby to require the maintenance of money in the expense fund except as provided by Article 23.02(3) of this code.

(b) The State Board of Insurance is authorized, by rule and regulations, to fix uniform standards and criteria for early warning that the continued operation of any company might be hazardous to its participants, creditors, or the general public, and to fix standards for evaluating the financial condition of any corporation complying with the requirement of this chapter, which standards shall be consistent with the purposes expressed in this article.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.25. Management and Exclusive Agency Contracts

(a) No corporation complying with the requirements of this chapter may enter into an exclusive agency contract or management contract, unless the contract is first filed with the State Board of Insurance and approved under this article within 30 days after filing or such reasonable extended period as the State Board of Insurance may specify by notice given within the 30 days.

(b) The State Board of Insurance shall disapprove a contract submitted under Section (a) of this article if it finds that:

(1) it subjects the corporation to excessive charges;

(2) the contract extends for an unreasonable period of time;

(3) the contract does not contain fair and adequate standards of performance;

(4) the persons empowered under the contract to manage the corporation are not sufficiently trustworthy, competent, experienced, and free from conflict of interest to manage the corporation with due regard for the interest of its participants, creditors, or the public; or

(5) the contract contains provisions which impair the interests of the corporation's participants, creditors, or the public in this state.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

Art. 23.26. Application of Other Laws

(a) Corporations complying with this chapter shall be subject to and are required to comply with the provisions of the Texas Miscellaneous Corporation Laws Act and the Texas Non-Profit Corporation Act as those laws now exist or may be amended in the future to the extent the provisions of this chapter are not in conflict therewith.

(b) The following provisions of the Insurance Code as they now exist or shall hereafter be amend-

ed shall, where not in conflict with this chapter, apply to corporations complying with the provisions of this chapter to the same extent as they apply to insurers and to those doing the business of insurance: Articles 1.01, 1.02, 1.04, 1.08, 1.09, 1.09-1, 1.11, 1.12, 1.13, 1.14, 1.15, 1.16, 1.17, 1.18, 1.19, 1.20, 1.21, 1.22, 1.23, 1.24, 1.25, 1.29, 3.12, 3.13, 3.14, 21.21, 21.25, 21.28, 21.28A, and 21.47 and Sections 1, 2, 6, 8, 9, 10, 11, 12, 13, 14, and 17 of Article 1.10 of the Insurance Code, as amended.

[Acts 1975, 64th Leg., p. 126, ch. 60, § 1, eff. Sept. 1, 1975.]

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TEXAS PROBATE CODE

CHAPTER 1. GENERAL PROVISIONS

§ 3. Definitions and Use of Terms

When used in this Code, unless otherwise apparent from the context:

[See Compact Edition, Volume 2 for text of (a) to (d)]

(e) "County Court" and "Probate Court" are synonymous terms and denote county courts in the exercise of their probate jurisdiction, courts created by statute and authorized to exercise original probate jurisdiction, and district courts exercising probate jurisdiction in contested matters.

(f) "County Judge," "Probate Judge," and "Judge" denote the presiding judge of any court having original jurisdiction over probate proceedings, whether it be a county court in the exercise of its probate jurisdiction, a court created by statute and authorized to exercise probate jurisdiction, or a district court exercising probate jurisdiction in contested matters.

(g) "Court" denotes and includes both a county court in the exercise of its probate jurisdiction, a court created by statute and authorized to exercise original probate jurisdiction, or a district court exercising original probate jurisdiction in contested matters.

[See Compact Edition, Volume 2 for text of (h) to (p)]

(q) "Independent executor" means the personal representative of an estate under independent administration as provided in Section 145 of this Code. The term "independent executor" includes the term "independent administrator."

[See Compact Edition, Volume 2 for text of (r) to (s)]

(t) "Minors" are all persons under eighteen years of age who have never been married or who have not had disabilities of minority removed for general purposes.

[See Compact Edition, Volume 2 for text of (u) to (z)]

(aa) "Personal representative" or "Representative" includes executor, independent executor, administrator, independent administrator, temporary administrator, guardian, and temporary guardian, together with their successors. The inclusion of independent executors herein shall not be held to

subject such representatives to control of the courts in probate matters with respect to settlement of estates except as expressly provided by law.

[See Compact Edition, Volume 2 for text of (bb) to (hh)]

[Amended by Acts 1975, 64th Leg., p. 104, ch. 45, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2195, ch. 701, § 1, eff. June 21, 1975; Acts 1977, 65th Leg., p. 1061, ch. 390, §§ 1, 2, eff. Sept. 1, 1977.]

Acts 1977, 65th Leg., ch. 390, which by §§ 1 to 8 amended subsecs. (q) and (aa) of this section, §§ 145, 147, 148, 149A(a), (b), and 150 and added § 154A, provided in §§ 9 and 10:

"Sec. 9. All other laws in conflict with this Act are hereby repealed to the extent they conflict."

"Sec. 10. This Act shall become effective September 1, 1977, and shall apply to estates of decedents who die intestate after September 1, 1977."

§ 5. Jurisdiction of District Court and Other Courts of Record With Respect to Probate Proceedings and Appeals from Probate Orders

(a) The district court shall have original control and jurisdiction over executors, administrators, guardians and wards under such regulations as may be prescribed by law.

(b) In those counties where there is no statutory probate court, county court at law or other statutory court exercising the jurisdiction of a probate court, all applications, petitions and motions regarding probate, administrations, guardianships, and mental illness matters shall be filed and heard in the county court, except that in contested probate matters, the judge of the county court may on his own motion, or shall on the motion of any party to the proceeding transfer such proceeding to the district court, which may then hear such proceeding as if originally filed in such court. In contested matters transferred to the district court in those counties, the district court, concurrently with the county court, shall have the general jurisdiction of a probate court, and it shall probate wills, appoint guardians of minors, idiots, lunatics, persons non compos mentis, and common drunkards, grant letters testamentary and of administration, settle accounts of executors, transact all business appertaining to deceased persons, minors, idiots, lunatics, persons non compos mentis, and common drunkards, including the settlement, partition, and distribution of estates of deceased persons and to apprentice minors, as provided by law. Upon resolution of all pending contested matters, the probate proceeding shall be transferred by the district court to the county court for further proceedings not inconsistent with the orders of the district court.

(c) In those counties where there is a statutory probate court, county court at law, or other statutory court exercising the jurisdiction of a probate court, all applications, petitions and motions regarding probate, administrations, guardianships, and mental illness matters shall be filed and heard in such courts and the constitutional county court, rather than in the district courts, unless otherwise provided by the legislature, and the judges of such courts may hear any of such matters sitting for the judge of any of such courts.

(d) All courts exercising original probate jurisdiction shall have the power to hear all matters incident to an estate, including but not limited to, all claims by or against an estate, all actions for trial of title to land incident to an estate and for the enforcement of liens thereon incident to an estate, all actions for trial of the right of property incident to an estate, and actions to construe wills. When a surety is called on to perform in place of an administrator or guardian, all courts exercising original probate jurisdiction may award judgment against the personal representative in favor of his surety in the same suit.

(e) All final orders of any court exercising original probate jurisdiction shall be appealable to the courts of (civil) appeals.

[Amended by Acts 1975, 64th Leg., p. 2195, ch. 701, § 2, eff. June 21, 1975; Acts 1977, 65th Leg., p. 1170, ch. 448, § 1, eff. Aug. 29, 1977.]

§ 28. Personal Representative to Serve Pending Appeal of Appointment

Pending appeals from orders or judgments appointing administrators or guardians or temporary administrators or guardians, the appointees shall continue to act as such and shall continue the prosecution of any suits then pending in favor of the estate.

[Amended by Acts 1975, 64th Leg., p. 2196, ch. 701, § 3, eff. June 21, 1975.]

§ 30. Repealed by Acts 1975, 64th Leg., p. 2197, ch. 701, § 7, eff. June 21, 1975

§ 36. Duty and Responsibility of Judge

It shall be the duty of each county and probate court to use reasonable diligence to see that personal representatives of estates being administered under orders of the court, guardians of the persons of wards, and other officers of the court, perform the duty enjoined upon them by law pertaining to such estates and wards. The judge shall annually, if in his opinion the same be necessary, examine the condition of each of said estates, the well-being of each ward of the court, and the solvency of the bonds of personal representatives of estate and guardians of persons. He shall, at any time he finds that the personal representative's bond is not suffi-

cient to protect such estate or ward, require such personal representatives to execute a new bond in accordance with law. In each case, he shall notify the personal representative, and the sureties on the bond, as provided by law; and should damage or loss result to estates or wards through the gross neglect of the judge to use reasonable diligence in the performance of his duty, he shall be liable on his bond to those damaged by such neglect.

[Amended by Acts 1975, 64th Leg., p. 979, ch. 375, § 1, eff. June 19, 1975.]

CHAPTER II. DESCENT AND DISTRIBUTION

§ 37A. Means of Evidencing Disclaimer or Renunciation of Property or Interest Receivable from a Decedent Under a Will or by an Inheritance.

Any person, or the personal representative of an incompetent, deceased, or minor person, with prior court approval of the court having, or which would have, jurisdiction over such personal representative or any independent executor of a deceased person, without prior court approval, who may be entitled to receive any property under any will of or by inheritance from a decedent and who intends to effect disclaimer irrevocably on or after September 1, 1977, of the whole or any part of such property shall evidence same as herein provided. A disclaimer evidenced as provided herein, shall be effective as of the death of decedent and the property subject thereof shall pass as if the person disclaiming or on whose behalf a disclaimer is made had predeceased the decedent unless decedent's will provides otherwise. Failure to comply with the provisions hereof shall render such disclaimer ineffective except as an assignment of such property to those who would have received same had the person attempting the disclaimer died prior to the decedent. The term "property" as used in this section shall include all legal and equitable interests, powers, and property, whether present or future, whether vested or contingent, and whether beneficial or burdensome, in whole or in part. The term "disclaimer" as used in this section shall include "renunciation." Nothing in this section shall be construed to preclude a subsequent disclaimer by any person who shall be entitled to property as a result of a disclaimer.

The following shall apply to such disclaimers:

(a) **Written Memorandum of Disclaimer and Filing Thereof.** In the case of property receivable under a will or by inheritance, the disclaimer shall be evidenced by a written memorandum, acknowledged before a notary public or other person authorized to take acknowledgements of conveyances of real estate. A written memorandum of disclaimer disclaiming a

present interest shall be filed not later than nine months after the death of the decedent and a written memorandum of disclaimer disclaiming a future interest may be filed not later than nine months after the event determining that the taker of the property or interest is finally ascertained and his interest is indefeasibly vested. The written memorandum of disclaimer shall be filed in the probate court in which the decedent's will has been probated or in which proceedings have been commenced for the administration of the decedent's estate or which has before it an application for either of the same; provided, however, if the administration of the decedent's estate is closed, or after the expiration of one year following the date of the issuance of letters testamentary in an independent administration, or if there has been no will of the decedent probated or filed for probate, or if no administration of the decedent's estate has been commenced, or if no application for administration of the decedent's estate has been filed, the written memorandum of disclaimer shall be filed with the county clerk of the county of the decedent's residence, or, if the decedent is not a resident of this state but real property or an interest therein located in this state is disclaimed, a written memorandum of disclaimer shall be filed with the county clerk of the county in which such real property or interest therein is located, and recorded by such county clerk in the deed records of that county.

(b) Notice of Disclaimer. In the event that a personal representative of a decedent is qualified and acting, copies of any written memorandum of disclaimer shall be delivered in person or shall be mailed by registered or certified mail to any qualified and acting personal representative of the decedent or to the holder of legal title to the property to which the disclaimer relates.

(c) Power of Testator to Provide for Disclaimer. Nothing herein shall prevent a testator from providing in a will for the making of disclaimers by legatees, devisees and beneficiaries and for the disposition of disclaimed property in a manner different from the provisions hereof.

(d) Irrevocability of Disclaimer. Any disclaimer filed and served under this section shall be irrevocable.

(e) Partial Disclaimer. Any person who may be entitled to receive any property under any will of or by inheritance from a decedent may disclaim such property in whole or in part, including but not limited to specific powers of invasion, powers of appointment, and fee estate in favor of life estates; and a partial disclaimer or renunciation, in accordance with the provi-

sions of this section, shall be effective whether the property so renounced or disclaimed constitutes a portion of a single, aggregate gift or constitutes part or all of a separate, independent gift; provided, however, that a partial disclaimer shall be effective only with respect to property expressly described or referred to by category in such disclaimer; and provided further, that a partial disclaimer of property which is subject to a burdensome interest created by the decedent's will shall not be effective unless such property constitutes a gift which is separate and distinct from undisclaimed gifts.

(f) Disclaimer After Acceptance. No disclaimer shall be effective after the acceptance of the property by the heir, legatee, devisee, or beneficiary. For the purpose of this section, acceptance shall occur only if the person making such disclaimer has previously taken possession or exercised dominion and control of such property in the capacity of heir, legatee, devisee, or beneficiary.

[Amended by Acts 1977, 65th Leg., p. 1918, ch. 769, § 1, eff. Aug. 29, 1977.]

§ 42. Inheritance Rights of Illegitimate Children

(a) Maternal Inheritance. For the purpose of inheritance to, through, and from an illegitimate child, such child shall be treated the same as if he were the legitimate child of his mother, so that he and his issue shall inherit from his mother and from his maternal kindred, both descendants, ascendants, and collaterals in all degrees, and they may inherit from him and his issue.

(b) Legitimation by Marriage. Where a man, having by a woman a child shall afterwards intermarry with such woman, such child shall thereby be legitimated, so that he and his issue shall inherit from his father and from his paternal kindred, both descendants, ascendants, and collaterals in all degrees, and they may inherit from him and his issue.

(c) Legitimation by Voluntary Legitimation Proceeding. Where a man, having by a woman a child shall afterwards legitimate the child pursuant to a voluntary legitimation proceeding under Chapter 13, Family Code, such child and his issue shall inherit from his father but not from his paternal kindred; and the father, but not the father's kindred, shall inherit from such child and his issue.

(d) Homestead Rights, Exempt Property, and Family Allowances. Such child shall also be treated the same as if he were a legitimate child of his mother, and, if legitimated by marriage or by voluntary legitimation, as if he were a legitimate child of his father, for the purpose of determining homestead rights, distribution of exempt property, and the making of family allowances.

(e) **Marriages Null in Law.** The issue also of marriages deemed null in law shall nevertheless be legitimate.

[Amended by Acts 1977, 65th Leg., p. 762, ch. 290, § 1, eff. May 28, 1977.]

CHAPTER III. DETERMINATION OF HEIRSHIP

§ 48. Proceedings to Declare Heirship. When and Where Instituted

[See *Compact Edition, Volume 2 for text of (a) and (b)*]

(c) Notwithstanding any other provision of this section, a probate court in which the proceedings for the guardianship of the estate of a ward who dies intestate were pending at the time of the death of the ward may, if there is no administration pending in the estate, determine and declare who are the heirs and only heirs of the ward, and their respective shares and interests, under the laws of this State, in the estate of the ward.

[Amended by Acts 1977, 65th Leg., p. 1521, ch. 616, § 1, eff. Aug. 29, 1977.]

§ 49. Who May Institute Proceedings to Declare Heirship

Such proceedings may be instituted and maintained in any of the instances enumerated above by any person or persons claiming to be the owner of the whole or a part of the estate of such decedent, or by the guardian of the estate of a ward, if the proceedings are instituted and maintained in the probate court in which the proceedings for the guardianship of the estate were pending at the time of the death of the ward. In such a case an application shall be filed in a proper court stating the name, time, and place of death and the names and residences of the heirs of the decedent, if known to the applicant, and, if the time and place of death or the names and residences of all of the heirs of such decedent be not definitely known to such applicant, then the application shall set forth all of the material facts and circumstances within the knowledge or information of such applicant, as may reasonably tend to show the time and place of death of the decedent, and the names and places of residence of the heirs, and the true share and interest of each applicant, and of each heir, in the estate of such decedent. Such application shall, so far as is known to any of the applicants, contain a general description of all the real property of the decedent and a general description of all the personal property belonging to the estate of the decedent. If any of the foregoing information is not set out in the application, the reason for the omission shall be stated. Such application shall be supported by the affidavit

of each applicant to the effect that, insofar as is known to such applicant, all the allegations of such application are true in substance and in fact and that no such material fact or circumstance has, within the affiant's knowledge, been omitted from such application. The unknown heirs of such decedent, all persons who are named in the application as heirs of such decedent, and all persons who are, at the date of the filing of the application, shown by the deed records of the county in which any of the real property described in such application is situated to own any share or interest in any such real property, shall be made parties in such proceeding. [Amended by Acts 1977, 65th Leg., p. 1522, ch. 616, § 2, eff. Aug. 29, 1977.]

CHAPTER V. PROBATE, GRANT OF ADMINISTRATION, AND GUARDIANSHIP

PART 2. PROCEDURE PERTAINING TO FOREIGN WILLS

Section

107A. Suit for the Recovery of Debts by a Foreign Executor or Administrator [NEW].

PART 3. ESTATES OF MINORS AND INCOMPETENTS

113A. Appointment of Attorney Ad Litem [NEW].

127A. Guardianship of Person Missing on Public Service [NEW].

PART 5. LIMITED GUARDIANSHIP PROCEEDINGS [NEW]

130A. Limited Guardianship.

130B. Authority to Appoint.

130C. Petition; Contents.

130D. Filing Fee.

130E. Notices and Citations in Limited Guardianship Proceedings.

130F. Examination and Report.

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130H. Order of the Court.

130I. Who May be Guardians.

130J. Certain Duties of Limited Guardian.

130K. Oath and Bond of Limited Guardian.

130L. Authority of Limited Guardian.

130M. Termination, Removal, or Resignation of Limited Guardian.

130N. Venue.

130O. Transfer of Venue.

PART 2. PROCEDURE PERTAINING TO FOREIGN WILLS

§ 107A. Suit for the Recovery of Debts by a Foreign Executor or Administrator

(a) On giving notice by registered or certified mail to all creditors of the decedent in this state who have filed a claim against the estate of the decedent for a debt due to the creditor, a foreign executor or administrator of a person who was a nonresident at the time of death may prosecute a suit in this state for the recovery of debts due to the decedent.

(b) The plaintiff's letters testamentary or letters of administration granted by a competent tribunal, properly authenticated, shall be filed with the suit.

(c) By filing suit in this state for the recovery of a debt due to the decedent, a foreign executor or administrator submits personally to the jurisdiction of the courts of this state in a proceeding relating to the recovery of a debt due by his decedent to a resident of this state. Jurisdiction under this subsection is limited to the money or value of personal property recovered in this state by the foreign executor or administrator.

(d) Suit may not be maintained in this state by a foreign executor or administrator if there is an executor or administrator of the decedent qualified by a court of this state or if there is pending in this state an application for appointment as an executor or administrator.

[Added by Acts 1977, 65th Leg., p. 1190, ch. 457, § 1, eff. Aug. 29, 1977.]

PART 3. ESTATES OF MINORS AND INCOMPETENTS

§ 110. Persons Disqualified to Serve as Guardians

The following persons shall not be appointed guardians:

- (a) Minors.
- (b) Persons whose conduct is notoriously bad.
- (c) Incompetents.
- (d) Those who are themselves parties, or whose father or mother is a party to a lawsuit on the result of which the welfare of the person for whom, or for whose estate, a guardian is to be appointed, may depend.

(e) Those who are indebted to the person for whom or for whose estate a guardian is to be appointed, unless they pay the debt prior to the appointment, or who are asserting any claim to any property, real or personal, adverse to the person for whom, or for whose estate, the appointment is sought.

(f) [Deleted.]

(g) Those who by reason of inexperience or lack of education, or for other good reason, are shown to be incapable of properly and prudently managing and controlling the ward or his estate.

[Amended by Acts 1977, 65th Leg., p. 2142, ch. 857, § 1, eff. Aug. 29, 1977.]

§ 113A. Appointment of Attorney Ad Litem

In a proceeding under the provisions of this chapter for the appointment of a guardian of a person who is not a minor, the judge may appoint an attorney ad litem to represent the interests of the person for whom the permanent guardianship is sought and shall allow the attorney ad litem a reasonable fee for his services to be taxed as part of the costs.

[Added by Acts 1977, 65th Leg., p. 1380, ch. 551, § 1, eff. Aug. 29, 1977.]

§ 127A. Guardianship of Person Missing on Public Service

(a) Not less than six months after a person is reported by an executive department of the United States to be a prisoner of war or missing on the public service of the United States, any person may file a written application for the appointment of a guardian of the person of the missing person in the court of the county of residence of the missing person's spouse or, if there is no spouse, in the county of residence of a parent or child of the missing person, or if there is no parent or child, in the county of residence of the missing person's next of kin.

(b) The application shall state:

(1) the name, sex, and last known residence of the person for whom the appointment of a guardian is sought;

(2) the executive department issuing the report, the date of the report, and the last known whereabouts of the missing person;

(3) the names and addresses of the missing person's spouse, children, and parents or, if there is no spouse, child, or parent, the name and address of the person's next of kin and facts that show that the court has venue of the proceeding;

(4) the reason for the appointment and the interest of the applicant in the appointment; and

(5) the name, relationship, and address of the person whom the applicant desires to have appointed as guardian.

(c) The court shall appoint an attorney to represent the interests of the missing person and shall allow the attorney a reasonable fee, not to exceed \$25, for his services to be taxed as part of the costs.

(d) The attorney appointed to represent the interest of the missing person shall be personally served with citation to appear and answer the application for the appointment of a guardian. The clerk of the court shall issue a notice setting forth that an application has been filed for the guardianship of the person of the missing person and by whom the application is made. The notice shall cite all persons interested in the welfare of that person to appear at the time and place stated in the notice and contest the application, if they so desire. The notice shall be served by posting, and the sheriff or other officer posting the notice shall return the original, signed officially, stating thereon in writing the time and place that he posted the copy of the notice. In addition to posting the notice, a copy of the notice shall be mailed by registered or certified mail to the spouse, to each child, to each parent of the missing person, and to any other person that the court deems appropriate.

(e) Any person has the right to appear and contest the appointment of a particular person as guardian of the missing person, or to contest any guardianship proceeding which he deems to be injurious to the missing person, or to commence a guardianship proceeding which he deems beneficial to the missing person.

(f) Before appointing a guardian, the court must find:

(1) that the person has been reported missing by an executive department of the United States and still is missing;

(2) that the court has venue of the proceeding and that there is not an existing guardianship of this person;

(3) that the person applying for appointment as the guardian is a proper person to act as the guardian; and

(4) that the rights of the missing person will be protected by the appointment of the guardian.

(g) After the hearing, the court shall dismiss the application or enter an order appointing a guardian to protect the rights of the missing person and may impose in the order any conditions or restrictions it deems necessary to protect the rights of the missing person. In appointing the guardian, the court shall give preference to the spouse of the missing person, and if there is no spouse shall give preference to parents and children of the missing person.

(h) The jurisdiction of the court over the guardianship is continuing. If the missing person returns, on motion of any interested person after a notice, stating that the motion has been filed and specifying the date of a hearing, has been issued and served on the formerly missing person as in other cases, the court shall amend or vacate the original order of guardianship. A copy of the motion shall accompany the notice.

[Added by Acts 1977, 65th Leg., p. 569, ch. 203, § 1, eff. Aug. 29, 1977.]

PART. 5. LIMITED GUARDIANSHIP PROCEEDINGS [NEW]

§ 130A. Limited Guardianship

Limited guardianship for mentally retarded persons shall be utilized only as necessary to promote and protect the well-being of the individual, shall be designed to encourage the development of maximum self-reliance and independence in the individual, and shall be ordered only to the extent necessitated by the individual's actual mental and adaptive limitations. A mentally retarded person for whom a limited guardian has been appointed shall not be presumed to be incompetent and shall retain all legal and civil rights and powers except those which have by court order been designated as legal disabilities

by virtue of having been specifically granted to the limited guardian. An appointment of a limited guardian shall be made pursuant to the provisions of Part 5, Chapter V. For the purposes of Chapter V, Texas Probate Code, a mentally retarded person is defined as a person with significantly subaverage general intellectual functioning of two or more standard deviations below the age-group mean for the tests used, existing concurrently with deficits in adaptive behavior.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130B. Authority to Appoint

The court exercising original probate jurisdiction of the county having venue may appoint limited guardians for mentally retarded persons. However, no limited guardianship may be created for a person who is the ward under a full guardianship of the person or the estate.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130C. Petition; Contents

The mentally retarded person or a person interested in his welfare may petition the court for the appointment of a limited guardian. A petition for a limited guardianship shall state:

(1) the name, age, residence, and post-office address of the alleged mentally retarded person;

(2) the nature of his alleged incompetency, in accordance with Section 130A of this code;

(3) the approximate value and description of his property, including any compensation, pension, insurance, or allowance to which he may be entitled;

(4) whether there is, in any state, a guardian or limited guardian of the alleged mentally retarded person;

(5) the nature and description of any existing guardianship or limited guardianship;

(6) the residence and post-office address of the person whom the petitioner asks to be appointed limited guardian;

(7) the names and addresses, so far as is known or can be reasonably ascertained, of the persons most closely related to the alleged mentally retarded person;

(8) the name and address of the person or institution having the care and custody of the alleged mentally retarded person;

(9) the reason for the appointment of a limited guardian and the interest of the petitioner in the appointment;

(10) the nature and degree of the alleged disability, the specific areas of protection and assistance requested, and the limitation of

rights requested to be included in the court's order of appointment; and

(11) the requested term of the limited guardianship to be included in the court's order of appointment.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130D. Filing Fee

A fee of \$15 shall be charged for filing a petition for limited guardianship, and a fee of \$4 shall be charged for the service of notice and citation. However, no fees shall be charged by the court for filing a petition for limited guardianship unless the alleged mentally retarded person has an estate valued in excess of \$1500. A party may file with the county clerk an affidavit stating that the estate of the alleged mentally retarded person is valued at less than \$1500, and the clerk shall thereupon accept the application and issue process and perform all other services required of him in the same manner as if security had been given.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130E. Notices and Citations in Limited Guardianship Proceedings

(a) On the filing of an application for appointment of a limited guardian, the clerk shall issue a notice setting forth that the application has been filed for the limited guardianship, the name of the person for whom the guardian is sought and the nature of the disability, and by whom the application is made. The notice shall cite all persons interested in the welfare of that person to appear at the time and place stated in the notice and contest the application, if they so desire.

(b) The notice shall be served by posting, and the sheriff or other officer posting the notice shall return the original, signed officially and stating thereon in writing the time and place that he posted the copy.

(c) The alleged mentally retarded person and his parents, if the parents can be found within this state, or the conservator or any person having control of the care and welfare of the alleged mentally retarded person shall be personally served with citation to appear and answer the application for the appointment of a limited guardian. Notwithstanding the foregoing, all persons then living who stand in the first degree of consanguinity or affinity to the alleged mentally retarded person shall be given notice if their whereabouts are known or can be reasonably ascertained.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130F. Examination and Report

Within 30 days after the filing of the petition for limited guardianship, the person alleged to be mentally retarded shall be examined at a facility approved by the Texas Department of Mental Health and Mental Retardation to perform such service. The examination shall be conducted in accordance with rules promulgated by the commissioner of the Texas Department of Mental Health and Mental Retardation. The facility shall submit a written report of its findings and recommendations to the court with copies to the alleged mentally retarded person and the petitioner. The report may include a description of the alleged mentally retarded person's degree of incompetency, if any. The findings and recommendations of the examinations shall not be binding on the court.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130G. Hearing

The person alleged to be mentally retarded shall be present at the hearing, unless the court determines that such personal appearance would not be in the person's best interest. He is entitled to be represented by counsel. If he is unable to pay for counsel, the county is responsible for costs of counsel. He is entitled, on request, to a jury trial. The hearing may be closed if the person alleged to be mentally retarded or his counsel requests a closed hearing. At the hearing, the court shall:

(1) inquire into the nature and extent of the general intellectual functioning of the individual asserted to need a limited guardian;

(2) evaluate the extent of the impairment in his adaptive behavior;

(3) ascertain his capacity to care for himself and manage his property; and

(4) inquire into the qualifications, abilities, and capabilities of the person seeking to be appointed limited guardian.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130H. Order of the Court

If it is found that the alleged mentally retarded person possesses the capacity to care for himself and to manage his property as would a reasonably prudent person or if it is found that the alleged mentally retarded person is totally without capacity to care for himself and to manage his property, the court shall dismiss the petition for the appointment of a limited guardian. If it is found that the alleged mentally retarded person lacks the capacity to do some, but not all, of the tasks necessary to care for himself or to manage his property, the court may appoint a limited guardian for the individual and shall define the powers and duties of the limited guardian so as to permit the mentally retarded person to care for himself or to manage his property

commensurate with his ability to do so. However, the powers and duties granted to and imposed on the limited guardian by the court in its order shall not duplicate or be in conflict with the powers and duties of any other limited guardian, and the powers and duties shall not exceed those applicable to full guardians under this code. An order appointing a limited guardian shall contain findings of fact and shall also specify:

- (1) the properties of the mentally retarded person to which the limited guardian is entitled to possession and management, giving the description of the properties that will be sufficient to identify them;
- (2) the debts, rentals, wages, or other claims due the mentally retarded person which the limited guardian is entitled to collect, or file suit with respect to, if necessary, and thereafter to possess and manage;
- (3) the contractual or other obligations which the limited guardian may incur on behalf of the mentally retarded person;
- (4) the claims against the mentally retarded person which the limited guardian may pay, compromise, or defend, if necessary; and
- (5) any other powers, limitations, or duties with respect to the care of the mentally retarded person or the management of his property by the limited guardian which the court shall specifically and explicitly specify.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130I. Who May be Guardians

(a) Only a person, institution, or corporation found by the court to be suitable may be appointed limited guardian of a mentally retarded person. The court shall not customarily or ordinarily appoint the Texas Department of Mental Health and Mental Retardation or a community mental health and mental retardation center, or any other agency, public or private, that is directly providing services to the mentally retarded person, except as a last resort.

(b) Prior to appointment, the court shall make reasonable effort to question the mentally retarded person concerning his preference of the person to be appointed limited guardian, and a preference indicated shall be given due consideration by the court. [Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130J. Certain Duties of Limited Guardian

(a) It is the duty of the limited guardian to file annually within 30 days after the anniversary date of his appointment and also within 30 days after termination of his appointment as the limited guardian a written verified account of his administration. The court in its discretion may also allow such

accounts to be filed at intervals of up to 36 months, with instructions to the limited guardian that any substantial increase in income or assets or substantial change in the mentally retarded person's condition shall be reported within 30 days of the substantial increase or change.

(b) It is the duty of the limited guardian who is managing properties to prepare and file within three months after his appointment a verified inventory of all the property of the mentally retarded person which shall come to his possession or knowledge, including a statement of all encumbrances, liens, and other secured charges on any item.

(c) To the extent that the order of the court gives the limited guardian control of any property of a mentally retarded person, the limited guardian must take care of and manage the property as a prudent man would manage his own property.

(d) Pursuant to the orders of the court, the limited guardian may expend funds of the limited guardianship in order to care for and maintain the mentally retarded person, including making application for residential care and services provided by public or private facilities. The limited guardian is required to report the condition of the mentally retarded person to the court at regular intervals or otherwise as the court may direct. If the person is receiving residential care in a public or private residential care facility, the limited guardian shall report to the court the necessity for continued care in the facility. [Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130K. Oath and Bond of Limited Guardian

The limited guardian shall take and subscribe an oath and, unless dispensed with by order of the court, shall file a bond in accordance with the provisions of Section 194, Texas Probate Code, as amended, except that in a limited guardianship of the person and in a limited guardianship of the estate in which the inventory filed with the court shows that the person has total accumulated assets of a value of less than \$1500, the court may dispense with the requirement of a bond. If the court dispenses with a bond, the limited guardian shall report to the court any known changes in the accumulated assets of the mentally retarded person that increase the value to more than \$1500.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130L. Authority of Limited Guardian

On the filing of the oath and bond, if any, the order of the court appointing the limited guardian shall become effective without the necessity for issuance of letters of guardianship. The order shall be evidence of the authority of the limited guardian to act within the scope of the powers and duties set forth in the order.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130M. Termination, Removal, or Resignation of Limited Guardian

(a) The limited guardianship shall be settled and closed when the mentally retarded person has died, or when he has been found by the court to have full capacity to care for himself and to manage his property, or when a full guardian of the person or estate of such individual has been appointed in this state and has qualified, or being married, when such individual's spouse has qualified as survivor in community.

(b) On petition of the mentally retarded person or any person interested in his welfare and on such notice as the court may direct, the court may remove the limited guardian if the court finds that to be in the best interest of the mentally retarded person. On petition of the limited guardian, the court may accept his resignation.

(c) When a limited guardian dies, resigns, or is removed, the court may, on application and on such notice as the court may direct, appoint a successor limited guardian. A successor limited guardian shall have all of the powers and rights and shall be subject to all of the duties of the prior limited guardian.

(d) An order appointing a limited guardian or a successor limited guardian may specify a minimum period, not exceeding one year, during which no petition for adjudication that the mentally retarded person no longer requires the limited guardianship may be filed without special leave. Subject to this restriction, the mentally retarded person or any person interested in his welfare may petition the court for an order that he is no longer in need of the limited guardianship and that requires the removal or resignation of the limited guardian. A request for this order may be made by informal letter to the court or judge, and a person who knowingly interferes with the transmission of this kind of request to the court or judge may be adjudged guilty of contempt of court.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130N. Venue

A proceeding for the appointment of a limited guardian of a mentally retarded person shall begin in the county where the mentally retarded person resides or where his principal estate is situated.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

§ 130O. Transfer of Venue

A court having venue of a limited guardianship proceeding may transfer venue of the limited guardianship proceeding to the court of any other county of the state on application of the limited guardian and with such notice to the mentally retarded person

or other interested party as the court may require. A transfer of a limited guardianship proceeding shall be made to the court of the county in which either the limited guardian or the mentally retarded person resides, as the court may deem appropriate, at the time of making application for the transfer. The original order providing for a transfer shall be retained as the permanent record by the clerk of the court in which the order is entered, and a certified copy thereof, together with the original file in the limited guardianship proceeding and a certified transcript of all record entries up to and including the order for the change, shall be transmitted to the clerk of the court to which the proceeding is transferred.

[Added by Acts 1977, 65th Leg., p. 1171, ch. 449, § 1, eff. Aug. 29, 1977.]

CHAPTER VI. SPECIAL TYPES OF ADMINISTRATION AND GUARDIANSHIP.

PART 4. INDEPENDENT ADMINISTRATION

Section

154A. Court-Appointed Successor Independent Executor [NEW].

PART 3. SMALL ESTATES

§ 137. Collection of Small Estates Upon Affidavit

The distributees of an estate shall be entitled thereto, to the extent that the assets, exclusive of homestead and exempt property, exceed the known liabilities of said estate, without awaiting the appointment of a personal representative when:

(a) No petition for the appointment of a personal representative is pending or has been granted; and

(b) Thirty days have elapsed since the death of the decedent; and

(c) The value of the entire assets of the estate, not including homestead and exempt property, does not exceed \$10,000; and

(d) There is filed with the clerk of the court having jurisdiction and venue an affidavit sworn to by such distributees as have legal capacity, and, if the facts warrant, by the natural guardian or next of kin of any minor or incompetent who is also a distributee, which affidavit shall be approved by the judge of the court having jurisdiction and venue, to be recorded in "Small Estates" records by the clerk, showing the existence of the foregoing conditions, the names and addresses of the distributees, and their right to receive the money or property of the estate, or to have such evidences of money, property or other rights of the estate as found to exist transferred to them, being heirs, devisees, or assignees, and listing all assets and known liabilities of the estates; and

(e) A copy of such affidavit, certified to by said clerk, is furnished by the distributees of the estate to the person or persons owing money to the estate, having custody or possession of property of the estate, or acting as registrar, fiduciary or transfer agent of or for evidences of interest, indebtedness, property or other right belonging to said estate.

Henceforth the county clerk of every county in this state shall provide and keep in his office an appropriate book labeled "Small Estates," with accurate index, in which he shall record every such affidavit so filed, upon being paid his legal recording fee, said index to show the name of decedent and reference to land, if any, involved.

[Amended by Acts 1975, 64th Leg., p. 1402, ch. 543, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 361, ch. 177, § 1, eff. May 20, 1977.]

PART 4. INDEPENDENT ADMINISTRATION

§ 145. Independent Administration

(a) Independent administration of an estate may be created as provided in Subsection (b) or, if the value of the entire assets of an estate does not exceed \$200,000, as provided in Subsections (c) through (e) of this section. Those methods provided in Subsections (c) and (d) only apply to wills and codicils published after September 1, 1977.

(b) Any person capable of making a will may provide in his will that no other action shall be had in the county court in relation to the settlement of his estate than the probating and recording of his will, and the return of an inventory, appraisement, and list of claims of his estate.

(c) In situations where an executor is named in a decedent's will, but the will does not provide for independent administration of the decedent's estate as provided in Subsection (b) of this section, all of the distributees of the decedent may agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent's will the executor named in the will to serve as independent executor and request in the application that no other action shall be had in the county court in relation to the settlement of the decedent's estate other than the probating and recording of the decedent's will, and the return of an inventory, appraisement, and list of claims of the decedent's estate. In such case the county court shall enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent executor, unless the county court finds that it would not be in the best interest of the estate to do so.

(d) In situations where no executor is named in the decedent's will, or in situations where each executor named in the will is deceased or is disqualified to serve as executor or indicates by affidavit filed

with the application for administration of the decedent's estate his inability or unwillingness to serve as executor, all of the distributees of the decedent may agree on the advisability of having an independent administration and collectively designate in the application for probate of the decedent's will a qualified person, firm, or corporation to serve as independent administrator and request in the application that no other action shall be had in the county court in relation to the settlement of the decedent's estate other than the probating and recording of the decedent's will, and the return of an inventory, appraisement, and list of claims of the decedent's estate. In such case the county court shall enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent administrator, unless the county court finds that it would not be in the best interest of the estate to do so.

(e) All of the distributees of a decedent dying intestate may agree on the advisability of having an independent administration and collectively designate in the application for administration of the decedent's estate a qualified person, firm, or corporation to serve as independent administrator and request in the application that no other action shall be had in the county court in relation to the settlement of the decedent's estate other than the return of an inventory, appraisement, and list of claims of the decedent's estate. In such case the county court shall enter an order granting independent administration and appointing the person, firm, or corporation designated in the application as independent administrator, unless the county court finds that it would not be in the best interest of the estate to do so.

(f) In those cases where an independent administration is sought under the provisions of Subsections (c) through (e) above, all distributees shall be served with citation and notice of the application for independent administration unless the distributee waives the issuance or service of citation or enters an appearance in court.

(g) In no case shall any independent administrator be appointed by any court to serve in any intestate administration until those parties seeking the appointment of said independent administrator offer clear and convincing evidence to the court that they constitute all of the said decedent's heirs.

(h) When an independent administration has been created, and the order appointing an independent executor has been entered by the county court, and the inventory, appraisement, and list aforesaid has been filed by the executor and approved by the county court, as long as the estate is represented by an independent executor, further action of any nature shall not be had in the county court except where this Code specifically and explicitly provides for some action in the county court.

(i) If a distributee described in Subsections (c) through (e) of this section is a minor or an incompetent, the guardian of the person of the distributee may sign the application on behalf of the distributee. If the county court finds that either the granting of independent administration or the appointment of the person, firm, or corporation designated in the application as independent executor would not be in the best interests of the minor or incompetent, then, notwithstanding anything to the contrary in Subsections (c) through (e) of this section, the county court shall not enter an order granting independent administration of the estate. If such distributee who is a minor or incompetent has no guardian of the person, the county court may appoint a guardian ad litem to make application on behalf of the minor or incompetent if the county court considers such an appointment necessary to protect the interest of the distributees.

(j) If a trust is created in the decedent's will, the person or class of persons first eligible to receive the income from the trust, when determined as if the trust were to be in existence on the date of the decedent's death, shall, for the purposes of Subsections (c) and (d) of this section, be deemed to be the distributee or distributees on behalf of such trust, and any other trust or trusts coming into existence upon the termination of such trust, and are authorized to apply for independent administration on behalf of the trusts without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence upon the termination of such trust.

(k) If a life estate is created either in the decedent's will or by law, the life tenant or life tenants, when determined as if the life estate were to commence on the date of the decedent's death, shall, for the purposes of Subsections (c) through (e) of this section, be deemed to be the distributee or distributees on behalf of the entire estate created, and are authorized to apply for independent administration on behalf of the estate without the consent or approval of any remainderman.

(l) If a decedent's will contains a provision that a distributee must survive the decedent by a prescribed period of time in order to take under the decedent's will, then, for the purposes of determining who shall be the distributee under Subsections (c), (d), (h), and (i) of this section, it shall be presumed that the distributees living at the time of the filing of the application for probate of the decedent's will survived the decedent by the prescribed period.

(m) In the case of all decedents, whether dying testate or intestate, for the purposes of determining who shall be the distributees under Subsections (c), (d), (e), (h), and (i) of this section, it shall be presumed that no distributee living at the time the

application for independent administration is filed shall subsequently disclaim any portion of such distributee's interest in the decedent's estate.

(n) If a distributee of a decedent's estate should die and if by virtue of such distributee's death such distributee's share of the decedent's estate shall become payable to such distributee's estate, then the deceased distributee's personal representative may sign the application for independent administration of the decedent's estate under Subsections (c), (d), (e), (h), and (i) of this section.

(o) Notwithstanding anything to the contrary in this section, a person capable of making a will may provide in his will that no independent administration of his estate may be allowed. In such case, his estate, if administered, shall be administered and settled under the direction of the county court as other estates are required to be settled.

(p) If an independent administration of a decedent's estate is created pursuant to Subsections (c), (d), or (e) of this section, then, unless the county court shall waive bond, the independent executor shall be required to enter into bond conditioned as required by law in the same manner as other personal representatives.

(q) Absent proof of fraud or collusion on the part of a judge, no judge may be held civilly liable for the commission of misdeeds, or the omission of any required act of any person, firm, or corporation designated as an independent executor under Subsections (c), (d), and (e) of this section.

[Amended by Acts 1977, 65th Leg., p. 1061, ch. 390, § 3, eff. Sept. 1, 1977.]

§ 147. Enforcement of Claims by Suit

Any person having a debt or claim against the estate may enforce the payment of the same by suit against the independent executor; and, when judgment is recovered against the independent executor, the execution shall run against the estate of the decedent in the hands of the independent executor which is subject to such debt. The independent executor shall not be required to plead to any suit brought against him for money until after six months from the date that an independent administration was created and the order appointing an independent executor was entered by the county court.

[Amended by Acts 1975, 64th Leg., p. 980, ch. 376, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1064, ch. 390, § 4, eff. Sept. 1, 1977.]

§ 148. Requiring Heirs to Give Bond

When an independent administration is created and the order appointing an independent executor is entered by the county court, any person having a debt against such estate may, by written complaint filed in the county court where such order was entered, cause all distributees of the estate, heirs at

law, and other persons entitled to any portion of such estate under the will, if any, to be cited by personal service to appear before such county court and execute a bond for an amount equal to the full value of such estate, as shown by the inventory and list of claims, such bond to be payable to the judge, and his successors, and to be approved by said judge, and conditioned that all obligors shall pay all debts that shall be established against such estate in the manner provided by law. Upon the return of the citation served, unless such person so entitled to any portion of the estate, or some of them, or some other person for them, shall execute such bond to the satisfaction of the county court, such estate shall thereafter be administered and settled under the direction of the county court as other estates are required to be settled. If the bond is executed and approved, the independent administration shall proceed. Creditors of the estate may sue on such bond, and shall be entitled to judgment thereon for the amount of their debt, or they may have their action against those in possession of the estate.

[Amended by Acts 1977, 65th Leg., p. 1064, ch. 390, § 5, eff. Sept. 1, 1977.]

§ 149A. Accounting

(a) Interested Person May Demand Accounting.

At any time after the expiration of fifteen months from the date that an independent administration was created and the order appointing an independent executor was entered by the county court, any person interested in the estate may demand an accounting from the independent executor. The independent executor shall thereupon furnish to the person or persons making the demand an exhibit in writing, sworn and subscribed by the independent executor, setting forth in detail:

1. The property belonging to the estate which has come into his hands as executor.
2. The disposition that has been made of such property.
3. The debts that have been paid.
4. The debts and expenses, if any, still owing by the estate.
5. The property of the estate, if any, still remaining in his hands.
6. Such other facts as may be necessary to a full and definite understanding of the exact condition of the estate.
7. Such facts, if any, that show why the administration should not be closed and the estate distributed.

Any other interested person shall, upon demand, be entitled to a copy of any exhibit or accounting that has been made by an independent executor in compliance with this section.

(b) **Enforcement of Demand.** Should the independent executor not comply with a demand for an accounting authorized by this section within sixty days after receipt of the demand, the person making the demand may compel compliance by an action in the county court or by a suit in the district court. After a hearing, the court shall enter an order requiring the accounting to be made at such time as it deems proper under the circumstances.

[See Compact Edition, Volume 2 for text of (c) and (d)]

[Amended by Acts 1977, 65th Leg., p. 1065, ch. 390, § 6, eff. Sept. 1, 1977.]

§ 150. Partition and Distribution

If the will does not distribute the entire estate of the testator, or provide a means for partition of said estate, or if no will was probated, the independent executor may file his final account in the county court in which the will was probated, or if no will was probated, in the county court in which the order appointing the independent executor was entered, and ask for partition and distribution of the estate; and the same shall be partitioned and distributed in the manner provided for the partition and distribution of estates administered under the direction of the county court.

[Amended by Acts 1975, 65th Leg., p. 1065, ch. 390, § 7, eff. Sept. 1, 1977.]

§ 154A. Court-Appointed Successor Independent Executor

(a) If a qualified independent executor fails or refuses to continue to serve as independent executor of a decedent's estate, and if, in the event the decedent died testate, the will does not provide for a qualified successor independent executor, all of the distributees of the decedent as of the filing of the application for an order continuing independent administration may apply to the county court for the appointment of a qualified person, firm, or corporation to serve as successor independent executor. If the county court finds that continued administration of the estate is necessary, the county court shall enter an order continuing independent administration and appointing the person, firm, or corporation designated in the application as successor independent executor, unless the county court finds that it would not be in the best interest of the estate to do so. Such successor shall serve with all of the powers and privileges granted to his predecessor independent executor.

(b) If a distributee described in this section is a minor or an incompetent, the guardian of the person of the distributee may sign the application on behalf of the distributee. If the county court finds that either the continuing of independent administration or the appointment of the person, firm, or corpora-

tion designated in the application as successor independent executor would not be in the best interest of the minor or incompetent, then, notwithstanding anything to the contrary in subsection (a) of this section, the county court shall not enter an order continuing independent administration of the estate. If the distributee who is a minor or incompetent has no guardian of the person, the court may appoint a guardian ad litem to make application on behalf of the minor or incompetent if the county court considers such an appointment necessary to protect the interest of such distributee.

(c) If a trust is created in the decedent's will, the person or class of persons first eligible to receive the income from the trust, determined as if the trust were to be in existence on the date of the filing of the application for an order continuing independent administration, shall, for the purposes of this section, be deemed to be the distributee or distributees on behalf of such trust, and any other trust or trusts coming into existence upon the termination of such trust, and are authorized to apply for an order continuing independent administration on behalf of the trust without the consent or agreement of the trustee or any other beneficiary of the trust, or the trustee or any beneficiary of any other trust which may come into existence upon the termination of such trust.

(d) If a life estate is created either in the decedent's will or by law, and if a life tenant is living at the time of the filing of the application for an order continuing independent administration, then the life tenant or life tenants, determined as if the life estate were to commence on the date of the filing of the application for an order continuing independent administration, shall, for the purposes of this section, be deemed to be the distributee or distributees on behalf of the entire estate created, and are authorized to apply for an order continuing independent administration on behalf of the estate without the consent or approval of any remainderman.

(e) If a decedent's will contains a provision that a distributee must survive the decedent by a prescribed period of time in order to take under the decedent's will, for the purposes of determining who shall be the distributee under this section, it shall be presumed that the distributees living at the time of the filing of the application for an order continuing independent administration of the decedent's estate survived the decedent for the prescribed period.

(f) In the case of all decedents, whether dying testate or intestate, for the purposes of determining who shall be the distributees under this section, it shall be presumed that no distributee living at the time the application for an order continuing independent administration of the decedent's estate is

filed shall subsequently disclaim any portion of such distributee's interest in the decedent's estate.

(g) If a distributee of a decedent's estate should die, and if by virtue of such distributee's death such distributee's share of the decedent's estate shall become payable to such distributee's estate, then the deceased distributee's personal representative may sign the application for an order continuing independent administration of the decedent's estate under this section.

(h) If a successor independent executor is appointed pursuant to this section, then, unless the county court shall waive bond, the successor independent executor shall be required to enter into bond conditioned as required by law in the same manner as other personal representatives.

[Added by Acts 1977, 65th Leg., p. 1066, ch. 390, § 8, eff. Sept. 1, 1977.]

CHAPTER VII. EXECUTORS, ADMINISTRATORS, AND GUARDIANS

PART 2. OATHS AND BONDS OF PERSONAL REPRESENTATIVES

§ 200. Bond of Married Person Under Eighteen Years of Age

When a person under eighteen years of age who is or has been married shall accept and qualify as executor, administrator, or guardian, any bond required to be executed by him shall be as valid and binding for all purposes as if he were of lawful age.

[Amended by Acts 1975, 64th Leg., p. 105, ch. 45, § 3, eff. Sept. 1, 1975.]

PART 5. GENERAL POWERS OF PERSONAL REPRESENTATIVES

§ 230. Care of Property of Estates

[See *Compact Edition, Volume 2 for text of (a)*]

(b) **Estates of Wards (1) General Powers and Duties.** The guardian of the estate of a ward is entitled to the possession and management of all properties belonging to the ward, to collect all debts, rentals, or claims due such ward, to enforce all obligations in his favor, and to bring and defend suits by or against him; but, in the management of the estate, the guardian shall be governed by the provisions of this Code. It is the duty of the guardian of the estate to take care of and manage such estate as a prudent man would manage his own property. He shall account for all rents, profits, and revenues that the estate would have produced by such prudent management.

(2) **Power to Make Tax-Motivated Gifts.** (A) On application of the guardian or any interested party, and after notice to all interested persons and to such

other persons as the court may direct, and on a showing that the ward will probably remain incompetent during his lifetime, the court may, after hearing and by order, authorize the guardian to apply such principal or income of the ward's estate as is not required for the support of the ward during his lifetime or of his family towards the establishment of an estate plan for the purpose of minimizing income, estate, inheritance, or other taxes payable out of the ward's estate. The court may authorize the guardian to make gifts of the ward's personal property or real estate, outright or in trust, on behalf of the ward, to or for the benefit of

- (i) organizations to which charitable contributions may be made under the Internal Revenue Code and in which it is shown the ward would reasonably have an interest,
- (ii) the ward's heirs at law who are identifiable at the time of the order,
- (iii) devisees under the ward's last validly executed will, if there be such a will,
- (iv) and a person serving as guardian of the ward provided he is eligible under either category (ii) or (iii) above.

(B) The person making application to the court shall outline the proposed estate plan, setting forth all the benefits to be derived therefrom. The application shall also indicate that the planned disposition is consistent with the intentions of the ward insofar as they can be ascertained. If the ward's intentions cannot be ascertained, the ward will be presumed to favor reduction in the incidence of the various forms of taxation and the partial distribution of his estate as herein provided.

(C) The court may appoint a guardian ad litem for the ward or any interested party at any stage of the proceedings, if deemed advisable for the protection of the ward or the interested party.

(D) Subsequent modifications of an approved plan may be made by similar application to the court. [Amended by Acts 1975, 64th Leg., p. 268, ch. 114, § 1, eff. April 30, 1975.]

§ 236. Sums Allowable for Education and Maintenance of Ward

[See Compact Edition, Volume 2 for text of (a)]

(b) **Court Approval of Previous Expenditures.** When a guardian has in good faith expended funds from the corpus of his ward's estate for support and maintenance for the ward, and when it is not convenient or possible to first secure approval of the Court, if the proof is clear and convincing that such expenditures were reasonable and proper and such that the Court would have granted authority to make the expenditures out of the corpus, and that the ward received the benefits of such expenditures, the judge, in the exercise of his sound discretion, may approve such expenditures in the same manner

as if such expenditures were made by the guardian out of the income from the ward's estate. Provided, however, such expenditures may not exceed the sum of Two Thousand Dollars (\$2,000) during an annual accounting period.

[Amended by Acts 1975, 64th Leg., p. 978, ch. 374, § 1, eff. June 19, 1975; Acts 1977, 65th Leg., p. 1170, ch. 448, § 2, eff. Aug. 29, 1977.]

PART 6. COMPENSATION, EXPENSES, AND COURT COSTS

§ 245. When Costs Are Adjudged Against Representative

When the personal representative of an estate or person neglects the performance of any duty required of him, and any costs are incurred thereby, or if he is removed for cause, he and the sureties on his bond shall be liable for costs of removal and other additional costs incurred that are not authorized expenditures, as defined by this code.

[Amended by Acts 1977, 65th Leg., p. 1171, ch. 448, § 3, eff. Aug. 29, 1977.]

CHAPTER VIII. PROCEEDINGS DURING ADMINISTRATION AND GUARDIANSHIP

PART 12. FINAL SETTLEMENT, ACCOUNTING, AND DISCHARGE

Section

404B. Payment by Guardian of Taxes or Expenses [NEW].

PART 3. SETTING APART HOMESTEAD AND OTHER EXEMPT PROPERTY, AND FIXING THE FAMILY ALLOWANCE

§ 273. Allowance in Lieu of Exempt Property

In case there should not be among the effects of the deceased all or any of the specific articles exempted from execution or forced sale by the Constitution and laws of this state, the court shall make a reasonable allowance in lieu thereof, to be paid to such widow and children, or such of them as there are, as hereinafter provided. The allowance in lieu of a homestead shall in no case exceed Ten Thousand Dollars and the allowance for other exempted property shall in no case exceed One Thousand Dollars, exclusive of the allowance for the support of the widow and minor children which is hereinafter provided for.

[Amended by Acts 1977, 65th Leg., p. 351, ch. 172, § 1, eff. Aug. 29, 1977.]

PART 4. PRESENTATION AND PAYMENT OF CLAIMS

§ 312. Contest of Claims, Action by Court, and Appeals

[See Compact Edition Volume 2 for text of (a) to (d)]

(e) **Appeal.** When a claimant or any person interested in an estate or ward shall be dissatisfied with the action of the court upon a claim, he may appeal therefrom to the courts of (civil) appeals, as from other judgments of the county court in probate matters.

[Amended by Acts 1975, 64th Leg., p. 2196, ch. 701, § 14, eff. June 21, 1975.]

§ 313. Suit on Rejected Claim

When a claim or a part thereof has been rejected by the representative, the claimant shall institute suit thereon in the court of original probate jurisdiction in which the estate is pending or in any other court of proper jurisdiction within ninety days after such rejection, or the claim shall be barred. When a rejected claim is sued on, the endorsement made on or annexed thereto shall be taken to be true without further proof, unless denied under oath. When a rejected claim or part thereof has been established by suit, no execution shall issue, but the judgment shall be certified within thirty days after rendition, if of any court other than the court of original probate jurisdiction, and filed in the court in which the cause is pending, entered upon the claim docket, classified by the court, and handled as if originally allowed and approved in due course of administration.

[Amended by Acts 1975, 64th Leg., p. 2196, ch. 701, § 5, eff. June 21, 1975.]

§ 320. Order of Payment of Claims

(a) **Estates of Decedents.** Executors and administrators, when they have funds in their hands belonging to the estate, shall pay in the following order:

(1) Funeral expenses and expenses of last sickness, in an amount not to exceed Two Thousand Dollars, if the claims therefor have been presented within sixty days from the original grant of letters testamentary or administration, but if not presented within such time, their payment shall be postponed until the allowances made to the widow and children, or to either, are paid.

(2) Allowances made to the widow and children, or to either.

(3) Expenses of administration and the expenses incurred in the preservation, safe-keeping, and management of the estate.

(4) Other claims against the estate in the order of their classification.

(b) **Estates of Wards.** The guardian shall pay all claims against the estate of his ward that have been allowed or approved, or established by suit, as soon as practicable, in the following order:

(1) expenses for the care, maintenance and education of the ward or his dependents;

(2) expenses of administration;

(3) other claims against the estate.

(c) A claimant whose claim has not been paid may petition the court for determination of his claim at any time before it is barred by the applicable statute of limitations and upon due proof procure an order for its allowance and payment from the estate.

[Amended by Acts 1975, 64th Leg., p. 1818, ch. 554, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 352, ch. 173, § 1, eff. Aug. 29, 1977.]

PART 5. SALES

§ 341. Application for Sale of Real Estate

(a) Application may be made to the court for an order to sell property of the estate when it appears necessary or advisable in order to:

(1) Pay expenses of administration, funeral expenses and expenses of last sickness of decedents, and allowances and claims against the estates of decedents and wards.

(2) Make up the deficiency when the income of a ward's estate, and the personal property thereof, and the proceeds of previous sales, are insufficient for the education and maintenance of the ward, or to pay debts against the estate.

(3) Dispose of property of the estate of a ward which consists in whole or in part of an undivided interest in real estate, when it is deemed to the best interest of the estate to sell such interest.

(4) Dispose of real estate of a ward, any part of which is nonproductive or does not produce sufficient revenue to make a fair return upon the value of such real estate, when the improvement of same with a view to making it productive is not deemed advantageous or advisable, and it appears that the sale of such real estate and the investment of the money derived therefrom would be to the best interest of the estate.

(5) Conserve the estate of a ward by selling mineral interest and/or royalties on minerals in place owned by a ward.

(6) Dispose of any interest in real property of the estate of a decedent, when it is deemed to the best interest of the estate to sell such interest.

(b) Any natural or adoptive parent of a minor who is not a ward may apply to the court for an order to sell property of a minor without being appointed guardian, when the value of the property does not exceed \$1,500. A sale of property pursuant to an order of the court under the subsection is not subject to disaffirmance by the minor.

(c) Such parent shall make application under oath to the court for the sale of such property. Venue for such application shall be the same as in applications for the appointment for guardians of a minor.

The application shall contain the following information:

- (1) A Legal description of the property.
- (2) The name of the minor, or minors and his interest in the property.
- (3) The name of the purchaser.
- (4) That such sale of the minor's interest is for cash.
- (5) That all funds received by the parent shall be used for the use and benefit of such minor.

(d) The court shall upon receipt of such application set the same for hearing at a date not less than five days from date of filing of such application, and if it deems necessary may cause citation to be issued.

(e) At the time of the hearing of said application, the court shall order the sale of such property, if it is satisfied from the evidence that the sale is in the best interest of said minor.

(f) When the order of sale has been entered by the court, the purchaser of such property shall pay the proceeds of such sale belonging to said minor or minors into the registry of the court.

(g) Nothing in this section shall prevent the proceeds so deposited from being withdrawn from the registry of the court under Section 144 of the Texas Probate Code.

[Amended by Acts 1975, 64th Leg., p. 975, ch. 372, § 1, eff. June 19, 1975; Acts 1975, 64th Leg., p. 976, ch. 373, § 1, eff. June 19, 1975.]

§ 355. Action of Court on Report of Sale

After the expiration of five days from the filing of a report of sale, the court shall inquire into the manner in which the sale was made, hear evidence in support of or against such report, and determine the sufficiency or insufficiency of the representative's general bond, if any has been required and given; and, if he is satisfied that the sale was for a fair price, was properly made and in conformity with law, and has approved any increased or additional bond which may have been found necessary to protect the estate, the court shall enter a decree confirming such sale, showing conformity with the foregoing provisions of the Code, and authorizing the conveyance of the property to be made by the representative of the estate upon compliance by the purchaser with the terms of the sale, detailing such terms. If the court is not satisfied that the sale was for a fair price, was properly made, and in conformity with law, an order shall be made setting the same aside and ordering a new sale to be made, if necessary. The action of the court in confirming or disapproving a report of sale shall have the force and effect of a final judgment; and any person interested in the estate or in the sale shall have the right to have such decrees reviewed as in other final judgments in probate proceedings.

[Amended by Acts 1975, 64th Leg., p. 2197, ch. 701, § 6, eff. June 21, 1975.]

PART 9. PARTITION OF WARD'S ESTATE IN REALTY

§ 388. Partition of Ward's Interest in Realty

[See Compact Edition, Volume 2 for text of (a) to (e)]

(f) **Judicial Proceeding to Secure Partition.** If the guardian of the estate of a ward is of the opinion that it is for the best interest of said ward's estate that any real estate which said ward owns in common with others, part owner or owners, should be partitioned, he may bring suit in the court in which such guardianship proceedings are pending against the other part owner for the partition of such real estate; and the court after hearing such suit may, if it is satisfied that such necessity exists, enter an order partitioning such real estate to the owner thereof.

[Amended by Acts 1975, 64th Leg., p. 1128, ch. 427, § 1, eff. June 19, 1975.]

PART 10. INVESTMENTS, LOANS, AND CONTRIBUTIONS OF ESTATES OF WARDS

§ 389A. Other Investments

(a) **Application to Invest or Sell.** When a guardian of an estate shall deem it to be in the best interest of its ward to invest in or sell any property or security in which a trustee is authorized to invest by either Article 7425b-46 V.A.T.S. (the Texas Trust Act) or Article 7425b-48 V.A.T.S. (the Uniform Common Trust Fund Act), and such investment or sale is not expressly permitted by other Sections of this Code, the guardian may file a written application in the court where the guardianship is pending, asking for an order authorizing it to make such desired investment or sale and stating the reason why the guardian is of the opinion that such investment or sale would be beneficial to the ward. No citation or notice is necessary unless ordered by the court.

[See Compact Edition, Volume 2 for text of (b) and (c)]

[Amended by Acts 1977, 65th Leg., p. 1137, ch. 428, § 1, eff. Aug. 29, 1977.]

PART 12. FINAL SETTLEMENT, ACCOUNTING, AND DISCHARGE

§ 404. Closing Administration of Estates of Decedents and Guardianship of Wards or Their Estates

Administration of the estates of decedents and guardianship of the persons and estates of wards shall be settled and closed:

(a) **Estates of Decedents.** When all the debts known to exist against the estate of a deceased person have been paid, or when they

have been paid so far as the assets in the hands of an administrator or executor of such estate will permit, and when there is no further need for administration.

(b) Persons and Estates of Wards.

1. Of a Minor. When the minor dies, or becomes an adult by becoming eighteen years of age, or by removal of disabilities of minority according to the law of this state, or by marriage.

2. Of Incompetents. When the ward dies, or is decreed as provided by law to have been restored to sound mind or sober habits, or, being married, when his or her spouse has qualified as survivor in community.

3. Of a Person Entitled to Funds From Any Governmental Source. When the ward dies, or when the court finds that the necessity for the guardianship has ended.

4. Exhaustion of Estate. When the estate of a ward becomes exhausted.

5. When Income Negligible. When the foreseeable income accruing to a ward or to

his estate is so negligible that maintaining the guardianship in force would be burdensome. In such case the court may authorize such income to be paid to a parent, or some other person who has acted as guardian, to assist as far as possible in the maintenance of the ward, and without liability to account to the court for such income.

[Amended by Acts 1975, 64th Leg., p. 104, ch. 45, § 2, eff. Sept. 1, 1975.]

§ 404B. Payment by Guardian of Taxes or Expenses

Notwithstanding any other provision of this Code, a Probate Court in which proceedings to declare heirship are maintained, under the provisions of Subsection (c), Section 48 of this Code, may order the payment by the guardian of inheritance or estate taxes or expenses of administering the estate and may order the sale of properties in the ward's estate, when necessary, for the purpose of paying inheritance or estate taxes, or expenses of administering the estate, or for the purpose of distributing the estate among the heirs.

[Added by Acts 1977, 65th Leg., p. 1522, ch. 616, § 3, eff. Aug. 29, 1977.]

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TITLE 122. TAXATION

CHAPTER ONE. LEVY OF TAXES AND OCCUPATION TAXES

Article

7041a. Application of Sunset Act [NEW].

7057c. [Repealed].

7057g. Validation of Unenforceable Tax Levies and Junior College District Boundary Changes [NEW].

Art. 7041a. Application of Sunset Act

The board to calculate the ad valorem tax rate is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1989.

[Added by Acts 1977, 65th Leg., p. 1855, ch. 735, § 2.170, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 7057c. Repealed by Acts 1975, 64th Leg., p. 2306, ch. 719, art. V, § 1, eff. Sept. 1, 1975

Art. 7057g. Validation of Unenforceable Tax Levies and Junior College District Boundary Changes

Unenforceable Tax Levies and Boundary Changes

Sec. 1. (a) All tax levies and junior college district boundary changes heretofore made by and for any tax unit, which levies or boundary changes are unenforceable because not made in strict compliance with the form and manner required by statute or because of any other defect which may be cured by the legislature, are hereby validated and declared enforceable the same as though they had been regularly made in proper form and manner.

(b) If for any cause any tax unit hereafter fails to make a valid tax levy for any year or years, the tax unit's last valid tax levy prior to such omitted year or years shall be continued in force as the tax levy of such tax unit for each year in which a valid levy was not made, so that there shall never be a year hereafter for which some valid levy is not in force.

Levies Not Recorded

Sec. 2. Should any tax unit fail to make a proper record of a tax levy for any year or years, but taxes were assessed and collected by the tax unit for that year or years and the tax rate(s) can be determined by examining the tax rolls for such year or years, such assessing and collecting shall constitute notice that a tax levy was made by the tax unit for each such year even though such levy was not properly recorded; and the tax unit's governing body may

make inquiry and determine that a proper tax levy was regularly and validly made for each such year but was not recorded, and the governing body may adopt a proper tax levy ordinance for each such year to be entered in the official records nunc pro tunc, and this record shall be conclusive evidence that the tax unit's levy for such year was properly and regularly made. This provision shall be cumulative of and in addition to all other rights and remedies now available to any tax unit in such cases.

Tax Unit Defined

Sec. 3. A tax unit or unit as used in this Act is any governmental agency or subdivision of the state which levies a property tax (ad valorem or otherwise).

Inapplicability of this Act

Sec. 4. This Act shall not affect nor apply to any suit pending in any court on the effective date of this Act in which the invalidity or nonrecord of any tax levy, or both of them, has heretofore been pleaded.

Savings Clause

Sec. 5. This Act will not affect pending litigation nor any disputed property valuation notice of which has been given to the tax unit involved.

Partial Invalidity

Sec. 6. If any provision of this Act or the application thereof to any person or circumstance is held to be invalid, such invalidity shall not affect other provisions or applications of this Act which can be given effect without the invalid provision or application, and to this end the provisions of this Act are declared to be severable.

[Acts 1977, 65th Leg., p. 1441, ch. 586, §§ 1 to 6, eff. Aug. 29, 1977.]

CHAPTER TWO. TAXES BASED UPON GROSS RECEIPTS

Art. 7083a. Allocation of Revenue Derived from Certain Occupations and Gross Receipts Taxes; Appropriations and Allocations for Certain Funds

[See Compact Edition, Volume 2 for text of 1]

Sec. 2.

[See Compact Edition, Volume 2 for text of 2, (1) to (4-c)]

(4-d) (A) After the above allocations and payments have been made from the Clearance

Fund, other than those provided by Subsections (4-a) and (5) of this section, there is allocated and shall be transferred and credited to the State Highway Fund an amount determined by the Highway Cost Index Committee as provided in this subsection.

(B) The Highway Cost Index Committee consists of the Governor, the Lieutenant Governor, and the State Comptroller of Public Accounts. In the absence of the Governor, the Secretary of State of Texas serves in place of the Governor.

(C) On or before November 1 of each even-numbered year, the committee created by this subsection shall certify to the Comptroller the estimated amount to be allocated, transferred, and credited to the State Highway Fund under this subsection for the succeeding fiscal biennium, except that the certification of the amount for the biennium beginning on September 1, 1977, must be made not later than 30 days after the effective date of H.B. No. 3, Acts of the 65th Legislature, Regular Session, 1977.

(D) On or before August 1 of each year, the committee shall certify to the Comptroller the amount to be allocated, transferred, and credited to the State Highway Fund under this subsection for the succeeding fiscal year.

(E) Funds allocated and appropriated from the Clearance Fund to the State Highway Fund shall be paid no later than the sixth working day of each month in equal monthly installments. If for any month the amount remaining to the credit of the Clearance Fund is insufficient to provide for the transfer and allocation to the State Highway Fund under this subsection, the difference between the amount transferred and the amount required to be transferred under this subsection shall be transferred and paid from the General Revenue Fund or from funds due to the General Revenue Fund.

(F) On or before November 1, 1978, and on or before each succeeding November 1, the committee shall determine the actual amount of dedicated revenue earned for the State Highway Fund and the actual highway cost index for the preceding fiscal year (except that for fiscal years beginning September 1, 1977, and September 1, 1978, the actual highway cost index is 1.00) and shall determine the amount by which the amount allocated, transferred, and credited to the State Highway Fund under this subsection during the preceding fiscal year differs from the amount that would have been allocated, transferred, and credited to the State Highway Fund during the preceding fiscal year based on the actual dedicated revenue and the actual highway cost index. The committee shall certify to the Comptroller the amount of the

difference, if any, and shall certify to the Comptroller the amount by which allocations, transfers, and credits for the remainder of the current fiscal year are to be adjusted to compensate for the amount of the difference.

(G) The amount to be transferred, allocated, and credited each fiscal year to the State Highway Fund shall be determined by application of the following formula:

Amount = (Base Amount × Cost Index) – Dedicated Revenue

In this formula:

(i) "Amount" means the amount to be allocated from the Clearance Fund to the State Highway Fund.

(ii) "Base Amount" means \$700 million for the fiscal year beginning September 1, 1977, and \$750 million for each fiscal year beginning on or after September 1, 1978.

(iii) "Highway Cost Index" means the number determined as provided in Paragraph (H) of this subsection, except that for the fiscal years beginning on September 1, 1977, and September 1, 1978, the highway cost index is 1.00.

(iv) "Dedicated Revenue" means the revenue credited to the State Highway Fund under Articles 9.25, 10.22, 10.72, and 20.13, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925, as amended; Article 6686, Revised Civil Statutes of Texas, 1925, as amended; Sections 1 through 16, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a-1 et seq., Vernon's Texas Civil Statutes); Chapter 18, General Laws, Acts of the 41st Legislature, 5th Called Session, 1930, as amended (Article 6675a-6e, Vernon's Texas Civil Statutes); Section 2, Chapter 178, General Laws, Acts of the 43rd Legislature, Regular Session, 1933, as amended (Article 6675a-13½, Vernon's Texas Civil Statutes); Chapter 298, Acts of the 56th Legislature, Regular Session, 1959 (Article 6675a-5b, Vernon's Texas Civil Statutes); Chapter 456, Acts of the 56th Legislature, Regular Session, 1959, as amended (Article 6675a-6b, Vernon's Texas Civil Statutes); Chapter 517, Acts of the 58th Legislature, 1963, as amended (Article 6675a-6c, Vernon's Texas Civil Statutes); Chapter 707, Acts of the 59th Legislature, Regular Session, 1965, as amended (Article 6675a-6d, Vernon's Texas Civil Statutes); and Chapter 338, Acts of the 64th Legislature, 1975 (Article 6675a-5e.1, Vernon's Texas Civil Statutes).

(H) The highway cost index shall be determined by the State Department of Highways and Public Transportation according to procedures approved by the Highway Cost Index Committee. The index shall be based on the weighted combined costs of highway operations, maintenance, and construction for the appropriate fiscal year compared to the costs of those items used for the fiscal year beginning on September 1, 1978.

(I) This subsection does not authorize the transfer of any funds from the State Highway Fund to the Clearance Fund or any other fund even though the actual amount of dedicated revenue exceeds the base amount times the cost index.

[See Compact Edition, Volume 2 for text of 2(5) to (9)]

[Amended by Acts 1977, 65th Leg., p. 112, ch. 55, § 2, eff. April 12, 1977.]

CHAPTER FOUR. INTANGIBLE TAX BOARD

Article

7098b. Application of Sunset Act [NEW].

7100. [Repealed].

Art. 7098b. Application of Sunset Act

The State Tax Board is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the board is abolished effective September 1, 1989.

[Added by Acts 1977, 65th Leg., p. 1855, ch. 735, § 2.168, eff. Aug. 29, 1977.]

¹ Article 5429k.

Art. 7100. Repealed by Acts 1975, 64th Leg., p. 898, ch. 334, § 11, eff. Sept. 1, 1975

CHAPTER SIX. PROPERTY SUBJECT TO TAXATION AND RENDITION

Article

7150i. Exemption of Historic Sites [NEW].

7150j. Notice of Homestead Exemption Availability to Person 65 or Older [NEW].

7150k. Valuation of Open-Space Land Used for Production of Farm Crops or Forest Products, Raising of Livestock, or College and University Ecological Laboratories [NEW].

7150l. Valuation of Property Owned by Nonprofit Associations or Corporations [NEW].

7150m. Assessment of Property Taxes in Planned Unit Development [NEW].

7150n. Appraisal of Land Limited in Use to Recreational, Park, or Open Space Purposes by Deed or Voluntary Restrictions [NEW].

Art. 7150. Exemption from Taxation

The following property shall be exempt from taxation, to-wit:

[See Compact Edition, Volume 2 for text of 1 to [19]]

Sec. 20. American Legion and other Veterans' Organizations.—Hereafter all buildings, together with the lands belonging to and occupied by such organizations known as The American Legion, American Veterans of World War II, Veterans of Foreign Wars of the United States, Disabled American Veterans, Jewish War Veterans and Catholic War Veterans, the American G.I. Forum, or any non-profit organization chartered or incorporated under the Texas Statutes for the purpose of preserving historical buildings, sites and landmarks, not leased or otherwise used with a view to profit, shall be exempt from taxation in this State. Provided, however, that no organization listed by the Attorney General of the United States or the Secretary of State of this State as subversive shall be entitled to exemption from taxation under the laws of this State.

[See Compact Edition, Volume 2 for text of 21 and 22, added by Acts 1967, 60th Leg., p. 319, ch. 152, § 1]

Sec. 22. All real and personal property owned by non-profit corporations (as defined in the Texas Non-Profit Corporation Act), which property is reasonably necessary for, and used for, the promotion of any of the following purposes:

- (1) Libraries and archival institutions
- (2) Zoos
- (3) Restoration and preservation of historic houses, structures and landmarks
- (4) Symphony orchestras, choirs, and chorals
- (5) Theaters of the dramatic arts, historical pageants
- (6) Youth athletic programs, including little league football and baseball.

Sec. 22a. (a) All real and personal property owned by non-profit corporations (as defined in the Texas Non-Profit Corporation Act) which property is reasonably necessary for, and used for, the promotion of any of the following purposes shall be exempt from all ad valorem taxation:

[See Compact Edition, Volume 2 for text of 22a(a)(1) to (6)]

(7) Museums and galleries and museum schools maintained and operated in connection therewith;

(8) Not to exceed 1,000 acres in any one county for the preservation of wildlife and conservation of wildlife.

(b) To be eligible for an exemption under Subsection (a)(8) of this section, a nonprofit corporation must:

(1) by charter or bylaw, pledge its assets for use in performing the functions that qualify it for exemption and direct that on discontinuance of the corporation (by dissolution or otherwise) the assets be transferred to a charitable, educational, or other organization that is qualified for exemption from property taxation under this article; and

(2) be operated in a way that does not result in accrual of distributable profits, realization of private gain from payment of compensation in excess of a reasonable allowance for salary or other compensation for services rendered, or realization of any other form of private gain.

[See Compact Edition, Volume 2 for text of 23 to 28]

Sec. 29. All real and personal property owned by a nonprofit corporation as defined in the Texas Nonprofit Corporation Act and held for the exclusive use and development of biomedical educational research, or for studies of scientific uses and purposes of biological research for the public benefit, and for the dissemination to the public of information gained therefrom, and not otherwise used with a view to profit, shall be exempt from all ad valorem taxation as though such property were owned and held by the State of Texas for biomedical educational research purposes.

[Amended by Acts 1975, 64th Leg., p. 2314, ch. 719, art. 14, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1909, ch. 760, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2192, ch. 865, § 1, eff. Aug. 29, 1977.]

Art. 7150f. Property Moving in Interstate Commerce

All property consigned to a consignee in this State from outside this State to be forwarded to a point outside this State, which is entitled under the tariffs, rules, and regulations approved by the Interstate Commerce Commission to be forwarded at through rates from the point of origin to the point of destination, if not detained within this State for a period of more than ninety (90) days, shall be deemed to be property moving in interstate commerce, and no such property shall be subject to taxation in this State. Goods, wares, ores, and merchandise originating outside this State, whether consigned to or owned by a taxpayer, shall be deemed to be located in this State for only a temporary period, do not acquire taxable situs in this State, and are not subject to taxation in this State if not detained more than nine (9) months and if such goods, wares, ores, and merchandise are so held for assembly, storage, manufacturing, processing or fabricating purposes. It is further provided that personal property origi-

nating outside this State and transported into this State for sale within this State must be assessed as any other personal property. Provided further, that all laws and parts of laws in conflict herewith are hereby repealed to the extent of such conflict only. [Amended by Acts 1977, 65th Leg., p. 1332, ch. 530, § 1, eff. Aug. 29, 1977.]

Art. 7150h. Exemption of Property of Disabled and Deceased Veterans

Exemption

Sec. 1. There are exempted from all property taxes levied by the state, a county, city, town, school district, special district, or other political subdivision of the state the value of assessed property owned by a disabled veteran or by the surviving spouse or children of a deceased veteran in the amounts provided in this Act.

Disabled Veteran Defined; Percentage of Disability

Sec. 2. (a) A "disabled veteran" is a person classified as a disabled veteran by the Veterans Administration of the United States (or the successor of that agency) or by the branch of the armed services of the United States in which he served, and whose disability is service connected.

(b) The percentage of disability under this Act is the percentage of disability that is certified for the veteran by the Veterans Administration of the United States or by the branch of the armed services of the United States in which he served.

Amount of Exemption

Sec. 3. (a) A disabled veteran whose disability is less than 10 percent is not entitled to an exemption under this Act.

(b) A disabled veteran whose disability is 10 percent or more, but not more than 30 percent, is entitled to an exemption of the first \$1,500 of the assessed value of his property.

(c) A disabled veteran whose disability is more than 30 percent, but not more than 50 percent is entitled to an exemption of the first \$2,000 of the assessed value of his property.

(d) A disabled veteran whose disability is more than 50 percent, but not more than 70 percent is entitled to an exemption of the first \$2,500 of the assessed value of his property.

(e) A disabled veteran whose disability is more than 70 percent is entitled to an exemption of the first \$3,000 of the assessed value of his property.

(f) A disabled veteran whose disability is 10 percent or more and who is 65 years old or older is entitled to an exemption of the first \$3,000 of the assessed value of his property.

(g) A disabled veteran whose disability consists of the loss of the use of one or more limbs, total

blindness in one or both eyes, or paraplegia is entitled to an exemption of the first \$3,000 of the assessed value of his property.

Qualification Under More Than One Exemption

Sec. 4. A disabled veteran who qualifies under more than one of the exemptions under Section 3 of this Act is not entitled to aggregate or combine the value of the exemptions, but may take the exemption allowing the largest exclusion.

Surviving Spouse's Exemption

Sec. 5. The surviving spouse of a person who dies while on active duty in the armed services of the United States is entitled to an exemption of the first \$2,500 of the assessed value of the spouse's property.

Surviving Child's Exemption

Sec. 6. A surviving child of a person who dies while on active duty in the armed services of the United States is entitled to an exemption of the first \$2,500 of the assessed value of the child's property during the period that the child is under 21 years old and is unmarried.

Effective Date of Exemption

Sec. 7. An exemption authorized under Sections 5 and 6 of this Act becomes effective on January 1 of the year following the year in which the member of the armed services of the United States died, and the eligibility of the surviving spouse or child is determined on the effective date of the exemption.

Deceased Disabled Veteran; Exemption of Surviving Spouse

Sec. 8. The surviving spouse of a deceased disabled veteran, who at the time of his death was entitled to an exemption under Section 3 of this Act, is entitled to an exemption equal to the amount the deceased disabled veteran was entitled to receive at the time of his death, if the surviving spouse is unmarried.

Deceased Disabled Veteran; Exemption of Qualified Child

Sec. 9. (a) This section applies only if there is no person receiving an exemption under Section 8 of this Act.

(b) Each qualified child of a deceased disabled veteran who was entitled to an exemption under Section 3 of this Act at the time of his death is entitled to an exemption from property taxes in an amount determined under Subsection (c) of this section.

(c) The amount of the exemption allowable under Subsection (b) of this section is determined by dividing the amount of the exemption to which the deceased disabled veteran was entitled at the time of his death by the number of qualified children.

(d) A qualified child of a disabled veteran is any child who is less than 21 years old, is unmarried, and

has property which would be subject to taxation by any taxing unit in the state without regard to the exemption authorized in this section.

Multiple Exemptions

Sec. 10. (a) A person who is entitled to an exemption under this Act as a disabled veteran and also is entitled to an exemption as the surviving spouse or child of a deceased disabled veteran or as the surviving spouse or child of a person who died while on active duty in the armed services of the United States is entitled to add the value of each exemption and is exempt from property taxes in an amount equal to the sum of the exemptions.

(b) A person who is entitled to an exemption as the spouse of a deceased disabled veteran is not entitled to an exemption as the child of a disabled veteran or as the child of a person who died while on active duty in the armed services of the United States.

Tax Assessor-Collectors Form for Claiming Exemption

Sec. 11. The tax assessor-collector of each taxing unit responsible for assessing and collecting property taxes in this state shall provide to each person appearing at the office of the tax assessor-collector to render his property or to have his property assessed and to each person personally visited by the tax assessor-collector to assess property a form on which the person may claim any exemption allowed under this Act.

Regulations of Comptroller of Public Accounts

Sec. 12. The comptroller of public accounts shall make regulations providing for the manner in which proof of eligibility of an exemption may be made. The comptroller may also make regulations concerning the duties of tax assessor-collectors under this Act and the manner in which an exemption may be claimed.

Purpose of Act

Sec. 13. The purpose of this Act is to provide for exemptions under the authority of Article VIII, Section 2(b), of the Texas Constitution.

[Amended by Acts 1975, 64th Leg., p. 2316, ch. 719, art. 20, § 1, eff. Jan. 1, 1976.]

Section 2 of art. XX of the 1975 amendatory act provides: "This Article takes effect January 1, 1976."

Art. 7150i. Exemption of Historic Sites

The governing body of any political subdivision of this state that levies property taxes may exempt from property taxation part or all of the value of a structure, and the land necessary for access and use thereof, if the structure is:

- (1) designated as a Recorded Texas Historical Landmark by the Texas Historical Commission and by the governing body of the taxing unit; or

(2) designated as a historically significant site that is in need of tax relief to encourage its preservation under an ordinance adopted by the governing body of the taxing unit.

[Added by Acts 1977, 65th Leg., p. 950, ch. 358, § 1.]

Section 2 of the 1977 Act provided:

"This Act takes effect on the adoption of the Constitutional Amendment proposed in Senate Joint Resolution No. 5 as adopted by the 65th Legislature, Regular Session, 1977 [so approved by voters at election held November 8, 1977]."

Art. 7150j. Notice of Homestead Exemption Availability to Person 65 or Older

If a county or other political subdivision adopts the residence homestead exemption for persons 65 years of age or older as permitted by Article VIII, Section 1-b(b), of the Texas Constitution, and requires persons to make a timely claim for the exemption, the subdivision shall include in at least one written communication mailed to its taxpayers each year a notice that the exemption is available and a form that a claimant may complete and return to the subdivision's tax office by mail to claim the exemption.

[Acts 1975, 64th Leg., p. 2322, ch. 719, art. 27, § 1, eff. Sept. 1, 1975.]

Articles 1 to XXVII of the 1975 Act revised and amended certain tax laws; art. XXVIII, § 1, thereof provided: "This Act takes effect September 1, 1975, unless otherwise specified within an Article."

Art. 7150k. Valuation of Open-Space Land Used for Production of Farm Crops or Forest Products, Raising of Livestock, or College and University Ecological Laboratories

Definitions

Sec. 1. In this Act:

(1) "Open-space land" means land owned by natural persons, authorized farm corporations, estates, or trusts for the benefit of natural persons with a five-year history of being devoted principally to the production of farm crops or forest products, to the raising of livestock, or land which is used principally for ecological laboratories by public and private colleges and universities, and land without such a history that the owner has sworn by affidavit to the local taxing authority will be used for the production of farm crops, forest products, the raising of livestock, or land which is used principally for ecological laboratories by public and private colleges and universities, exclusive of structures with a residential use and those structures used for processing farm crops, forest products, or livestock.

(2) "Farm crops" means plants and fruits grown for human or animal consumption and plants grown for the production of fibers, floriculture, viticulture, horticulture, or planting seed.

(3) "Forest products" means forestry and the growing of trees for the purpose of rendering those trees into lumber, fiber, or other items for industrial, commercial, or personal consumption.

(4) "Livestock" means domestic or native farm or ranch animals kept for use and profit.

(5) "Category" refers to the value classification of land for agricultural and forestry use, with due consideration given to soil type, soil capability, general topography, weather factors, location factors, and other pertinent information from recognized agricultural sources and other competent sources.

(6) "Average net to land" means the average net income that would have been earned over the five-year period immediately preceding the valuation by a person using ordinary prudence in the management of the land and the farm crops, forest products, or livestock produced or supported thereon.

(7) "Authorized farm corporation" means a domestic corporation of which (1) the shareholders do not exceed 10 in number unless all are related by blood, adoption or marriage; (2) all shareholders, other than any estate or trust for the benefit of natural persons, are natural persons; and (3) its aggregate annual revenues from rents, royalties, dividends, interest and annuities do not exceed 20 percent of its gross receipts in any fiscal year of said corporation.

Valuation of open-space land

Sec. 2. The value for ad valorem tax purposes of open-space land used to support the raising of livestock or production of farm crops or forest products shall be determined on the basis of the category of the land supporting livestock or producing farm crops or forest products using accepted income capitalization methods applied to average net to land. The value so determined shall never exceed the fair market value of the land as determined by other appraisal methods. Pursuant to rule-making authority, the comptroller shall develop and distribute to all taxing authorities appraisal manuals setting forth the income capitalization method to be used for valuing open-space land and defining the categories of open-space land, and the appraisal manuals shall be used by each taxing authority in determining the value of open-space land. For the valuation function enumerated in Section 4 of this Act, the tax records of the valuations of open-space land used to support the raising of livestock or production of farm crops or forest products shall also contain the full market value of the open-space land. The comptroller shall develop and the local taxing authority shall enforce procedures to verify that the land in question meets the conditions contained in Section 1(1) of this Act.

Capitalization rate

Sec. 3. The income capitalization rate to be used in determining the value of open-space land shall be an amount equal to 2 percent greater than the average variable interest rate specified by the Federal Land Bank of Houston, for the immediately preceding tax year.

Change of use of land

Sec. 4. If the local taxing authority finds that the open-space land devoted to the production of farm crops, forest products, or livestock ceases to be used for the production of farm crops, forest products, or livestock, the land shall be appraised at market value, and the owner shall pay to each taxing authority imposing ad valorem taxes on the land a tax equal to the difference between the taxes paid or payable on the land during the previous four years under its open-space land for farm crops, forest products, or livestock designation and that tax that would have been levied had the land been appraised at market value for the same period of time plus interest at the rate of 5 percent per annum calculated from the dates on which the difference would have become due.

Minimum appraisal of forest land

Sec. 5. The value for ad valorem tax purposes of open-space land used for the production of forest products as provided in Section 2 of this Act shall not be less than the appraised value of such land for the 1977 tax year; provided, however, that the value used for any tax year shall never exceed the fair market value of the land as determined by other appraisal methods.

Values for state funding purposes

Sec. 6. The values of open-space land shall not be binding upon the Legislature of the State of Texas in its determination of the distribution of state funds to any unit of government for any purpose when the distribution of those funds is dependent, directly or indirectly, upon the values of property whose situs is within that unit of government.

Effective date

Sec. 7. This Act takes effect January 1, 1978. [Acts 1977, 65th Leg., p. 847, ch. 318, §§ 1 to 7, eff. Jan. 1, 1978.]

Art. 7150I. Valuation of Property Owned by Non-profit Associations or Corporations**Policy of State**

Sec. 1. The legislature recognizes as an existing condition the fact that many residential subdivisions are developed on the basis of a nonprofit association or corporation maintaining nominal ownership to certain property which will be held for the use, benefit, and enjoyment of the members of such

association or corporation, such nominally owned property consisting of such items as swimming pools, parks, meeting halls, parking lots, tennis courts, and many other similar and related items of property. The legislature further recognizes that the existence of such an association or corporation holding nominal title to such facilities for the use, benefit, and enjoyment of its members greatly enhances the valuation for tax purposes of the individual properties owned by members of the association or corporation who are entitled to the use and enjoyment thereof. The legislature further recognizes that the valuation for tax purposes of the property thus nominally held by such associations or corporations is actually reflected in the enhanced valuation of the property owned by the individual members thereof, and to assess such nominally owned property on the basis of its fair market value would result in double taxation of such property. It is therefore declared to be the policy of the State of Texas that all political subdivisions of the State of Texas take cognizance of the existence of such subdivision developments and recognize that all property nominally owned by such associations or corporations should be assessed and taxed on a nominal basis rather than at fair market value.

Assessment at Nominal Value

Sec. 2. All property, real, personal, or mixed, owned by an association, corporation, or similar non-profit organization, as herein defined, shall be assessed for tax purposes on the basis of a nominal value with respect to all property taxes levied by the State of Texas or any political subdivision of the State of Texas if:

(a) all property owned by said association or corporation is held for the use, benefit, and enjoyment of all members of said association equally; and

(b) each member of the association or corporation owns or possesses an easement, license, or other nonrevokable right for the use and enjoyment on an equal basis of all the property so held by such association or corporation, subject to any restrictions imposed by the instruments conveying such right or interest or granting such easement and any rules, regulations, or bylaws imposed by the association or corporations pursuant to the authority granted by the articles of incorporation, declaration of covenants, conditions and restrictions, the bylaws, or the articles of association of such corporation or association; and

(c) each easement, license, or other nonrevokable right to the use and enjoyment of all association property is appurtenant to and an integral part of the taxable real property owned by such members.

Enhanced Value as Assessment Factor

Sec. 3. In appraising individual properties owned by members of the association or corporation who are entitled to the use and enjoyment of facilities owned by the association or corporation, the enhanced value of the individual properties because of the right to the use and benefit of the facilities shall be a factor taken into consideration by the appraiser.

Qualifications for Benefits of Act

Sec. 4. Any nonprofit association, corporation, or other organization shall qualify for the benefits provided in this Act if:

(a) such association or corporation is engaged in residential real estate management; and

(b) such association or corporation is organized and operated to provide for the acquisition, construction, management, maintenance, and care of property nominally owned by such association or corporation and held for the use, benefit, and enjoyment of its members; and

(c) 60 percent or more of the gross income of such association or corporation consists of amounts received as membership dues, fees, or assessments from owners of residences or residential lots within the area subject to jurisdiction and assessment power of such association or corporation; and

(d) 90 percent or more of the expenditures of the association or corporation is made for the purpose of acquiring, constructing, managing, maintaining, and caring for the property nominally held by such association or corporation; and

(e) all members of the association or corporation own easement, license, or other nonrevokable rights for the use and enjoyment on an equal basis of all the property nominally owned by such association or corporation subject to any restrictions imposed by the instruments conveying such right or interest or granting such easement and any rules, regulations, or bylaws imposed by the association or corporation pursuant to the authority granted by the articles of incorporation, declaration of covenants, conditions and restrictions, the bylaws, or the articles of association of such corporation or association; and

(f) no part of the net earning, if any, of such association or corporation shall inure to the benefit of any member or individual, other than by acquiring, constructing, or providing management, maintenance, and care of association or corporation property, or other than by a rebate of excess membership dues, fees, or assessments; and

(g) such nonprofit corporation, association, or organization shall qualify for treatment under

Section 1301 of the Tax Reform Act of 1976 amending Internal Revenue Code, Section 528, "Certain Homeowners Associations."

Repeal of Conflicting Laws; Cumulative Effect

Sec. 5. All laws or parts of laws in conflict herewith are hereby repealed to the extent of such conflict but only to the extent of such conflict, and this Act shall be cumulative of all existing laws relative hereto and not inconsistent herewith.

[Acts 1977, 65th Leg., p. 1975, ch. 790, §§ 1 to 5, eff. Aug. 29, 1977.]

Art. 7150m. Assessment of Property Taxes in Planned Unit Development

Sec. 1. For purposes of this Act, "planned unit development" means a real property development project in which the owners of individual parcels of real property in the development each have a membership in an association that owns and maintains property in the development for the use of its members.

Sec. 2. A property tax on the property in a planned unit development that is owned by the association may be assessed proportionately against each member of the association if the association files with the tax collector a resolution adopted by majority vote of all members of the association authorizing the proportionate assessment.

Sec. 3. If taxes are assessed proportionately as authorized in this Act, the amount of tax to be imposed on the association's property shall be divided by the number of separately owned parcels of real property in the development. The quotient is the proportionate amount of tax to be assessed against each separately owned parcel in the development, and a tax lien attaches to each parcel to secure payment of its proportionate share of the tax on the association's property. Each separate parcel, together with the quotient portion applicable thereto, shall be rendered and assessed separately and the tax lien to secure the payment of the taxes assessed upon each such separate parcel, together with the quotient portion applicable to that parcel, shall apply only to such respective parcel together with its applicable quotient portion, and the tax lien securing the payment of taxes upon any other parcel or parcels, and the respective quotient or quotients applicable thereto, shall not apply to any other parcel and the respective quotient applicable thereto. [Acts 1977, 65th Leg., p. 2037, ch. 815, §§ 1 to 3, eff. Aug. 29, 1977.]

Art. 7150n. Appraisal of Land Limited in Use to Recreational, Park, or Open Space Purposes by Deed or Voluntary Restrictions**Definitions**

Sec. 1. In this Act:

(1) "Recreational, park, or open space use" means the employment or application of real

property for individual or group sporting activities, for park or camping activities, or for the conservation and preservation of scenic areas, and includes the use of real property for walking, jogging, running, swimming, boating, fishing, hunting, golfing, horseback riding, shooting, tennis, and the development of historical, archaeological, scenic, or scientific sites.

(2) "Deed restriction" means a valid and enforceable provision in a conveyance of land of five or more acres filed and recorded in the deed records of the county in which the land is located and which provision limits or restricts the use of the land conveyed.

(3) "Improvements" includes all valuable additions to real property except appurtenances to land.

(4) "Appurtenances to land" means riparian water rights, private roads, dams, reservoirs, water wells, and canals, ditches, and similar reshaping or additions to the soil.

Voluntary Restrictions

Sec. 2. (a) The owner of the fee simple title to a five or more acre tract of real estate may limit the use of the land to recreational, park, or open space use by filing with the county clerk an instrument executed in the form and manner of a deed.

(b) The restriction instrument must include a description of the property, the name of the owner or owners of the property, and a statement that the land may not be used for any purpose other than recreational, park, or open space uses for a term of years which term must be expressed in the instrument.

(c) An instrument complying with the requirements of this section may be enforced in the same manner as a valid deed restriction by action of the county attorney or any person owning or having an interest in the restricted property.

Appraisal of Restricted Land

Sec. 3. (a) For the purpose of assessing ad valorem taxes imposed by each tax authority, land that is subject to a deed restriction or a restriction instrument executed and filed as provided in Section 2 of this Act and that limits the use of the land to recreational, park, or open space uses for a term of 10 or more years and which land is actually used exclusively for recreational, park, or open space purposes on January 1 of the tax year and during all of the preceding tax year shall be appraised and valued as provided in Subsection (b) of this section.

(b) The tax assessor or appraiser shall consider no factor other than those relative to the value of the land as restricted. Sales of comparable land not subject to such restrictions may not be used.

(c) Improvements on land and the mineral estate shall be valued at actual cash value to be determined by comparable sales or other methods to determine market value.

(d) If the land has been subjected to a deed restriction or a restriction established as provided in Section 2 of this Act during the calendar year immediately preceding January 1 of the tax year and if the restriction is for a term of 10 or more years, the land is entitled to be valued as provided in Subsection (b) of this section, if the owner of the land presents to the tax assessor or appraiser an affidavit stating that for the tax year the land will be used exclusively for recreational, park, or open space purposes. If the valuation of the land is made according to the methods prescribed by Subsection (b) of this section based on an affidavit, the tax assessor or appraiser shall, at the end of the tax year, determine if the property was used exclusively for recreational, park, or open space uses, and if the land was not used exclusively for recreation, park, or open space uses, he shall assess additional taxes equal to the difference in the amount of the taxes assessed for the property based on recreational, park, or open space uses and the amount of taxes that would have been assessed if the property had been valued for tax purposes at market value of unrestricted land.

Reassessment of Taxes

Sec. 4. (a) When property valued as provided in Subsection (b), Section 3 of this Act is no longer subject to a deed restriction or a restriction instrument executed as provided in Section 2 of this Act, or when the property is not used exclusively for recreational, park, or open space uses, the tax assessor of each taxing authority shall determine the amount of taxes which would have been payable to the taxing authority had the land been valued at market value without restriction for the current tax year and for the previous five tax years and shall assess against the property and the owner additional taxes equal to the amount of the taxes assessed according to the value of the property as restricted for recreational, park, or open space uses and the amount of the taxes based on its value without restriction as to use for the current tax year and for the previous five tax years.

(b) The tax assessor for the taxing unit shall include the amount of the additional tax assessed under Subsection (a) of this section, plus interest, on the next tax notice issued after the additional assessment is made. Additional tax under this section shall be treated as back taxes.

Penalty for Violation of Restriction

Sec. 5. If, at any time before the expiration of a restriction which limits the use of land to recreational, park, or open space use, the land is used for a purpose other than recreational, park, or open space

use, there shall be assessed as a penalty an amount equal to the difference in the amount of the taxes assessed for the tax year in which the restriction is not observed on the property based on recreational, park, or open space uses and the amount of taxes that would have been assessed for the tax year in which the restriction is not observed if the property had been valued for tax purposes at market value of unrestricted land. The penalty imposed by this section is in addition to taxes imposed under Sections 3 and 4 of this Act. Penalties become due and are payable in the same manner as is the tax.

Effective Date

Sec. 6. This Act applies to each tax year beginning after December 31, 1977.

[Acts 1977, 65th Leg., p. 2065, ch. 818, §§ 1 to 6, eff. Jan. 1, 1978.]

Art. 7173. Leasehold interests in land, buildings, or improvements owned in whole or in part by the State, a county, a city or cities, a school district or any other governmental or public entity or body politic

(a) Property held under a lease for a term of one year or more, or held under a contract for the purchase thereof, belonging to the State, a county, a city or cities, a school district, or any other governmental or public entity, authority or body politic or that is exempt by law from taxation in the hands of the owner thereof, except for properties held, owned or dedicated, in trust or otherwise, to the support, maintenance or benefit of institutions of higher education, shall be considered for all the purposes of taxation, as the property of person so holding the same, except as otherwise specially provided by law; however this shall not include:

(1) A lease, concession or other use of an airport passenger building or a building used by certified air carriers primarily for aircraft maintenance, air cargo or aircraft services and equipment storage; an aircraft fueling systems facility servicing certified air carriers; or property in a foreign-trade zone established and operating pursuant to federal law, if the area of the zone does not exceed 250 acres, or

(2) A use by way of concession in or relative to the use of a public park, public market, fairground or similar public property, or

(3) A grazing or agricultural lease on property owned by such a governmental or public entity.

(b) Timber held by persons or corporations, heretofore or hereafter purchased from the State under the various laws for that purpose, shall likewise be subject to assessment for taxes, and the value thereof for taxation shall be ascertained as the value of

other property is ascertained. And should the owner of such timber fail or refuse to pay the taxes assessed against it, the same shall be sold for the taxes thereon, as provided in this title for the sale of personal property for taxes, provided that the same can be found by the collector; but, if the timber cannot be found, then the collector shall collect the taxes due as the taxes on other personal property are collected; provided, further, that the Land Commissioner shall furnish by the first of January each year to the various commissioners courts and the tax assessors of this State a full and complete list of all timber sold by the State belonging to the school funds, giving the number of acres, price and to whom sold, in the respective counties where the timber so sold is situated. In case of the sale of such timber for taxes as herein provided, the purchaser shall take and hold the same under the same terms and conditions as the original purchaser thereof from the State.

[Amended by Acts 1977, 65th Leg., p. 1523, ch. 617, § 1, eff. Aug. 29, 1977.]

Art. 7174. Valuation of Property for Taxation

(a) Each separate parcel of real property shall be valued at its true and full value in money, excluding the value of crops growing or ungathered thereon.

(b) In determining the true and full value of real and personal property the assessor shall not adopt a lower or different standard of value because the same is to serve as a basis of taxation, nor shall he adopt as a criterion of value the price for which such property would sell at auction or a forced sale or in the aggregate with all the property in his county; but he shall value each tract or lot by itself, and at such sum and price as he believes the same to be fairly worth in money at the time such assessment is made.

(c) In valuing any real property on which there is a coal or other mine, or stone or other quarry, or springs possessing medicinal properties, the same shall be valued at such price as such property, including a mine, or quarry or spring, would probably sell at a fair voluntary sale for cash.

(d) An interest in a mineral which may be removed by surface mining or quarrying from a deposit that is not being produced shall be valued at the price for which the interest would sell while the mineral is in place and not being produced. The value shall be determined by applying a per acre value to the number of acres covered by the interest. The aggregate of the value of such an interest, and all other interests that, if not under separate ownership, would constitute a fee simple estate in any real property, may not exceed the value which would be placed upon the fee estate, if the interest in minerals were not owned separately.

(e) Taxable leasehold estates on non-exempt property shall be valued at such price as such leasehold estates would bring at a voluntary sale for cash, and taxable leasehold estates on exempt property shall be valued at such price as such leasehold estates would bring at a voluntary sale thereof for cash, based upon the value of a comparable improvement if located on non-exempt property, with reductions for reversionary interests, restrictions on use, and credit for normal rental, except that the value of a leasehold may not be less than the total annual rental for the leasehold for the year in which it is valued.

(f) Personal property of every description shall be valued at its true and full value in money.

(g) Money, whether in possession or on deposit, or in the hands of any member of the family, or any person whatsoever, shall be entered in the statement at the full amount thereof.

(h) Every credit for a sum certain, payable either in money or property of any kind, shall be valued at the full value of the same so payable. If for a specified article or for a specified number or quantity of property of any kind, it shall be valued at the current price of such property at the place where payable. Annuities or moneys payable at stated periods shall be valued at the price that the person listing the same believes them to be worth in money. [Amended by Acts 1977, 65th Leg., p. 1195, ch. 461, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1524, ch. 617, § 2, eff. Aug. 29, 1977.]

CHAPTER SEVEN. ASSESSMENT AND ASSESSORS

Article

7244b. Assessors Registration and Professional Certification Act
[NEW].

Art. 7244b. Assessors Registration and Professional Certification Act

Purpose of Act

Sec. 1. The Constitution of Texas requires that taxation be equal and uniform. It provides for taxation in proportion to value. The responsibility for assessing property in compliance with constitutional requirements is that of the tax assessor-collector. The purpose of the legislature by this Act is to assure the people of Texas that the responsibility of assessing property for taxation is entrusted only to those persons duly registered and competent according to the regulations provided by this Act. The legislature further intends that the assessing of property for taxation be practiced and regulated as a learned profession and that the practitioners in this state be accountable to the public.

Definitions

Sec. 2. In this Act:

(1) "Assessor" means a person who assesses property or otherwise determines, recommends, or certifies the value of property for ad valorem tax purposes for a political subdivision of this state.

(2) "Assessors code of ethics" means an ethical standard of conduct for assessors established by the Board of Tax Assessor Examiners according to Section 7 of this Act.

(3) "Board" means the Board of Tax Assessor Examiners.

(4) "Candidate" means a person who is qualified and duly authorized by the board to seek certification as a registered professional assessor.

(5) "Governing body" means a county commissioners court, city council, board of trustees, or governmental board of a political subdivision of this state.

(6) "Practicing assessor" means a person who is engaged in the practice of assessing property for a county, school district, city, or other political subdivision of the state.

(7) "Registered Texas assessor" means a person who is duly registered and qualified to act as an assessor or to engage in the duties of assessing property for taxation according to the terms of this Act.

(8) "Registered professional assessor" means a person who is registered and holds a certificate for professional assessors issued by the Board of Tax Assessor Examiners according to Section 18 of this Act.

Short Title

Sec. 3. This Act shall be known as "The Texas Assessors Registration and Professional Certification Act."

Board of Tax Assessor Examiners; Establishment; Vacancies; Qualifications; Term of Office

Sec. 4. (a) The Board of Tax Assessor Examiners is established.

(b) The board consists of six members appointed by the governor with the advice and consent of the senate. A vacancy on the board is filled in the same manner for the unexpired portion of the term.

(c) To be eligible to serve on the board an individual must be a resident of this state, be actively engaged in assessing property for property tax purposes, and have at least five years experience in property appraisals. At least four of the members must hold a certificate issued under this Act. However, for the members first appointed, certification by a recognized professional association of assessors

or appraisers satisfies the certification requirement for eligibility.

(d) Members hold office for terms of six years, with the terms of two members expiring on March 1 of each odd-numbered year. In making the initial appointments, the governor shall designate two members for terms expiring on March 1, 1979, two members for terms expiring on March 1, 1981, and two members for terms expiring on March 1, 1983.

Expenses

Sec. 5. Board members receive no compensation for their services, but each is entitled to be reimbursed for the necessary expenses incurred in the discharge of his duties.

Regular and Special Meetings; Election of Officers; Quorum

Sec. 6. (a) The board shall hold at least four regular meetings each year. Special meetings shall be held at such times as are required, according to the bylaws and rules of procedure enacted by the board.

(b) Members of the board shall receive notice of special meetings at least 15 days in advance of the meeting date.

(c) The board shall elect annually from its membership a chairman, vice-chairman, and secretary-treasurer. The election of officers shall be held at the first regular meeting of each calendar year. A majority of the members constitute a quorum.

Rules and Regulations; Examination of Applicants and Issuance of Certificates

Sec. 7. (a) The board may make and enforce all rules and regulations necessary for the performance of its duties, establish standards of professional practice, conduct, education and ethics for assessors in keeping with the purposes and intent of the Act, and insure strict compliance with and enforce all provisions of this Act.

(b) The board may promulgate and amend rules of professional conduct appropriate to establish and maintain a high standard of integrity in the practice of assessing and collecting ad valorem taxes, after all persons registered under Section 12 of this Act are notified. The notice shall set forth the proposed rules of professional conduct or amendments to the rules. No rule or amendment shall become operative until it is approved by a majority of the registered professional assessors practicing in this state. The board shall adopt reasonable means for voting on such measures and shall declare the results of elections and proclaim the effective date of the rules or amendments and notify all persons registered by this Act.

(c) Members of the board who are registered professional assessors have the sole authority, responsibility, and duty of performing all acts relating to the

examination of applicants for candidacy and the issuance of certificates for professional assessors, registered according to Sections 17 and 18 of this Act.

Receipt and Accounting of Money; Assessors Registration Fund; Record of Proceedings; Roster of Registrants

Sec. 8. (a) The board shall receive and account for all money derived under the provisions of this Act and shall pay it to the State Treasurer. The State Treasurer shall designate a separate fund to be known as the "Assessors Registration Fund," which may be used only by the board for the purpose of administering this Act.

(b) The board shall keep an accurate record of all proceedings, which shall be available to the public at all times. The board shall also maintain a roster of all assessors registered with the board, showing their names and places of employment as well as the type of registration. Copies of the roster shall be mailed to all persons registered with the board, and the roster shall be placed on file with the Secretary of State. Copies of the roster shall be made available to the public on request.

Executive Director; Clerical and Other Personnel

Sec. 9. The board may employ an executive director and clerical and other personnel to assist it in the performance of its duties under this Act. The board may delegate its powers and duties to the executive director.

Initiation of Proceedings; Notice

Sec. 10. The board may initiate proceedings under this Act, either on its own motion or on the complaint of any person, to insure strict compliance with this Act and the enforcement of this Act and of all rules and regulations adopted by the board. The violation of a provision of this Act, or a rule or regulation of the board, by a person practicing assessing in Texas is sufficient reason or ground to refuse, suspend, or revoke his registration granted under the terms of this Act. The board may institute action in its own name against an individual person to enjoin a violation of a provision of this Act or a rule or regulation of the board. The board is not required to give an appeal bond in a cause arising under this Act. Prior to the initiation of proceedings for a violation of this Act, a written notice shall be sent by certified mail to the prospective defendant stating the nature of the charge and the time and place of the hearing before the board. The notice shall be mailed at least 20 days before the hearing.

Persons Required to Register

Sec. 11. The following persons shall register with the board:

(1) all persons elected or appointed to act as assessors for a county, independent school district, city, municipal water district, navigation district, or other political subdivision requiring the services of a tax assessor;

(2) all supervisors of assessing, including chief deputy assessor-collectors, assistant assessor-collectors, assessing supervisors, or any person with authority to render judgment, recommend, or certify assessed values to a board of equalization; and

(3) all persons engaged in appraisals of real or personal property for ad valorem tax purposes for a taxing authority.

Identification Card; Classifications

Sec. 12. While on official duty, persons duly registered and authorized to engage in the practice of assessing shall carry a serially numbered card of identification issued by the board stating the expiration date, if any, of the registration and describing the classification into which the holder is placed for purposes of registration. The classifications are:

(1) registration permit holder, which includes newly elected or newly appointed assessors without previous experience as assessors or employees of a tax department, evidenced by an identification card that bears the title "Registration Permit to Practice Assessing in Texas";

(2) registered Texas assessor, which class includes persons who have sufficient experience and training to engage in the practice of assessing, and which is evidenced by an identification card describing the holder as a "Registered Texas Assessor" and, for persons initially registered, a letter of confirmation;

(3) registered Texas assessor and candidate for certification, which class includes persons engaged in the practice of assessing who are eligible to meet the provisions required for registered Texas assessors and the prerequisites required for candidates described under Section 17 of this Act, in which case the board shall issue a letter listing the achievements of each candidate and a card of identification showing the holder to be a "Registered Texas Assessor and Candidate for Professional Certification"; and

(4) registered professional assessor, which class includes persons engaged in assessing who hold a comparable certificate awarded by a recognized professional association of assessors issued prior to January 1, 1978, and candidates registered after January 1, 1978, under the provisions of this Act, who shall be awarded the title of professional assessor following the completion of all requirements described under Section 18 of this Act to the satisfaction of the

board, and to each of these persons, the board shall issue a Certificate for Professional Achievement, a letter testifying to the qualifications required for professional status, and an identification card identifying the person as a "Registered Professional Assessor of Texas."

Annual and Renewal Fees; Reinstatement

Sec. 13. Registrants shall pay to the board an annual fee not to exceed \$25. The annual registration period expires on December 31 of each year, but may be renewed annually for a period of one year. The board shall determine the amount of the renewal fee for each coming year on or before December 1 of each year and mail notices to all persons registered under the terms of this Act on or before that date. A person registered under this Act who fails to pay the annual renewal fee on or before January 31 of each year shall be deleted from the list of persons duly registered to practice assessing in Texas according to the provisions of this Act. Persons applying for reinstatement within 30 days shall pay a penalty, not to exceed \$25, set by the board. Reinstatement thereafter shall be denied except on regular application and examination satisfactory to the board. The board may not waive the collection of a fee or penalty described under this Act.

Applications for Registration; Processing Fee; Examination; Remission of Fee

Sec. 14. All original applications for registration shall be made on printed forms provided by the board, and applications made otherwise may not be accepted. Information required on the form shall include the applicant's name, residence address, educational background, work experience, character and employment references, a recent photograph of the applicant, and other information as the board deems necessary. The form shall be accompanied by the code of ethics and the other limiting conditions required by the rules and regulations prescribed by the board. All applications, including the code of ethics, shall be subscribed and sworn to before a notary public or other person qualified to administer oaths. Initial application for registration shall be accompanied by a processing fee of \$30 which shall be retained by the board without regard to the disposition of the application. The board shall act on all applications within 60 days after they are received by the secretary-treasurer. Applicants approved by the board shall be notified of the time and place where examination for all classes of registration will be conducted. Applicants shall be allowed a maximum of one year to pass the required examinations for classifications described under Subdivisions (1) and (2), Section 12 of this Act. The maximum time for complying with classifications described under Subdivisions (3) and (4), Section 12 of this Act shall be in accord with the rules and regulations for professional certification prescribed by the board.

After notification that all requirements for registration are in compliance with the provisions of this Act, the applicant shall remit the annual registration fee to the secretary-treasurer before he is duly registered to practice assessing.

Qualifications of Applicants

Sec. 15. An applicant qualifying for a registration permit shall be a resident of the State of Texas and a person of good moral character. A registrant in this class shall have favorable recommendations from at least three persons, one of whom is a practicing assessor duly registered under the provisions of this Act. Each shall subscribe the assessors code of ethics and pass an examination for minimum qualifications in accordance with the rules and regulations of the board.

Qualifications of Registrants

Sec. 16. A registered Texas assessor shall be at least 21 years of age and a resident of the State of Texas. He shall be a person of good moral character confirmed by at least five persons who have known the applicant for at least three years. In addition, the application for registered Texas assessor shall list at least three persons who can vouch for the applicant's qualifications, one of whom shall be a registered professional assessor. The minimum educational requirement is satisfactory completion of the 12th grade of high school or the equivalent. Registered Texas assessors with birthdates prior to January 1, 1950, may substitute special training and experience for the minimum educational requirement at the discretion of the board. All registered Texas assessors shall subscribe the assessors code of ethics and pass a written examination prepared by the board to confirm the assessor's ability to value and assess property for taxation. Registered Texas assessors shall furnish satisfactory evidence of their work experience and qualification as practicing assessors in compliance with the rules and regulations prescribed by the board. All persons qualifying under this section must within five years from the date of their original registration satisfactorily demonstrate to the board a level of competence gained through educational achievement and experience to qualify under the requirements of Section 17 of this Act.

Qualifications of Certification Candidates; Level of Competence

Sec. 17. (a) A candidate for certification shall be an assessor for a taxing jurisdiction, qualified to register under Section 16 of this Act and shall:

- (1) be recommended by at least three registered professional assessors having knowledge of the applicant's qualifications to become registered as a candidate for certification;
- (2) have at least two years of education above the high school level, or have equivalent educa-

tion and training beyond high school deemed satisfactory by the board;

(3) have at least three years of experience in some phase of assessing or work related to ad valorem taxation, one year of which must be in-service training deemed satisfactory to the board; and

(4) pass an examination conducted by the board for the purpose of testing the applicant's knowledge of fundamental valuation theory and the assessors code of professional ethics as set forth by the board's rules and regulations.

(b) All persons qualifying under this section must within five years from the date of qualification under Section 17 of this Act satisfactorily demonstrate to the board a level of competence gained through educational achievement and experience to qualify under the requirements of Section 18 of this Act.

Issuance of Certificates; Contents of Examinations

Sec. 18. (a) Certificates for registered professional assessors shall be issued by the board to persons:

- (1) who hold a comparable certificate issued by a recognized professional association of assessors prior to January 1, 1978; or
- (2) who are registered candidates authorized by this Act who are at least 25 years of age and have at least 5 years experience in the practice of assessing, 1 year of which must be in-service training meeting requirements set forth by the board and have:

(A) completed the educational training courses required by the board's regulations or furnished evidence of passing grades for related examinations conducted by professional organizations approved by the board;

(B) submitted demonstration appraisals required by the board's regulations; and

(C) passed a written examination conducted by the board to test the candidate's knowledge of real and personal property valuation theory, the three approaches to value, collection, accounting, and general ad valorem tax administration, and an oral examination if the board deems it necessary.

(b) Examinations conducted by the board shall be prepared to test the candidate's knowledge and ability to estimate value by use of the income, cost, and market approaches to value. The candidate shall be tested for knowledge and ability to apply and calculate all forms of depreciation and obsolescence. A candidate must show by examination the ability to estimate value by use of the mass appraisal concept. The examination shall include general tax adminis-

tration and test the candidate's knowledge and understanding of the assessors code of ethics described in the board's rules and regulations.

Unauthorized Use of Title

Sec. 19. No person may assume or use the title of registered Texas assessor, candidate for certification, or registered professional assessor, unless he holds a valid registration approved by the Board of Tax Assessor Examiners. No person may indicate or imply that he is a registered Texas assessor, candidate for certification, or registered professional assessor, unless he is registered under the terms of this Act. A person who violates this section is subject to board action under Section 10 of this Act.

Official Acts Unrestricted

Sec. 20. This Act does not restrict an official act required by the Texas Constitution and performed according to law.

Discrimination Prohibited

Sec. 21. No person may be denied the right to register under the terms of this Act because of race, color, creed, sex, or ethnic origin.

Unprofessional Manner or Violation of Act Required by Governing Body Prohibited

Sec. 22. No governing body of a taxing jurisdiction of this state may, as a necessity for employment, require that an assessor act in an unprofessional manner or commit acts in violation of this Act. A complaint of a violation of this section shall be thoroughly investigated by the board. A proceeding for a violation shall be conducted according to Section 10 of this Act.

Rights and Prohibited Acts of Registrants; Suspension or Revocation for Violations

Sec. 23. (a) An assessor registered under the terms of this Act shall:

(1) assess property in his jurisdiction on a fair and equal basis to the best of his ability, using the estimated true market value as the basis for judgment except when required otherwise by the Texas Constitution or by law; and

(2) hold confidential any information received while performing duties as an assessor which could be used for personal gain, unless the information is public information or is required by law to be public.

(b) An assessor registered under the terms of this Act may not:

(1) give or use an arbitrary opinion of value for any property in his jurisdiction unless the opinion is based on available and known facts;

(2) accept an assignment for assessing services, if his or her employment is contingent on the reporting of a specific predetermined amount of value or is contingent on the report-

ing of specific findings other than those known by the assessor to be facts at the time of the accepting of the assignment;

(3) accept remuneration other than the official salary or fee for assessing services rendered;

(4) act in a manner or engage in a practice that is dishonest or fraudulent or involves deceit or misrepresentation that will bring discredit on the honor and dignity of the assessing profession; or

(5) violate the board's rules and regulations, the assessors code of ethics, or any part of this Act.

(c) Violations named in this section are sufficient reason for the board to suspend or revoke the registration of such persons.

Penalty for Failure to Register

Sec. 24. A person who is required under Section 11 of this Act to register with the board commits a Class A misdemeanor if he fails to register.

Compliance With Educational and Examination Requirements

Sec. 24A. Notwithstanding any provision of this Act, it is expressly provided that any person who is able to comply with the educational and examination requirements of this Act for the registration classifications pursuant to Section 12 of this Act shall be entitled to receive from the board a statement of certification evidencing same.

[Acts 1977, 65th Leg., p. 1068, ch. 391, §§ 1 to 24A, eff. Aug. 29, 1977.]

CHAPTER EIGHT. COLLECTION AND COLLECTOR

Article

7261a. Acceptance of Checks by Tax Collector for Payment of Fees and Taxes [NEW].

Art. 7260. Monthly Reports

[See Compact Edition, Volume 2 for text of 1 to 7]

8. (a) The Tax Collector shall, on proof of error, be entitled to deduct amounts of ad valorem tax payments, if paid in error, from the amounts of taxes due the State of Texas; and same shall be by him refunded to claimants; and the State Comptroller shall, on proof of error, honor such deductions the same as if made in the month in which the payment was actually made.

(b) This section applies only in a case of mistake acknowledged by the tax collector and does not apply to a case involving a dispute between a taxpayer and the tax collector.

(c) The comptroller may honor a deduction made under the authority of this section only after an

independent examination of the evidence offered in proof of the claim and on a finding that the claim is valid and arises from a mistake.

[Amended by Acts 1975, 64th Leg., p. 629, ch. 260, § 1, eff. Sept. 1, 1975.]

Art. 7261. Duties of Clerk and Collector

[See Compact Edition, Volume 2 for text of 1 to 6]

7. When the Tax Collector determines that county ad valorem taxes or other ad valorem taxes collected by the Tax Collector on behalf of other Tax Units have been erroneously paid or overpaid, through mistake of law or fact, the Tax Collector, upon verification by the County Auditor of the erroneous payment or overpayment, may refund such erroneous payment or overpayment from available tax-collection revenues received or other available funds appropriated for this purpose. Application for a refund must be made by the taxpayer affected and filed with the Tax Collector within three (3) years of the date of the erroneous payment or overpayment. For all refunds in excess of \$500 the Tax Collector must present the application for the refund to the Tax Unit's governing body for verification and approval.

[Amended by Acts 1975, 64th Leg., p. 1347, ch. 506, § 1, eff. Sept. 1, 1975.]

Art. 7261a. Acceptance of Checks by Tax Collector for Payment of Fees and Taxes

Definitions

Sec. 1. In this Act:

(1) "Tax collector" means the county tax assessor-collector.

(2) "Check" means an instrument signed by the maker; containing an unconditional promise or order to pay a sum certain in money and containing no other promise, order, obligation, or power given by the maker; payable on demand; and drawn on a bank.

(3) "Maker" means the drawer of a check.

Acceptance of Check for Payment of Certain Fees Permitted

Sec. 2. A tax collector may, but is not required to, accept a check for the payment of motor vehicle registration fees (Article 6675a-1 et seq., Vernon's Texas Civil Statutes); motor vehicle sales taxes imposed by Chapter 6, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925; occupation taxes paid to the tax collector under Chapter 19, Title 122A, Taxation-General, Revised Civil Statutes of Texas, 1925; motor vehicle title transfer fees under the Certificate of Title Act (Article 6687-1, Vernon's Texas Civil Statutes); license or permit fees under the Texas Liquor Control Act (Article 666-1 et seq., Vernon's Texas Penal Auxiliary Laws), and property taxes.

Issuance Conditional on Bank's Honoring Check

Sec. 3. The acceptance of a check for the payment of taxes and fees listed in Section 2 of this Act does not constitute payment of the tax or fee, and the tax or fee is not considered paid until the check is honored by the bank on which the check is drawn. This section does not prohibit a tax collector from issuing receipts, license plates, certificates, or other instruments on the receipt of a check, but the issuance is conditional on the payment of the check by the drawee bank.

Identification Required

Sec. 4. When a tax collector receives a check as conditional payment of a tax or fee listed in Section 2 of this Act, he shall require adequate identification of the maker and note on the check or otherwise record the type of identification of the maker and information from the identification to assist in locating the maker in the event the check is not honored.

Liability of Tax Collector and Bondsman

Sec. 5. Except as provided in Section 8 of this Act, a tax collector and his bondsman are not liable for the amount of any taxes and fees for which the tax collector has accepted a check that is not honored by the drawee bank if the tax collector complied with the requirements of Section 4 of this Act and if the tax collector did not know or should not reasonably have known that the check was not properly drawn or that it would not be honored.

Procedures for Collection of Dishonored Checks

Sec. 6. A tax collector may establish procedures for the collection of dishonored checks. The procedures may include:

(1) official notification to the maker that the check has not been honored and that the receipt, registration, certificate, or other instrument issued on the receipt of the check is not valid until payment of the tax or fee is made;

(2) notification of the sheriff or other law enforcement officers that a check has not been honored and that the receipt, registration, certificate, or other instrument held by the maker is not valid; and

(3) notification to the State Department of Highways and Public Transportation, the State Comptroller of Public Accounts, or the Department of Public Safety that the receipt, registration, certificate, or instrument held by the maker is not valid.

Dishonored checks; Remission Not Required; Notice; Assistance in Collection

Sec. 7. If taxes and fees listed in Section 2 of this Act are required to be remitted to the State Comptroller of Public Accounts or the State Department of Highways and Public Transportation and if payment was made to the tax collector by a check

that was not honored by the drawee bank, the amount of the tax or fee is not required to be remitted, but the tax collector shall notify the appropriate department of the amount of the fee or tax, the type of fee or tax involved, and the name and address of the maker. The State Department of Highways and Public Transportation and the State Comptroller of Public Accounts shall assist the tax collector in collecting the fee or tax and may cancel or revoke any receipt, registration, certificate, or instrument issued in the name of the state conditioned on the payment of the fee or tax.

Liability of Tax Collector for Violations of Act

Sec. 8. If the State Comptroller of Public Accounts or the State Department of Highways and Public Transportation determines that the tax collector of a county has accepted payment for fees and taxes to be remitted to that department in violation of Section 4 of this Act or that more than two percent of the fees and taxes to be received from the tax collector are not remitted because of the acceptance of checks that are not honored by the drawee bank, the department may notify the tax collector that he may not accept a check for the payment of any fee or tax to be remitted to that department. A tax collector who, after notice that he may not receive a check for the payment of fees or taxes to be remitted to a department, accepts a check for the payment of a fee or tax, is liable to the state for the amount of the check accepted.

Rules for Acceptance of Checks and Collection of Dishonored Checks

Sec. 9. The State Comptroller of Public Accounts and the State Department of Highways and Public Transportation may make rules concerning the acceptance of checks by tax collectors and for the collection of dishonored checks.

[Acts 1977, 65th Leg., p. 2121, ch. 847, §§ 1 to 9, eff. Aug. 29, 1977.]

CHAPTER TEN. DELINQUENT TAXES

Article

7328.2. Procedure for Sale of Property Under Tax Foreclosure Sale [NEW].

7345b-3. Limitations on Actions to Recover Real Property Sold at Tax Sale [NEW].

7345f. Right of Appeal by Property Owner [NEW].

Art. 7328.2. Procedure for Sale of Property Under Tax Foreclosure Sale

(a) In addition to information required by any other law or rule, notice of a sale of real property at a tax foreclosure sale, or a sale of real property purchased at the tax foreclosure sale by the state or a taxing unit, shall specify the hour that the sale will

begin and which one of several entrances is the courthouse door where the sale will be held.

(b) Notwithstanding any other provision of the law or rules, the sheriff, a deputy sheriff, or an authorized agent of the sheriff may conduct the tax foreclosure sale or sale of real property purchased at a tax foreclosure sale by the state or a taxing unit. If the sheriff appoints an agent to conduct the sale, the notice of the sale shall contain the name, address, and telephone number of the agent. A bidder at the sale must be registered at the time the sale begins with the sheriff, deputy sheriff, or agent conducting the sale.

[Acts 1977, 65th Leg., p. 145, ch. 70, § 1, eff. April 25, 1977.]

Art. 7329a. Homestead Owned by Person 65 or Older; Collection of Delinquent Taxes Deferred or Abated

Suit to Collect Delinquent Taxes Prohibited; Affidavit

Sec. 1. No suit to collect delinquent ad valorem taxes on real property shall be filed by any tax unit of this state against property owned and occupied as a homestead, as defined in Article XVI, Section 51, of the Texas Constitution, by a person sixty-five (65) years of age or older during the time that it remains the homestead of such person; and provided further, that such person shall have filed for record with the county clerk of the county in which the land, or a part thereof, is located, prior to institution of suit by any tax unit, an affidavit containing the following:

- (1) the birth date of the affiant;
- (2) a description by metes and bounds, or other sufficient description to identify the property claimed as a homestead; and
- (3) the signature of the affiant and acknowledgement or proof as in other instruments for record.

Defendant's Sworn Plea; Abatement of Suit

Sec. 2. In a suit for the collection of delinquent ad valorem taxes, the defendant may file a sworn plea stating that he is sixty-five (65) years old or older and that he is entitled to a residential homestead in the property. If the tax unit fails to file an affidavit controverting the sworn plea, or if on a hearing the court determines that the plea is true, the suit shall be abated until the property is no longer owned and occupied by the person sixty-five (65) years or older filing such sworn plea.

Right to Delinquent Taxes Not Extinguished or Released; Delay

Sec. 3. This Act does not extinguish or release the right of a tax unit to delinquent ad valorem taxes, and penalties (including "interest") against

any property. In any suit upon which action is deferred or abated pursuant to this Act, such delay is not the basis for a plea of limitation, laches, or want of prosecution against a tax unit.

Penalties and Interest

Sec. 4. Penalties and interest continue to accrue during a period of deferment or abatement of suit as a result of this Act. Delinquent ad valorem taxes, penalties, and interest at all times remain a first priority lien upon the land and all mutations thereof until paid. A tax unit may sue for and foreclose its liens on all accrued delinquent ad valorem taxes and penalties (including "interest") when the homestead is no longer owned and occupied by the person sixty-five (65) years old or older who has claimed protection of this Act.

Payment of Taxes Due Not Precluded

Sec. 5. Nothing in this Act precludes any person sixty-five (65) years old or older from paying the ad valorem taxes due on residential homestead property. He or she may pay for any year(s) without losing his rights to protection under this Act for any year(s) when he is unable to pay or chooses not to pay.

[Amended by Acts 1977, 65th Leg., p. 1677, ch. 661, § 1, eff. Aug. 29, 1977.]

Art. 7345b. Suits for Delinquent Taxes by Taxing Units

[See Compact Edition, Volume 2 for text of 1 to 7]

Sale for Less Than Adjusted Value or Aggregate of Judgments in Suit to Party Other Than Taxing Unit Prohibited;
Distribution of Proceeds

Sec. 8. No property sold for taxes under decree in such suit shall be sold to the owner of said property, directly or indirectly or to anyone having an interest therein, or to any party other than a taxing unit which is a party to the suit, for less than the amount of the adjudged value aforesaid of said property or the aggregate amount of the judgments against the property in said suit, whichever is lower, and the net proceeds of any sale of such property made under decree of court in said suit to any party other than any such taxing unit shall belong and be distributed to all taxing units which are parties to the suit which by the judgment in said suit have been found to have tax liens against such property, pro rata and in proportion to the amounts of their respective tax liens as established in said judgment, but any excess in the proceeds of sale over and above the amount necessary to defray the costs of suit and sale and other expenses hereinabove made chargeable against such proceeds, and to fully discharge the judgments against said property, shall be paid by the sheriff or constable making the sale to the clerk of the court out of which execution or

other final process issued to be retained and disposed of by him as follows:

Such excess funds shall be retained by the clerk of the court for a period of three (3) years from the date received, unless otherwise ordered by the court, after which time he shall forward such excess funds to the State Treasurer, who shall hold the same in trust to be paid to the owner against whom said taxes were assessed or the heirs or legal representative of a deceased owner. The clerk shall note upon the execution docket in each such case the amount of such excess funds, the date received by him, and the date transmitted to the State Treasurer, and shall accompany such remittance with a statement upon a form to be prescribed by the Comptroller showing the style and number of the case, the court from which execution issued, which statement shall be filed and kept by the Treasurer and a duplicate thereof shall be forwarded to the Comptroller, who shall also keep an account of such excess funds transmitted to the Treasury.

At any time during the three (3) year period such excess funds are retained by the clerk of the court, anyone claiming the same may file a petition in the case out of which execution or other process issued, setting forth in said petition the basis upon which claimant claims such excess funds, and the court shall set the same for hearing. A full copy of such petition and date set shall be served on the County or District Attorney of the county at least twenty (20) days prior to the date set for the hearing, and if there be intervening plaintiffs or attorney ad litem in the case previously, then a full copy of such petition shall also be timely served on each such plaintiff or attorney. Signed approval or waiver must be obtained from each such plaintiff or attorney before the petition may be approved and granted.

At any time within four (4) years from the date such excess funds are forwarded to the State Treasurer by the clerk of the court, anyone claiming the same may file a petition in the case out of which execution or other final process issued, setting forth in said petition the basis upon which claimant claims such excess funds, and the court shall set the same for hearing. A copy of such petition shall be served on the County or District Attorney of the county, at least twenty (20) days prior to the date of hearing, and a copy of such petition shall be forwarded to the State Treasurer and the Comptroller. The County Attorney, or District Attorney if there be no County Attorney, of such county, shall represent the State at such hearing.

If the court shall find that such claimant is entitled to recover such excess funds, it shall make an order directing the Comptroller to issue his warrant on the Treasury against such trust funds for the payment of same, but without interest or cost; a copy of which order under the seal of the court shall be sufficient voucher for issuing such warrant.

After expiration of four (4) years from date such excess funds are received by the Treasurer he shall transfer the same from the trust fund to the general revenue fund unless there is then pending a petition by a claimant of such excess funds not acted upon, and if such claimant has not within four (4) years as herein provided filed a petition for such excess funds, the same shall be forever barred, and no claim shall be thereafter filed or allowed.

This Act shall apply to and govern the handling and disposition of excess funds arising from delinquent tax sales in the hands of the District Clerk or the State Treasurer at the effective date of this Act. The District Clerk shall submit to the State Treasurer all such excess funds which have been in his hands three (3) years or more prior to the effective date of this Act, but the District Clerk shall have thirty (30) days from the effective date of this Act to comply herewith, and such excess funds may be claimed within (4) years from the effective date of this Act in the same manner as such funds transmitted to the State Treasurer under the terms of this Act after its effective date.

After the expiration of four (4) years from the effective date of this Act such excess funds remaining in the trust fund, unless a petition is then pending claiming such funds, the State Treasurer shall transfer all of such unclaimed funds from the trust fund to the general revenue fund and thereafter the claim for such funds shall be forever barred and no claim shall be thereafter filed or allowed.

Purchasing Taxing Unit to Hold Property for Itself and Other Taxing Units Adjudged to Have Liens; Sale by Purchasing Taxing Unit; Proceeds; Failure to Sell Within Six Months after Redemption Period Expires

Sec. 9. If the property be sold to any taxing unit which is a party to the judgment under decree of Court in said suit, the title to said property shall be bid in and held by the taxing unit purchasing same for the use and benefit of itself and all other taxing units which are parties to the suit and which have been adjudged in said suit to have tax liens against such property, pro rata and in proportion to the amount of the tax liens in favor of said respective taxing units as established by the judgment in said suit, and costs and expenses shall not be payable until sale by such taxing unit so purchasing same. During the time the taxing unit has title to the

property, it shall preserve the status and value of the property by fencing, leasing, or other reasonable means until the property is redeemed or resold. If the property is leased during the redemption period, the rental income shall be used to maintain and improve the property, and the taxing unit shall keep records of the amount of rental income and its disposition. The taxing unit may sell and convey said property so purchased by it, or which has heretofore been purchased in the name of any officer thereof, at any time in any manner determined to be most advantageous to said taxing unit or units either at public or private sale, subject to any then existing right of redemption; and the purchaser of the property at any such sale shall receive all of the right, title and interest in said property as was acquired and is then held by said taxing unit under such tax foreclosure sale to it; but such property shall not be sold by the taxing unit purchasing the same, at private sale, for less than the adjudged value thereof, if any, as established in the tax judgment, or the total amount for which such judgment was rendered against the property in said suit, whichever is lower, without the written consent of all taxing units which in said judgment shall have been found to have tax liens against said property. All such consents shall be evidenced by the joinder in the conveyance by the consenting taxing units, acting by the officers herein authorized to give such consents. Consent to such sales in behalf of the State of Texas may be given by the County Tax Collector of the county in which the property is located; and consents on behalf of other taxing units may be given by the presiding officers of their governing bodies. Deeds executed hereunder by taxing units shall be executed in their behalf by the presiding officer of their governing body and whose authority to so act in any given case shall be prima facie presumed. When such property is so sold at public or private sale, the proceeds thereof shall be received by or paid over to the taxing unit which purchased said property at the tax foreclosure sale, for the account of itself and all other taxing units adjudged to have a tax lien against such property, and all taxing units so receiving said proceeds shall first pay out of the same all costs and expenses of Court and of sale, and distribute the remainder among all taxing units for which purchasing taxing unit purchased and held said property, pro rata and in proportion to the amounts of their tax liens against said property as established in said judgment. Public sales hereinabove provided for may either be made by the Sheriff, at the request of the taxing unit purchasing the property at the tax foreclosure sale, or by any Commissioner appointed by such taxing unit by resolution of its governing body. If the State of Texas is the taxing unit which purchased said property at the tax foreclosure sale, the Commissioners Court of the county in which the

property is located shall have authority to act for the State of Texas in making private sales and conveyances of said property, as herein provided, or in requesting the Sheriff, or in appointing a Commissioner, to make public sale thereof, and in receiving and distributing the proceeds of such sales; and all sales and conveyances made in behalf of the State of Texas by the Commissioners Court, or made by the Sheriff or any Commissioner appointed by the Commissioners Court, under the provisions hereof, shall operate to transfer to the purchaser at such sale all right, title and interest acquired or held by the State of Texas as purchaser at the tax foreclosure sale. Any taxing unit, Sheriff, or Commissioner appointed by a taxing unit, making any sale under provisions hereof shall execute and deliver to the purchaser at such sale a deed of conveyance, conveying all right, title and interest of all the taxing units interested in the tax foreclosure judgment in and to the property so sold; provided, if the period for the redemption of said property from said tax foreclosure sale has not expired at the time of said sale, said conveyance shall be made expressly subject to the right of redemption provided in Section 12 of said Act.

Provided, however, that the methods of sale above set out shall not be exclusive and that if sale has not been made by, or at the instance of, the purchasing taxing unit within six (6) months after the redemption period has expired, any taxing unit which has obtained judgment in said suit may force the sale of said property by the Sheriff by written request to the Sheriff, and in the event such written request is so made to the Sheriff it shall be his duty to sell said property at public sale as hereinafter provided. All public sales provided for in this Section shall be made in the manner prescribed for the sale of real estate under execution. The notice of the sale shall contain a legal description of the property to be sold, the number and style of the suit under which same was sold at tax foreclosure sale and the date of said tax foreclosure sale; and the Sheriff or other officer making such sale is hereby authorized and it is hereby made his duty, to reject any and all bids for said land when in his judgment the amount bid is insufficient or inadequate, and in the event said bid or bids are rejected, the land shall be readvertised and offered for sale as herein provided, but the acceptance by the Sheriff or other officer authorized to make such sale of a bid for said land shall be conclusive and binding on the question of the sufficiency of the bid, and no action shall be sustained in any Court of this State to set aside said sale on the grounds of the inadequacy of the amount bid and accepted. Nothing herein shall be construed as prohibiting any taxing unit participating in said judgment from instituting action to set aside the said sale on the grounds of fraud or collusion between

the officer making the sale and the purchaser, provided that such action be brought within two (2) years after such sale is made, and not afterward. The Sheriff or other officer making any such sale shall receive and pay over the proceeds thereof as hereinabove provided, and the same shall be distributed as herein provided.

All sales and conveyances heretofore made by taxing units, or officers thereof, of property purchased by them, or in the name of any officer thereof, at tax foreclosure sales, for the benefit of themselves and all other taxing units interested in the tax judgment, and all sales heretofore made by the Commissioners Courts, or the Attorney General joined by the County Tax Collector, of property purchased by the State of Texas at tax foreclosure sales for the benefit of itself and other taxing units, are hereby in all things confirmed and validated; provided that this validating provision shall in no way apply to or validate any such sale the validity of which is challenged in any now pending litigation; nor shall the same apply to or validate any such sale, in cases where the Sheriff upon written request of any taxing unit, has thereafter made sale of the same property at public outcry and all such so made by the Sheriff as provided in Section 9 of said Act prior to the taking effect of this Amendment, and all such sales so made by the Sheriff are hereby in all things confirmed and validated.

No action attacking the validity of any resale of property purchased by a taxing unit at a tax foreclosure sale, or any of said sale hereafter made in accordance with, or purporting to be made in accordance with, this Section shall be commenced after the expiration of one (1) year from the date of such sale.

[See Compact Edition, Volume 2 for text of 10 to 15]

[Amended by Acts 1977, 65th Leg., p. 1240, ch. 479, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1244, ch. 481, § 1, eff. Aug. 29, 1977.]

Art. 7345b-3. Limitations On Actions to Recover Real Property Sold at Tax Sale

(a) No cause of action or defense may be asserted or maintained on a claim respecting any land sold for delinquent taxes at a tax sale pursuant to a judicial foreclosure of a tax lien, unless the cause of action or defense is asserted in an action commenced within three years after the filing of record of the deed executed to the purchaser at the tax sale.

(b) If the purchaser's deed was filed before the effective date of this Act, the cause of action or defense may be asserted in an action commenced

within three years after the effective date of this Act.

(c) Notwithstanding any other provision of this Act, if a person other than the purchaser at the tax sale or his successor in interest pays taxes on the property during the three consecutive years following the tax sale, the three-year limitations period provided in this Act does not run against the person who paid the taxes unless that person was duly served by process in the previous suit involving foreclosure of the tax lien for delinquent taxes.

(d) When an action for recovery of real property is barred by the provisions of this Act, the purchaser at the tax sale or his successor in interest shall be held to have full title to the land, precluding all other claims.

[Acts 1977, 65th Leg., p. 1680, ch. 663, § 1, eff. Aug. 29, 1977.]

Art. 7345f. Right of Appeal by Property Owner

Time for Filing Petition for Review

Sec. 1. A property owner is entitled to appeal a decision of any board of equalization to a district court of the State of Texas. A party who appeals to a district court must file a petition for review with the district court within 45 days after the tax roll containing the value involved is approved by the taxing authority.

Venue

Sec. 2. Venue is in the county in which the board of equalization that made the decision is located.

Trial by Jury

Sec. 3. Any party is entitled to a trial by jury on demand.

Value of Property Fixed

Sec. 4. (a) The issue to be determined by the district court in an appeal is whether or not the value of the property in question as ascertained by the board of equalization is in error.

(b) If the court or jury finds that the value as ascertained by the board of equalization is in error, meaning it is higher than the value set out by the property owner in a rendition filed prior to the board of equalization hearings as required by law, then the court or jury shall fix a value for the property in question as of January 1 of the tax year in controversy. In fixing the value of the property in question, the court or jury shall determine the cash market value and multiply that value by the assessment ratio, if any, in effect for the taxing authority involved.

(c) The value affixed by the court or jury pursuant to Subsection (b) above shall be binding on the taxing authority or authorities involved in the law-

suit for the tax year in question and for the succeeding tax year. However, in the succeeding tax year the taxing authority may add the value of subsequent improvements to the property, if any, to the value affixed by the court or jury.

Defense to Appeal

Sec. 5. When established by a preponderance of the evidence, it shall be a defense to an appeal under this article that the taxpayer failed to exercise good faith in estimating the cash market value set out in the rendition required in Subsection (b) of Section 4 of this article. A taxpayer does not fail to exercise good faith for purposes of this section if he makes a good faith effort to estimate the cash market value of the property and the assessment ratio, if any, in effect for the taxing authority and renders the value determined by multiplying his estimate of cash market value by the assessment ratio. A taxpayer shall be required to file with the board of equalization a sworn affidavit, in addition to the rendition, prior to invoking the provisions of this article but shall not be required to appear personally or by a representative.

Rights Cumulative

Sec. 6. The rights afforded taxpayers under this article are cumulative and do not preempt other remedies granted by statute or evolving by common law.

Injunctive or Restraining Order Relief

Sec. 7. The cause of action herein granted does not expand upon taxpayers' rights to sue for an injunction or restraining order as a member of a class. Rights granted hereunder are specifically prohibited from being the basis of injunctive or restraining order relief in a class action suit seeking to enjoin the putting into effect of a tax plan of a taxing authority.

[Added by Acts 1977, 65th Leg., p. 1912, ch. 764, § 1, eff. June 16, 1977.]

CHAPTER ELEVEN. IN CERTAIN CASES

Art. 7359. City May Use County Officers

Any incorporated city, town or village in this State is hereby authorized by ordinance to authorize the county tax assessor and county tax collector of the county in which said city, town or village is situated, to act as tax assessor and tax collector respectively for said city, town or village. The property in said city, town or village utilizing such county assessor and collector shall be assessed at the same value as it is assessed for county and State purposes, except that real property in an incorporated city in a county of 830,460 population, or greater, according to the last preceding federal census, by

ordinance of the city government may be assessed at a greater rate of value than the same property is assessed for state and county purposes. When an ordinance is so passed making available their services, said assessor shall assess the taxes for said city, town or village and perform the duties of tax assessor for said city, town or village according to the ordinances of said city, town or village and according to law; and said collector shall collect the taxes and assessments for said city, town or village and turn over as soon as collected to the city depository of said city or other authority authorized to receive such taxes or assessments, all taxes or money so collected, and shall perform the duties of tax collector of said city, town or village according to the ordinances thereof and according to law, deducting from the taxes so collected his fees provided for herein; and they shall respectively receive for such services one percent of the taxes so collected, except the fee for the collection of taxes of a city in a county having a population of 830,460 or more, according to the last preceding federal census, may be determined by agreement between the county tax assessor-collector and the city of an amount not to exceed the actual costs to the county.

[Amended by Acts 1975, 64th Leg., p. 663, ch. 278, § 2, eff. Sept. 1, 1975.]

CHAPTER TWELVE. MULTISTATE TAX COMPACT

Art. 7359a. Multistate Tax Compact

[See Compact Edition, Volume 2 for text of 1]

Appointment of Commission Member

Sec. 2

[See Compact Edition, Volume 2 for text of 2(a) and (b)]

(c) The office of Multistate Tax Compact Commissioner for Texas is subject to the Texas Sunset Act;¹ and unless continued in existence as provided by that Act the office is abolished, and this Act expires effective September 1, 1989.

[See Compact Edition, Volume 2 for text of 3 to 5]

[Amended by Acts 1977, 65th Leg., p. 1856, ch. 735, § 2.172, eff. Aug. 29, 1977.]

¹ Article 5429k.

TITLE 122A. TAXATION—GENERAL

CHAPTER 1. GENERAL PROVISIONS

Article

- 1.032A. Compromises or Settlements [NEW].
1.034. Dates for Filing Reports and Making Payments [NEW].
1.035. Confidentiality of Federal Tax Information [NEW].
1.13A. Repealed.

Art. 1.032A. Compromises or Settlements

(a) The comptroller of public accounts may compromise or settle any tax including penalty and interest due the State of Texas pursuant to the provisions of this title in an order or decision of the comptroller upon a petition for redetermination if:

(1) the cost of collection exceeds the amount of tax due provided the total amount of tax due does not exceed \$1,000; or

(2) the taxpayer is in liquidation, insolvent, or has ceased to do business and has no property in this or any other state that may be seized by the courts of this or any other state or if the property owned by the taxpayer is insufficient to pay the taxes and any debts against the property; or

(3) collection of the entire tax due would make the taxpayer insolvent; provided the taxpayer must submit all financial records including income tax reports and an inventory of all property owned regardless of its location.

(b) Subsequent to an examination of taxpayer's records and prior to a redetermination, the comptroller or his designee may compromise or settle any tax including penalty and interest due the State of Texas pursuant to the provisions of this title if the cost of collection exceeds the amount of tax due; provided the total amount of tax due does not exceed \$300 and provided the compromise or settlement is approved by the assistant comptroller for legal services.

(c) The comptroller or his designee may compromise or settle any penalty or interest provided by this title if the taxpayer exercised reasonable diligence to comply with the provisions of this title and provided the compromise or settlement is approved by the assistant comptroller for legal services.

[Added by Acts 1977, 65th Leg., p. 1357, ch. 538, § 1, eff. Aug. 29, 1977.]

Art. 1.034. Dates for Filing Reports and Making Payments

The Comptroller of Public Accounts is authorized to prescribe the date for filing reports and payments required to be made pursuant to the provisions of this Title notwithstanding other specific requirements for reporting or payments contained in the Title except those specific provisions of Chapter 20 of this Title.

[Added by Acts 1975, 64th Leg., p. 2315, ch. 719, art. 15, § 1, eff. Sept. 1, 1975.]

Art. 1.035. Confidentiality of Federal Tax Information

(1) In the event any person is required to submit any federal tax return or include federal tax return information with a state tax return or report required under any article of this title, such federal return or return information shall be confidential.

(2) No official, employee, or former official or employee of the comptroller of public accounts shall disclose in any manner federal returns or return information required to be submitted by any person, except for the purposes of a judicial proceeding for the collection of delinquent taxes in which the State of Texas is a party. If any official or employee or former official or employee of the comptroller shall make known in any manner, except as provided by law, federal tax returns or return information required to be submitted by any person, he shall be punished by a fine not exceeding \$1,000 or confinement in jail not exceeding one year, or both.

[Added by Acts 1977, 65th Leg., p. 1342, ch. 534, § 1, eff. Aug. 29, 1977.]

Art. 1.13. Timely Filing of Reports

[See *Compact Edition, Volume 2 for text of (a) to (g)*]

(h) Notwithstanding any other specific provision in this title to the contrary, the comptroller is authorized to grant upon written request by any person required to file or make any report by this title on or before a specified date a reasonable extension of time not to exceed 45 days to make or file the return or returns. In order to be eligible for an extension of time in which to file a return, the person must state in the request the reasons or grounds for the extension of time and remit 90 percent of the taxes estimated to be due on or before the filing date specified in other provisions of the title.

[Amended by Acts 1975, 64th Leg., p. 1092, ch. 412, § 1, eff. Sept. 1, 1975.]

Section 2 of the 1975 amendatory act provided:
"This Act takes effect September 1, 1975."

Art. 1.13A. Repealed by Acts 1977, 65th Leg., p. 1357, ch. 538, § 2, eff. Aug. 29, 1977

The repealed article, waiving penalty and interest charges where taxpayer has exercised reasonable diligence to comply with this title, was derived from Acts 1975, 64th Leg., p. 1093, ch. 413, § 1.
See, now, art. 1.032A, § (c).

CHAPTER 6. MOTOR VEHICLE RETAIL SALES AND USE TAX

Article

- 6.041. Registration of Motor Vehicle Purchased for Rental [NEW].
- 6.042. Revocation; Suspension of Motor Vehicle Retail Seller's Permit; Procedure [NEW].

Art. 6.01. Imposition of Tax

(1) There is hereby levied a tax upon every retail sale of every motor vehicle sold in this State, such tax to be equal to four percent (4%) of the total consideration paid or to be paid for said motor vehicle. The tax shall be the obligation of and be paid by the purchaser of the motor vehicle.

(2) There is hereby levied a use tax upon every motor vehicle purchased at retail sale outside this State and brought into this State for use upon the public highways by any person who is a resident of this State or who is domiciled or doing business in this State. The tax imposed by this section shall be equal to four percent (4%) of the total consideration paid or to be paid for said vehicle at said retail sale. The tax shall be the obligation of and be paid by the person operating said motor vehicle upon the public highways of this State.

(3) There is hereby levied a use tax in the sum of Fifteen Dollars (\$15) upon any motor vehicle which (i) is brought into this State by a new resident of this State and (ii) has been previously registered in the new resident's name in any other state or foreign country. The use tax is in lieu of the use tax imposed by Section (2) of this Article and shall be the obligation of and be paid by the new resident.

(4) There is hereby levied a tax in the sum of Five Dollars (\$5) upon any transaction involving the even exchange of two (2) motor vehicles which tax shall be paid by each party to the transaction.

(5) There is hereby levied a tax in the sum of Ten Dollars (\$10) upon any gift of a motor vehicle which tax shall be paid by the donee.

(6) There is hereby imposed a tax on the gross rental receipts from the rental of a motor vehicle; the tax shall be at the rate of four percent (4%) on the gross rental receipts. The tax shall be the obligation of and be paid to the Comptroller by the owner of the motor vehicle. Except for motor vehicles which are stolen and not recovered or destroyed, the total amount of gross rental receipts tax due and payable to the Comptroller by the owner, as defined

in Section (J)(i) of Article 6.03, from the rental of a motor vehicle registered pursuant to the provisions of Article 6.041 may not be less than the amount of motor vehicle sales or use tax imposed by Section (1) or (2) of this Article. No motor vehicle sales or use tax is due as long as the motor vehicle is registered as a rental vehicle pursuant to the provisions of Article 6.041.

(7) There is hereby levied a use tax in the sum of Twenty Dollars (\$20) upon any person to whom any metal dealer plate is issued by the Texas Highway Department pursuant to the provisions of Article 6686, Revised Civil Statutes of Texas, 1925, as amended. The tax shall be paid on each metal plate issued and shall be in lieu of any other tax levied under this Chapter. The taxes levied by this section shall be paid to the Texas Highway Department, which Department shall deposit said funds in the State Treasury to be credited in the same manner as other taxes collected under this Chapter. The tax shall be paid at the same time application is made for the issuance of any metal dealer plate and the Texas Highway Department shall refuse to issue any such plate until said tax is paid.

(8) When a lessor-purchaser acquires a motor vehicle that is to be leased to a public agency, he is not required to pay the tax imposed by this Chapter if he presents to the Tax Assessor-Collector a form prescribed and provided by the Comptroller showing the identification of the motor vehicle and the name and address of the lessor and the lessee and verified by the lessor and an officer of the public agency to which the motor vehicle is to be leased and operated with exempt license number plates issued under Article 6675a-3aa, Title 116, Revised Civil Statutes of Texas, 1925, as amended. When a motor vehicle for which the tax has not been paid under this section is no longer leased to a public agency, the owner shall notify the Comptroller of Public Accounts of the fact on a form prescribed and provided by the Comptroller and shall pay the tax on the motor vehicle based on the owner's book value at the rate prescribed by this Article.

The taxes levied by or under this Chapter shall be in addition to any and all license fees and taxes levied by or under any other law of this State. [Amended by Acts 1975, 64th Leg., p. 167, ch. 71, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2308, ch. 719, art. 10, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 629, ch. 233, § 1, eff. Sept. 1, 1977.]

Section 6 of the 1977 amendatory act provided: "This Act takes effect September 1, 1977."

Art. 6.03. Title Definitions

The following words shall have the following meaning unless a different meaning clearly appears from the context.

[See Compact Edition, Volume 2 for text of (A)]

(B) Retail Sale. The term "retail sale" as herein used shall include all sales of motor vehicles except those whereby the purchaser acquires a motor vehicle for the exclusive purpose of resale and not for use and shall not include those operated under and in accordance with the terms of Article 6686, Revised Civil Statutes of Texas, 1925, as amended.

[See Compact Edition, Volume 2 for text of (C)]

(D) Total Consideration.

[See Compact Edition, Volume 2 for text of (D)(1) and (2)]

(3) Any person engaging in the business of making sales, rentals, or leases of motor vehicles who has obtained a certificate of title to a motor vehicle which he uses for personal or business purposes may deduct the fair market value of such vehicle from the "total consideration" when such person purchases another motor vehicle upon which he obtains a certificate of title as a substitute vehicle for personal or business use and the original vehicle is offered for sale.

(E) Rental or Renting. Those terms as herein used shall mean the agreeing by the owner to give exclusive use of a motor vehicle to another for a consideration and for a period of time not to exceed 180 days under any one agreement. The term "rental" includes any agreement by an original manufacturer of motor vehicles to give exclusive use of a motor vehicle to another for consideration and any agreement to give exclusive use of a motor vehicle to another for re-rental purposes, regardless of the period of time covered by the agreement.

(F) Lease or Leasing. Those terms as herein used shall mean the agreeing by the owner to give exclusive use of a motor vehicle to another for a consideration and for a period of time exceeding 180 days under such agreement; provided an agreement by an original manufacturer to give exclusive use of a motor vehicle to another for consideration or an agreement to give exclusive use of a motor vehicle to another for re-rental purposes, regardless of the period of time covered by the agreement, is not included in the terms.

(G) "Public agency" means a department, commission, board, office, institution, or other agency of the State of Texas or of a county, city, town, school district, hospital district, water district, or other special district or authority or political subdivision created by or pursuant to the constitution or the statutes of this state. The term also means the unincorporated agencies and instrumentalities of the United States of America.

(H) Person. The term "person" includes individuals, firms, corporations, and associations.

(I) Gross rental receipts. "Gross rental receipts" means money or the value of property received or promised as consideration to the owner of a motor vehicle for the rental of the vehicle. Gross rental receipts does not include:

(i) separately stated fees or charges for insurance;

(ii) assessments for damages to the rental vehicle occurring during a rental agreement period;

(iii) receipts for motor fuel sold by the owner of the motor vehicle if the receipts from motor fuel sales are separately stated as motor fuel receipts; or

(iv) discounts.

(J) "Owner of a motor vehicle" means:

(i) a person named in the certificate of title of the vehicle as the owner; or

(ii) a person having the exclusive use of a vehicle by reason of a rental and who holds the motor vehicle for re-rental.

[Amended by Acts 1975, 64th Leg., p. 2308, ch. 719, art. 10, § 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 629, ch. 233, § 1, eff. Sept. 1, 1977.]

Art. 6.04. Collection of Taxes

(1) Except as otherwise provided in this Article, the taxes levied by this Chapter shall be collected by the Tax Collector and Assessor of the county in which an application for registration and for a Texas Certificate of Title is made for a motor vehicle. The Tax Collector and Assessor shall refuse to accept an application for the registration of or for the Texas Certificate of Title to a motor vehicle until the applicable tax levied by this Chapter is paid.

(2) Persons doing business in Texas who register motor vehicles for use on the public highways of this State pursuant to the provisions of Section 14, Chapter 110, Acts of the 47th Legislature, Regular Session, 1941 (Article 6675a-16, Vernon's Texas Civil Statutes), shall pay the motor vehicle use tax imposed by Section (2) of Article 6.01 to the Comptroller on or before the date the motor vehicle is brought into this State.

(3) The tax on gross rental receipts levied by this Chapter shall be reported and paid to the Comptroller in the same manner as the Limited Sales, Excise and Use Tax is reported and paid by retailers under Article 20.05 of this Title. Motor vehicle owners required to collect, report, and pay taxes on gross rental receipts imposed by this Chapter shall register as retailers with the Comptroller and obtain from him a Motor Vehicle Retailer's Permit in the same manner as required by Article 20.031 of this Title.

(4) The motor vehicle owner required to collect, report, and pay the taxes on the gross rental receipts imposed by this Chapter shall add the tax to the rental charge, and when added, the tax shall consti-

tute a part of the rental charge, shall be a debt of the person renting the motor vehicle to the owner until paid, and shall be recoverable at law in the same manner as the rental charge. Nothing in this Section or any other provision of this Chapter precludes the Comptroller from proceeding against the person renting the motor vehicle for unpaid gross rental receipts taxes on the rental.

(5) When an owner as defined in Section (J)(i) of Article 6.03 of a motor vehicle previously registered pursuant to the provisions of Article 6.041 ceases to use the vehicle for rental, he shall report and remit on the next succeeding report required to be filed with the Comptroller any unremitted portion of minimum gross rental receipts tax required by Section (6) of Article 6.01.

(6) When a motor vehicle upon which the motor vehicle sales or use tax has been paid is used for rental, the owner shall collect the gross rental receipts tax imposed by this Chapter from the person renting the vehicle but is entitled to credit an amount equal to the motor vehicle sales or use tax paid by such owner to the Comptroller against the amount of gross rental receipts tax due and payable to the Comptroller from the rental of the motor vehicle. The credit provided herein is not transferable and cannot be applied against the amount of gross rental receipts tax due and payable to the Comptroller from the rental of any other motor vehicle belonging to the same owner.

(7) The motor vehicle owner required to collect, report, and pay the taxes on the gross rental receipts imposed by this Chapter is entitled to credit an amount equal to the taxes on the gross rental receipts of a motor vehicle paid by such owner to any other state in calculating the amount of the minimum gross rental receipts tax due and payable to the Comptroller. The credit provided herein is not transferable and cannot be applied against the amount of minimum gross rental receipts tax due and payable to the Comptroller from the rental of any other motor vehicle belonging to the same owner.

[Amended by Acts 1977, 65th Leg., p. 629, ch. 233, § 1, eff. Sept. 1, 1977.]

Art. 6.041. Registration of Motor Vehicle Purchased for Rental

(1) When a motor vehicle is purchased for rental, the owner may furnish the County Tax Collector and Assessor a rental certificate in lieu of the motor vehicle sales or use tax imposed by Section (1) or (2) of Article 6.01; whereupon the Tax Collector and Assessor shall accept the motor vehicle for registration and issue a receipt for the license and title application.

(2) A rental certificate may be furnished by a dealer licensed pursuant to the provisions of Article

6686, Revised Civil Statutes of Texas, 1925, as amended, or by an owner for use in a rental business that rents at least five (5) different motor vehicles within any twelve (12) month period.

(3) The rental certificate shall be in a form promulgated by the Comptroller and shall:

(i) be signed by the owner and bear the name and the address of the owner; and

(ii) give the owner or dealer's license number or a statement by the owner that the rental business of the owner meets the activity requirement of Section (2) of this Article; and

(iii) include the Motor Vehicle Identification Number, the total consideration paid or to be paid, and the amount of motor vehicle sales or use tax that would have been due had a rental certificate not been furnished.

[Added by Acts 1977, 65th Leg., p. 634, ch. 233, § 2, eff. Sept. 1, 1977.]

Art. 6.042. Revocation; Suspension of Motor Vehicle Retail Seller's Permit; Procedure

(1) Whenever any motor vehicle owner required by Article 6.04 to obtain a Motor Vehicle Retail Seller's Permit fails to comply with any provision of this Chapter or with any rule or regulation of the Comptroller relating to such tax prescribed and adopted under this Chapter, the Comptroller upon hearing, after giving the person twenty (20) days' notice in writing specifying the time and place of hearing and requiring him to show cause why his permit or permits should not be revoked, may revoke or suspend any one or more of the permits held by the person.

(2) The Comptroller shall give to the person written notice of the suspension or revocation of any of his permits.

(3) The notices may be served personally or by mail in the manner prescribed for service of notice of a deficiency determination.

(4) The Comptroller shall not issue a new permit after the revocation of a permit unless he is satisfied that the former holder of the permit will comply with the provisions of this Chapter and the rules and regulations of the Comptroller. The Comptroller may prescribe the terms under which a suspended permit may be reissued.

(5) The action of the Comptroller may be appealed by the taxpayer in the same manner as a final deficiency determination.

[Added as art. 6.041 by Acts 1975, 64th Leg., p. 2315, ch. 719, art. XVII, § 1, eff. Sept. 1, 1975. Renumbered as art. 6.042 by Acts 1977, 65th Leg., p. 634, ch. 233, § 3, eff. Sept. 1, 1977.]

Art. 6.05. Affidavits and Sales Invoices as to Consideration, Records

(1) The purchaser and seller shall make a joint affidavit setting forth the then value in dollars of the total consideration, whether in money or other things of value, received or to be received by the seller or his nominee in a retail sale. Where a transfer of title to a motor vehicle is made either as the result of an even exchange or of a gift, the two (2) principal parties to such a transaction shall make a joint affidavit setting forth the facts describing the nature of the transaction. In an even exchange no transfer of title shall be accomplished until the two (2) principal parties have paid a tax of Five Dollars (\$5) each to the Tax Assessor and Collector. Where any party to a sale, exchange, even exchange or gift is a corporation, the president, vice president, secretary, manager or other authorized officer of the corporation shall make the affidavit for the corporation. When any tax imposed by this Chapter is paid to the Tax Assessor and Collector, the person upon whom the tax is imposed by this Act shall file with the Tax Assessor and Collector the joint affidavit required by this Article. The Tax Collector and Assessor shall keep copies of the affidavits until they are called for by the Comptroller of Public Accounts or his representative for auditing.

Any person who signs the joint affidavit knowing that it is false in any material fact is guilty of a felony and upon conviction is punishable by imprisonment for not more than five (5) years nor less than two (2) years or by a fine of not more than One Thousand Dollars (\$1,000) or by both a fine and imprisonment.

[See Compact Edition, Volume 2 for text of (2)]

(3) The owner of a motor vehicle used for rental purposes is required to keep records and supporting documents containing the total consideration paid, or to be paid; the amount of motor vehicle sales or use tax paid, if any; the amount of gross rental receipts; and the amount of gross rental receipts tax remitted to the Comptroller with regard to each motor vehicle used for rental. The owner must keep the records and documents for at least four (4) years from the date of purchase of the motor vehicle. No mileage records are required.

[Amended by Acts 1977, 65th Leg., p. 629, ch. 233, § 1, eff. Sept. 1, 1977.]

Art. 6.06. Penalties and Interest; Redetermination and Hearings

(1) If the Comptroller upon audit of the records of the seller shall determine that the amount of tax due on any transaction was incorrectly reported on the joint affidavit so that the tax actually paid was less than that actually due or that the seller failed to execute and deliver to the purchaser a joint affidavit and any other documents necessary to register the

vehicle, the seller shall then be liable for the full amount of tax determined to be due plus a penalty of ten per cent (10%) of the amount of tax due and interest on the amount of tax due computed at the rate of six per cent (6%) per annum beginning sixty (60) days from the date on which the joint affidavit was executed. The Comptroller shall notify the seller in writing of his determination and the seller shall, within ten (10) days following the receipt of such notice, pay to the Comptroller the amount of back taxes, penalty and interest. The Comptroller shall promulgate rules and regulations under which the seller may petition for a redetermination of liability and shall grant the seller an oral hearing. The Comptroller may decrease or increase the amount of his determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the Comptroller at or before the hearing, in which case the seller shall be entitled to a thirty-day continuance of the hearing to allow him to obtain and produce further evidence applicable to the items upon which the increase is based.

[See Compact Edition, Volume 2 for text of (2)]

[Amended by Acts 1977, 65th Leg., p. 634, ch. 233, § 4, eff. Sept. 1, 1977.]

Art. 6.09. Exemptions

[See Compact Edition, Volume 2 for text of (1)]

(2) The taxes imposed by this Chapter do not apply to fire trucks, ambulances, or other motor vehicles used exclusively for fire fighting purposes or for emergency medical services when purchased by a volunteer fire department. "Volunteer fire department" means any company, department, or association organized for the purpose of answering fire alarms and extinguishing fires, or answering fire alarms, extinguishing fires, and providing emergency medical services, the members of which receive no compensation or nominal compensation for their services thus rendered.

[Text of Section (3) added by Acts 1977, 65th Leg., p. 635, ch. 233, § 5]

(3) The taxes imposed by this Chapter do not apply to the sale of a motor vehicle to or use of a motor vehicle by a public agency; provided the vehicle is operated with exempt license number plates issued pursuant to Section 3-AA, Chapter 88, General Laws, Acts of the 41st Legislature, 2nd Called Session, 1929, as amended (Article 6675a-3aa, Vernon's Texas Civil Statutes).

[Text of Section (3) added by Acts 1977, 65th Leg., p. 1011, ch. 375, § 1]

(3) There are exempted from the taxes imposed by this Chapter the receipts from the sale or rental and the use of a motor vehicle that is designed to carry more than six (6) passengers, is sold to or used

by a church or religious society, and is used primarily for the purpose of providing transportation to and from church or religious services or meetings. This exemption does not apply to a vehicle registered as a passenger vehicle and the primary use of which is for the personal or official needs or duties of a minister.

[Text of Section (3) added by Acts 1977, 65th Leg., p. 1121, ch. 417, § 1]

(3)(a) There are exempted from the taxes imposed by this chapter the receipts from the sale and use of a motor vehicle that is driven primarily by an orthopedically handicapped person. Exemption under this section shall extend to privately owned vehicles which require modification for operation by an orthopedically handicapped person. Exemption under this section shall not extend to any vehicle owned or operated by any corporation, partnership, limited partnership, or association.

(b) The comptroller shall promulgate rules and regulations to ensure that any vehicle exempt from taxation under this section is used primarily for the purposes specified herein. Any person seeking exemption from taxation under this section shall present such information or documents as the comptroller may require pursuant to granting any exemption.

(c) For the purposes of this section, an "orthopedically handicapped person" is one who is so physically impaired that he is unable to operate a motor vehicle which has not been specially modified.

[Text of Sections (4) and (5) added by Acts 1977, 65th Leg., p. 635, ch. 233, § 5]

(4) The taxes imposed by this Chapter do not apply to the rental of a motor vehicle to a public agency. The tax which would have been remitted on gross rental receipts without this exemption shall be deemed to have been remitted for the purpose of calculating the minimum gross rental receipts tax due and payable to the Comptroller under the provisions of Section (6) of Article 6.01.

(5) The taxes imposed by this Chapter on the gross rental receipts from the rental of a motor vehicle do not apply to the rental of a motor vehicle for the purpose of re-rental. The minimum gross rental receipts tax imposed by Section (6) of Article 6.01 remains the obligation of the owner as defined in Section (J)(i) of Article 6.03; provided the owner may credit all gross rental receipts taxes remitted to the Comptroller on the re-rental of a motor vehicle registered in accordance with Article 6.041 for the purpose of calculating the amount of the minimum gross rental receipts tax due and payable to the Comptroller. A person authorized by Article 6.041 to register motor vehicles for rental may issue an exemption certificate to the owner of the motor vehicle. If the owner takes an exemption certificate

in good faith he is relieved of the burden of proving that the vehicle was rented for the purpose of re-rental.

[Amended by Acts 1977, 65th Leg., p. 635, ch. 233, § 5, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 1011, ch. 375, § 1, eff. June 10, 1977; Acts 1977, 65th Leg., p. 1121, ch. 417, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1393, ch. 559, § 1, eff. Aug. 29, 1977.]

CHAPTER 7. CIGARETTE TAX LAW

Art. 7.08. Authority of Comptroller

[See Compact Edition, Volume 2 for text of (1) to (8)]

(9) The State Treasurer shall require that payment in full for stamps or meter settings be made within fifteen (15) days from the date the stamps or the set meter are received by the distributor. Upon receipt of an order for stamps or the setting of a meter, the State Treasurer shall snip such stamps or set such meter in compliance with the order and transmit with the stamps or the meter a certified statement showing the amount due for said stamps or meter setting, and the distributor shall forward a remittance as payment in full of the amount certified as due by the State Treasurer within fifteen (15) days after receipt of the stamps or the set meter and the certified statement. However, in order to secure the payments of the tax as provided in this Section, a distributor must file with the State Treasurer a surety bond, approved by the State Treasurer and the Attorney General, with a corporate surety authorized to do business in this State, conditioned upon payment in full for the stamps or meter settings within the time specified in this Section. Payment by a company check or by personal check of a bonded distributor shall be treated as cash payment when received by the State Treasurer for payment of stamps or meter settings received by the bonded distributor. The State Treasurer shall fix the amount of the bond, in an amount equal to one and one-half times the credit in stamps and/or meter settings requested by the distributor and approved by the State Treasurer for the purchase of stamps and/or meter settings during the succeeding month. Any distributor who fails to forward the proper remittance by the due date shall be notified by the State Treasurer within five (5) days after the due date to appear within five (5) days before the Treasurer to show cause why he should not be denied the privilege of ordering stamps as herein provided, and if such distributor shall fail to show good cause, the Treasurer is hereby authorized to discontinue the shipment of stamps or the setting of meters as provided in this Section and to enforce payment of the bond.

[Amended by Acts 1975, 64th Leg., p. 2321, ch. 719, art. 26, § 1, eff. Sept. 1, 1975.]

CHAPTER 8. CIGARS AND TOBACCO PRODUCTS TAX

Art. 8.02. Tax Levy and Rate

There is hereby levied a tax upon the "first sale" of cigars and tobacco products as those terms are defined herein, which tax shall be determined by the following schedule:

(a) Upon cigars of all description weighing not more than three (3) pounds per one thousand (1,000), one cent (1¢) for each ten (10) cigars or fraction thereof.

(b) Upon cigars of all description weighing more than three (3) pounds per one thousand (1,000) sold at factory list price, exclusive of any trade discount, special discount, or deals for not more than three and three-tenths cents (3.3¢) each, seven dollars and fifty cents (\$7.50) per one thousand (1,000).

(c)(1) Upon cigars of all description weighing more than three (3) pounds per one thousand (1,000) sold at factory list price, exclusive of any trade discount, special discount, or deals for over three and three-tenths cents (3.3¢) each, containing no substantial amount of non-tobacco ingredients, eleven dollars (\$11) per thousand (1,000).

(2) [Deleted]

(3) Upon cigars of all description weighing more than three (3) pounds per one thousand (1,000) sold at factory list price exclusive of any trade discount, special discount, or deals for over three and three-tenths cents (3.3¢) each, containing a substantial amount of non-tobacco ingredients, fifteen dollars (\$15) per thousand (1,000).

(4) All cigars described in this Paragraph (c) are presumed to contain a substantial amount of non-tobacco ingredients unless the report to the Comptroller made for the purpose of establishing the tax upon such cigars is accompanied by an affidavit, by the manufacturer when the manufacturer prepares such report or by both the manufacturer and the distributor, when the distributor prepares such report, stating that specific cigars described in such report contain no sheet wrapper, sheet binder, or sheet filler.

(d) Upon all chewing tobacco and all smoking tobacco including granulated, plug-cut, crimp-cut, ready-rubbed, and other kinds and forms of tobacco prepared in such manner as to be suitable for smoking in a pipe or cigarette: the tax shall be twenty-five percent (25%) of the factory list price, exclusive of any trade discount, special discount, or deals. [Amended by Acts 1975, 64th Leg., p. 2319, ch. 719, art. 23, § 1, eff. July 1, 1975; Acts 1977, 65th Leg., p. 1623, ch. 637, § 1, eff. Aug. 29, 1977.]

Section 2 of art. XXIII of the 1975 amendatory act provides: "This Article takes effect July 1, 1975."

CHAPTER 11. MISCELLANEOUS TAXES BASED ON GROSS RECEIPTS

Art. 11.01. Repealed by Acts 1975, 64th Leg., p. 2306, ch. 719, art. IV, § 1, eff. Jan. 1, 1976

Art. 11.05. Repealed by Acts 1975, 64th Leg., p. 2306, ch. 719, art. III, § 1, eff. Jan. 1, 1976

CHAPTER 12. FRANCHISE TAX

Art. 12.01. Base and Rate of Tax

(1) Except as otherwise provided in this chapter, every domestic and foreign corporation heretofore or hereafter chartered or authorized to do business in Texas or doing business in Texas shall file such reports as are required by Articles 12.08 and 12.19 and pay to the Comptroller a franchise tax for the period from May 1 of each year to and including April 30 of the following year, based on whichever of the following Subsections (a), (b), or (c) shall yield the greatest tax:

(a) Basic Tax. Four Dollars and Twenty-five Cents (\$4.25) per \$1,000 or fractional part thereof applied to that portion of the sum of the stated capital, surplus, and undivided profits the sum of which for the purposes of this chapter is hereafter referred to as "taxable capital," allocable to Texas in accordance with Article 12.02. As used in this chapter, the phrase "stated capital" shall have the same meaning as defined in Article 1.02 of the Texas Business Corporation Act;

(b) Four Dollars and Twenty-five Cents (\$4.25) per \$1,000 or fractional part thereof applied to the assessed value for county ad valorem tax purposes of the real and personal property owned by the corporation in this state; or

(c) Fifty-five Dollars (\$55).

(2) Other than those corporations enjoying the use of public highways by virtue of a certificate of public convenience and necessity granted by the Railroad Commission of Texas, the corporations enumerated below shall be required to pay a franchise tax equal to one-fifth of the franchise tax imposed under Subsection (1)(a) or (1)(b) of this article, whichever is the greater, but not less than the entire tax imposed by Subsection (1)(c) of this article:

(a) corporations paying annually a tax on intangible assets as required by the laws of this state;

(b) corporations incorporated only for the purpose of owning or operating street railways or passenger bus systems in any city or town and suburbs thereof;

(c) corporations incorporated and doing business only for the purpose of maintaining or owning or operating electric interurban railways; and

(d) corporations, four-fifths or more of whose assets are invested in, and four-fifths or more of whose gross income is received from, voting common capital stock which comprises four-fifths or more of the total fully voting common capital stock of one or more corporations which are public utility corporations as defined by the laws of Texas whose rates or services are regulated, or subject to a regulation in whole or in part, by law.

[Text of sec. (6) added by Acts 1975, 64th Leg., p. 2318, ch. 719, art. XXI, § 2]

(6) A corporation may deduct from its taxable capital taxable in this state the amortized cost of a solar energy device acquired by the corporation for the production of energy or for heating or cooling and used in this State by the corporation. The cost may be amortized for any period not less than 60 months in equal monthly amounts beginning on the month the device is placed into service in this State and extending only during the period that the device is in use in this State. A corporation making a deduction under this Section shall file with the Comptroller an amortization schedule showing the period during which a deduction is to be made and on the request of the Comptroller shall provide proof of the cost of the device and of its operation in this State. A separate deduction may be taken for each device placed in service in this State by the corporation.

[Amended by Acts 1975, 64th Leg., p. 2310, ch. 719, art. 12, § 1, art. 21, § 2, eff. Sept. 1, 1975.]

Section 2 of art. XII of the 1975 Act amended article 12.03; § 3 amended article 12.06(3); § 4 repealed article 12.211; and § 5 thereof provided: "This Article is not intended to be nor shall it or any provision of it ever be construed or deemed to be 'an Act of the Legislature passed subsequent to the effective date of Public Law 91-156 [12 U.S.C.A. § 548]' as that term is used in Acts 1971, 62nd Legislature, p. 1206, Chapter 292, Article 7, Section 1, effective July 1, 1971 [see note under article 20.02, Compact Edition, volume 21."]

Art. 12.03. Corporations Exempt

(1) The franchise tax imposed by this chapter shall not apply to:

(a) an insurance company; surety, guaranty, or fidelity company; transportation company; sleeping, palace car, and dining company now required to pay an annual tax measured by their gross receipts;

(b) a corporation organized as a railway terminal corporation and having no annual net income from the business done by it;

(c) a nonprofit corporation organized for the exclusive purpose of promoting the public interest of any county, city, or town, or other area within the state;

(d) a nonprofit corporation organized for the purpose of religious worship;

(e) a nonprofit corporation organized for the purpose of providing places of burial;

(f) a nonprofit corporation organized for the purpose of holding agricultural fairs and encouraging agricultural pursuits;

(g) a nonprofit corporation organized for strictly educational purposes, including a corporation organized for the sole purpose of providing a student loan fund or student scholarships;

(h) a nonprofit corporation organized for purely public charity;

(i) a savings and loan association chartered or authorized to operate as a building or savings and loan association under the provisions of the Texas Savings and Loan Act (Article 852a, Vernon's Texas Civil Statutes);

(j) an open-end investment company, as defined in and subject to the Federal Investment Company Act of 1940 (15 U.S.Code, secs. 80a-1 et seq.), and which also is registered as such investment company under The Securities Act, as amended (Articles 581-1 et seq., Vernon's Texas Civil Statutes);

(k) a nonprofit corporation organized for the sole purpose of educating the public in the protection and conservation of fish, game, and other wildlife, as well as grasslands and forests;

(l) a nonprofit water supply or sewer service corporation organized in behalf of cities or towns pursuant to Chapter 76, Acts of the 43rd Legislature, 1st Called Session, 1933, as amended (Article 1434a, Vernon's Texas Civil Statutes);

(m) a nonprofit corporation organized for the purpose of constructing, acquiring, owning, leasing, or operating a natural gas facility in behalf of and for the benefit of a city or residents of a city;

(n) a nonprofit corporation organized for the purpose of providing convalescent homes or other housing for persons 62 years of age or older or for handicapped or disabled persons without regard to whether the corporation is for purely public charity;

(o) a nonprofit corporation engaged exclusively in the business of owning residential property for the purpose of providing cooperative housing for any person or persons;

(p) a corporation exempted from the payment of a franchise tax by the provisions of any of the laws of this state other than this chapter;

(q) a nonprofit corporation which has been exempted from the federal income tax under the provisions of Section 501(c)(3), (4), (5), (6), or (7) of the Internal Revenue Code of 1954, as amended, as it existed on January 1, 1975; and

(r) corporations engaged exclusively in the business of manufacturing, selling, or installing solar energy devices, which term, for the pur-

poses of this chapter, means a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power or both by means of collecting and transferring solar-generated energy and includes mechanical or chemical devices having the capacity for storing solar-generated energy for use in heating or cooling or in the production of power.

(2) Each corporation eligible for exemption from the franchise tax under Subdivision (q) of Section 1 of this article shall furnish to the comptroller evidence sufficient to establish that it is exempt from the federal income tax. The federal exemption may be established by furnishing to the comptroller no later than the end of the month nearest the expiration of 15 months from the date of charter or certificate or from September 1, 1975, whichever is later, a copy of the letter of exemption issued to the corporation by the Internal Revenue Service. If a letter of exemption has not been timely issued by the Internal Revenue Service, the corporation may furnish to the comptroller within such 15-month period evidence that the corporation has in good faith filed an application for the federal exemption and, except as indicated in Section (6) of this article, the franchise tax exemption, when finally established under either of the above procedures, will be recognized as of the date of the corporation's charter or certificate.

(3) If a corporation timely furnishes evidence to the comptroller that it has made application in good faith for a federal income tax exemption, and if the application is finally denied by the Internal Revenue Service, no penalty provided in this chapter shall be added to the franchise tax owed by such corporation from the date of its charter or certificate to the date of such final denial.

(4) If a corporation's exemption from the federal income tax is withdrawn by the Internal Revenue Service for failure of the corporation to qualify or to maintain its qualification therefor, the corporation's franchise tax exemption shall terminate on April 30 next following the effective date of withdrawal of the federal exemption, and thereafter such corporation shall be subject to and shall be liable for the franchise tax levied by this chapter.

(5) Any corporation, whether or not eligible for exemption under Section 501(c)(3), (4), (5), (6), or (7) of the Internal Revenue Code of 1954, as amended, as it existed on January 1, 1975, may elect to apply to the comptroller for exemption under an applicable provision of Section (1) of this article, by furnishing in accordance with rules and regulations promulgated by the comptroller evidence sufficient to establish its exemption. If the application is submitted to the comptroller no later than the end of the month after the expiration of 15 months from the date of charter

or certificate, or from September 1, 1975, whichever is later, except as indicated in Section (6) of this article, the exemption when finally established will be recognized as of such date of charter or certificate.

(6) The provisions of this article do not require any additional application, report, letter of exemption, or other evidence from a corporation eligible for exemption under Section (1) of this article, which corporation was granted exemption by the comptroller or by the secretary of state prior to September 1, 1975. Provided that nothing in this article or in any other laws of this state shall be construed to authorize a refund or credit for franchise tax paid prior to September 1, 1975, by a corporation eligible for or determined by the comptroller to be exempt under this article from the payment of franchise tax, unless the comptroller determines that the corporation through mistake of law or fact overpaid the franchise tax due by it prior to September 1, 1975. Provided, further, that if a corporation which was granted an exemption prior to September 1, 1975, no longer qualifies for exemption under Section (1) of this article, such previously granted exemption shall terminate on April 30, 1976, and thereafter such corporation shall be subject to and shall be liable for the franchise tax levied by this chapter.

[Amended by Acts 1975, 64th Leg., p. 2311, ch. 719, art. 12, § 2, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 1439, ch. 584, § 1, eff. Aug. 29, 1977.]

Art. 12.06. Initial Tax to be Paid

[See Compact Edition, Volume 2 for text of (1) and (2)]

(3) Effective September 1, 1975, each foreign corporation doing business in this State shall have on deposit with the Comptroller of Public Accounts the Five Hundred Dollars (\$500) trust amount described in Section (2) above. Upon determination by the comptroller that a foreign corporation has maintained a continuous status in good standing for three (3) consecutive reporting years, or upon determination by the comptroller that a corporation is exempt from payment of the franchise tax under Article 12.03 of this chapter or other laws of this state, such corporation shall be exempt thereafter from the security requirements of this article, and the comptroller shall return the trust deposit to the corporation; provided, however, that such exemption from the security requirement shall continue only until such time that it is determined by the comptroller that the corporation has failed to file all reports or to pay the franchise tax or other payments required by this chapter, or that the corporation no longer qualifies for exemption from the franchise tax, at which time the comptroller shall notify the corporation that a cash trust deposit in the amount of Five Hundred Dollars (\$500) must be furnished the comptroller's office as required by this article.

[Amended by Acts 1975, 64th Leg., p. 2313, ch. 719, art. 12, § 3, eff. Sept. 1, 1975.]

Art. 12.12. Authority of Comptroller of Public Accounts, Rules and Regulations

All reports to the Comptroller of Public Accounts required by this Chapter shall contain such information as the Comptroller of Public Accounts may require. He shall have authority to make and publish rules and regulations not inconsistent with the Constitution or laws of this State or of the United States for the enforcement of this Chapter. The Comptroller of Public Accounts may require any corporation to furnish such additional information from its books and records as may be necessary in determining the amount of taxes that may be due hereunder. The Comptroller of Public Accounts or his authorized representative, or the State Auditor or his authorized representative, shall have full and complete authority to investigate and inquire into and examine the books and records of any such corporation for the purpose of ascertaining the correctness of its franchise tax liability.

In addition to any other requirements established by the Comptroller of Public Accounts, corporations shall provide the following information on the Corporate Franchise Tax Form, but in no event more than once a year, which the Comptroller of Public Accounts shall forward to the Secretary of State to be available for public inspection:

(1) the name, title, and mailing address of each director and officer of the corporation; and

(2) the name of each corporation in which the corporation filing the report owns a 10 percent or greater interest and the percentage owned by the corporation; the name of each corporation which owns a 10 percent or greater interest of the corporation filing the report.

Any foreign corporation doing business in Texas under a Certificate of Authority granted under the laws of this State, or any officer or agent thereof, or any domestic corporation which shall fail or refuse to permit the Comptroller of Public Accounts, or his authorized representative, or the State Auditor or his authorized representative, to examine its books and records, whether the same be situated within this State or any other state within the United States, shall thereby forfeit its right to do business in this State; and its Certificate of Authority or charter shall be cancelled or forfeited.

[Amended by Acts 1977, 65th Leg., p. 1191, ch. 458, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 amendatory act provided:

"The unexpended balances from the appropriations for the office of the Secretary of State for the year ending August 31, 1977, are appropriated to the Secretary of State for the fiscal year ending August 31, 1978, and the unexpended balance from this 1977-1978 appropriation is appropriated to the Secretary of State for the fiscal year ending August 31, 1979, for the purpose of implementing the provisions of this Act."

Art. 12.14. Failure to Pay Tax and File Reports

(1) Any corporation, either domestic or foreign, which shall fail to pay any franchise tax provided for in this Chapter when the same shall become due and payable under the provisions of this Chapter or shall fail to file any report provided for in this Chapter when the same shall become due, shall thereupon become liable to a penalty of five per cent (5%) of the amount of such franchise tax due by such corporation, and if said report has not been filed or said taxes have not been paid within thirty (30) days from the date said report or taxes shall have become due, an additional five per cent (5%) of such tax shall be forfeited; said penalty shall never be less than One Dollar (\$1). Delinquent taxes shall draw interest at the rate of six per cent (6%) per annum beginning sixty (60) days from the date due.

(2) If the reports required by Articles 12.08, 12.09, and 12.19 be not filed in accordance with the provisions of this Chapter, or if the amount of such tax and penalties be not paid in full on or before September 15 of each year or, when an initial tax report or payment is required, on or before ninety (90) days after the time the initial report and payment is required, such corporation shall for such default forfeit its right to do business in this State; which forfeiture shall be consummated without judicial ascertainment by the Comptroller of Public Accounts. Any corporation whose right to do business shall be thus forfeited shall be denied the right to sue or defend in any court of this State, except in a suit to forfeit the charter or certificate of authority of such corporation. In any suit against such corporation on a cause of action arising before such forfeiture, no affirmative relief shall be granted to such corporation unless its right to do business in this State shall be revived as provided in this Chapter.

(3) Each director and officer of any corporation whose right to do business within this State shall be so forfeited shall, as to any and all debts of such corporation, which shall include all franchise taxes and penalties thereon which shall become due and payable subsequent to the date of such forfeiture, and which may be created or incurred within this State, after the report or payment becomes due and before the revival of the right of such corporation to do business, be deemed and held liable thereon in the same manner and to the same extent as if such directors and officers of such corporation were partners. However, any officer or director may avoid liability if he shows that the debt was created (1) over his objection, or (2) without his knowledge, if the exercise of reasonable diligence to acquaint himself with the affairs of the corporation would not have revealed the intention to create the debt.

[Amended by Acts 1977, 65th Leg., p. 1692, ch. 671, § 1, eff. Aug. 29, 1977.]

Art. 12.15. Notice of Forfeiture

The Comptroller of Public Accounts shall notify each domestic and foreign corporation which may be or become subject to a franchise tax under the laws of this State and which has failed to file such report or pay franchise tax on or before the time specified by this Chapter that unless such overdue report is filed or such overdue tax together with said penalties thereon shall be paid on or before September 15 of that year or, if an initial report or tax payment is required on or before ninety (90) days after the day on which the initial report or payment was required to be made, the right of such corporation to do business in this State will be forfeited without judicial ascertainment. The notice must be mailed during the 45-day period following the day on which the report or payment was required to be made. This notice may be either written or printed and shall be verified by the seal of the office of the Comptroller of Public Accounts, and shall be addressed to such corporation and mailed to the post office named in its articles of incorporation as its principal place of business, or to any other known place of business of the corporation. A record of the date of mailing this notice shall be kept in the office of the Comptroller of Public Accounts, and such notice and record thereof shall constitute legal and sufficient notice thereof for all purposes of this Chapter. Any corporation whose right to do business may have been forfeited, as provided in this Chapter, shall be relieved from such forfeiture by paying to the Comptroller of Public Accounts at any time prior to the forfeiture of the charter or certificate of authority of such a corporation as hereinafter provided, the full amount of the franchise taxes, penalties, and interest due by it. When such taxes, penalties, and interest shall be paid to the Comptroller of Public Accounts, he shall revive the right of the corporation to do business within the State. If any domestic corporation or foreign corporation, whose right to do business within this State shall hereafter be forfeited under the provisions of this Chapter, shall fail to pay the Comptroller of Public Accounts within one hundred and twenty (120) days after such forfeiture, the amount necessary to entitle it to have its right to do business revived under the provisions of this Chapter, such failure shall constitute sufficient ground for the forfeiture of the charter of such domestic corporation, or of the certificate of authority of such foreign corporation. It shall be the duty of the Comptroller of Public Accounts, after such one hundred and twenty (120) days next following such forfeiture, to certify to the Attorney General for bringing suit under Article 12.16 of this Chapter and to the Secretary of State for administrative forfeiture under Article 12.17 of this Chapter the names of all corporations whose right to do business within the State has been forfeited as hereinbefore provided. The Attorney General, upon receiving

such certificate, shall forthwith institute suit against such corporations certified to him by the Comptroller of Public Accounts as provided in Article 12.16 of this Chapter.

[Amended by Acts 1977, 65th Leg., p. 1693, ch. 671, § 2, eff. Aug. 29, 1977.]

Art. 12.211. Repealed by Acts 1975, 64th Leg., p. 2314, ch. 719, art. XII, § 4, eff. Sept. 1, 1975

CHAPTER 13. TAX ON COIN-OPERATED MACHINES

Art. 13.01. Definitions

The following words, terms and phrases as used in this Chapter are defined as follows:

(1) The term "owner" means any person, individual, firm, company, association or corporation owning any "coin-operated machine" in this State.

(2) The term "operator" means any person, firm, company, association or corporation who exhibits, displays or permits to be exhibited or displayed, in a place of business other than his own, any "coin-operated machine" in this State.

(3) The term "coin-operated machine" means every machine or device of any kind or character which is operated by or with coins, or metal slugs, tokens or checks, "music coin-operated machines" and "skill or pleasure coin-operated machines" as those terms are hereinafter defined, shall be included in such terms.

(4) The term "music coin-operated machine" means every coin-operated machine of any kind or character, which dispenses or vends or which is used or operated for dispensing or vending music and which is operated by or with coins or metal slugs, tokens or checks. The following are expressly included within said term: phonographs, pianos, graphophones, and all other coin-operated machines which dispense or vend music.

(5) The term "skill or pleasure coin-operated machines" means every coin-operated machine of any kind or character whatsoever, when such machine or machines dispense or are used or are capable of being used or operated for amusement or pleasure or when such machines are operated for the purpose of dispensing or affording skill or pleasure, or for any other purpose other than the dispensing or vending of "merchandise or music" or "service" exclusively, as those terms are defined in this Chapter. The following are expressly included within said term: marble machines, marble table machines, marble shooting machines, miniature race track machines, miniature football machines, miniature golf machines, miniature bowling machines,

and all other coin-operated machines which dispense or afford skill or pleasure. Provided that every machine or device of any kind or character which dispenses or vends merchandise, commodities or confections or plays music in connection with or in addition to such games or dispensing of skill or pleasure shall be considered as skill or pleasure machines and taxed at the higher rate fixed for such machines.

(6) The term "service coin-operated machines" means every pay toilet, pay telephone and all other machines or devices which dispense service only and not merchandise, music, skill or pleasure.

(7) The term "commission" means the Texas Amusement Machine Commission.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.02. Amount of Tax

(1) Every "owner", save an owner holding an import license and holding coin-operated machines solely for re-sale, who owns, controls, possesses, exhibits, displays, or who permits to be exhibited or displayed in this State any "coin-operated machine" shall pay, and there is hereby levied on each "coin-operated machine", as defined herein in Article 13.01, except as are exempt herein, an annual occupation tax of \$15.00.

(2) Provided that the first money taken from each coin-operated machine each calendar year shall be paid to the owner to reimburse the payment of that year's annual occupation tax levied above and those levied by any city or county. No owner shall agree or contract or offer to agree to contract to waive this reimbursement either directly or indirectly. No owner shall agree or contract with a bailee or lessee of a coin-operated machine to compensate said bailee or lessee in excess of fifty percent (50%) of the gross receipts of such machine after the above reimbursement has been made. In addition to all other penalties provided by law the commission shall revoke any license held under Article 13.17 by any person who violates this Subsection.

(3) The commission may provide a duplicate permit if a valid permit has been lost, stolen, or destroyed. The fee for a duplicate permit is \$2. [Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.03. Exemptions From Tax

Gas meters, pay telephones, pay toilets, food vending machines, confection vending machines, beverage vending machines, merchandise vending machines, and cigarette vending machines which are now subject to an occupation or gross receipts tax, stamp vending machines, and "service coin-operated machines," as that term is defined, are expressly

exempt from the tax levied herein, and the other provisions of this Chapter.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.04. Public Nuisance

Every coin-operated machine subject to the payment of the tax levied herein, and upon which the said tax has not been paid as provided herein, is hereby declared to be a public nuisance, and may be seized and destroyed by the commission, its agents, or any law enforcing agency of this State as in such cases made and provided by law for the seizure and destruction of common nuisances.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.05. Injunction; Venue; Payment of Tax as Condition Precedent; Records and Reports

(1) Any person who shall invoke the power and remedies of injunction against the commission to restrain or enjoin it from enforcement of the collection of the tax levied herein upon any grounds for which an injunction may be issued, shall file such proceedings in a court of competent jurisdiction in Travis County, Texas, and venue for such injunction is hereby declared to be in Travis County, Texas.

(2) Before any restraining order or injunction shall be granted against the commission to restrain or enjoin the collection of the taxes levied herein the applicant therefor shall pay into the suspense account of the State Treasury all taxes, fees, and assessments then due by him to the State and the application for restraining order or injunction shall reflect said fact of payment under oath of the applicant, his agent, or attorney. Provided that said applicant shall keep for the inspection at all times of the Attorney General and the commission or their authorized representatives, a complete, itemized record maintained in accordance with generally accepted auditing and accounting practices, showing all coin-operated vending machines possessed and in operation during the pendency of such restraining order or injunction. Such record shall show the make and kind of machine, the serial number, the date such machine was put in operation, and the location and serial number of each and every machine possessed or operated within the State. Provided further that said applicant shall make and file with the commission daily, excluding Sundays and legal holidays, a report on a form to be prescribed by the commission, showing the ownership, make and kind, and the serial number of every such machine operated by said applicant within this State. Said report shall also show the county, city, and location within the city and county of each machine and the date such machine was placed in operation. In the event the location or ownership of any machine is

changed such information shall be included in said report. Said application and temporary injunction or restraining order shall be immediately dismissed and dissolved after hearing if said applicant fails, at any time before the case shall have been finally disposed of by the court of last resort, to keep the records or make and file the reports required herein or to pay daily, excluding Sundays and legal holidays, into the suspense account of the Treasurer all taxes, fees and assessments due and thereafter becoming due, and such taxes shall be paid before such machines are operated, exhibited or displayed for operation within this State. The commission, or its authorized representatives, may file in the court granting such injunction an affidavit that said applicant has failed to comply with the provisions of this Chapter or has violated the same. Upon the filing of said affidavit, the clerk of said court shall issue notice to the said applicant to appear before such court upon the date named therein, which shall be within five (5) days from service of such notice or as soon thereafter as the court can hear the same, to show cause why such injunction should not be dismissed, which notice shall be served by the sheriff of the county in which applicant resides or any other peace officer in this State. In the event the injunction is finally dissolved or dismissed, all taxes, fees and assessments paid into the suspense account of the Treasurer under the provisions of this Chapter shall be paid to the funds to which such taxes, fees and assessments are allocated. If the final judgment maintains the right of applicant to a permanent injunction to prevent the collection of such taxes the funds so deposited shall be refunded by the Treasurer to said applicant.

(3) No person, firm, association or corporation required to pay the taxes levied herein to the State may receive or take advantage of any benefit of any restraining order or injunction against the commission, to restrain the collection of the tax levied herein except such person, firm, association or corporation as may have applied for said injunction. All other persons not securing an injunction shall pay to the commission all taxes, fees, and assessments due by him under the provisions of this Chapter and said restraining order or injunction shall in no way interfere with or impair the power of the commission to collect and enforce the payment of the taxes, fees, and assessments involved in any litigation from taxpayers not parties to the restraining order or injunction. Provided further, that no court shall entertain or hear any restraining order or injunction nor shall any restraining order or injunction be granted in behalf of any class or group unless and until each and every member of such class and/or group shall have been made a party to the cause of action, and shall have paid or deposited the taxes as hereinbefore provided.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.06. Attachment of Permit to Machine

Provided further, the permit issued by the commission to evidence the payment of the tax levied herein shall be securely attached to the machine in a manner that will require continued application of steam and water to remove the same.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.07. Rules and Regulations; Revocation of Licenses or Permits

(1) The commission may make and publish rules and regulations, not inconsistent with this Chapter or the other laws or the Constitution of this State or of the United States, for the enforcement of the provisions of this Chapter and the collection of the revenues hereunder.

(2) If any individual, company, corporation or association who owns, operates, exhibits or displays any coin-operated machine in this State, shall violate any provision of this Chapter or any rule and regulation promulgated hereunder, the commission shall investigate the violation, make findings of fact, and may recommend to the Attorney General that a license, permit, or registration certificate be revoked. If the licenses, permits, or registration certificate of any individual, company, corporation, or association owning, operating or displaying coin-operated machines in this State is revoked, such individual, company, corporation, or association shall not operate, display or permit to be operated or displayed such machines until the licenses, permits, or registration certificates are reinstated or until new licenses, permits, or registration certificates are granted.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.08. Permits; Collection of Tax; Payment of Expenses

The commission shall collect, and issue permits for the payment of the tax levied herein and to employ all the agencies of the law available to him for the enforcement of the provisions of this Chapter. Provided that Twenty-five Thousand Dollars (\$25,000) of the funds derived under the provisions of this Chapter shall be deposited annually to the credit of the General Revenue Fund as payment for the services of the commission and other State agencies in the enforcement of this Chapter.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.09. Existing Laws; Violations not Authorized

Nothing herein shall be construed or have the effect to license, permit, authorize or legalize any machine, device, table, or coin-operated machine, the keeping, exhibition, operation, display or mainte-

nance of which is now illegal or in violation of any Article of the Penal Code of this State or the Constitution of this State.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.10. Records

Every "owner" of one or more coin-operated machines in this State shall keep for a period of two (2) years for the inspection at all times by the Attorney General and the commission, or their authorized representatives, a complete, itemized record maintained in accordance with accepted auditing and accounting practices of each and every such machine purchased, received, possessed, handled, exhibited or displayed in this State. Such record shall be kept at a permanent address which address shall be designated on the application for permit and shall include the following information: The kind of each such machine, the date acquired or received in Texas, the date placed in operation, the location or locations of each machine including county, city, street and/or rural route number, the date of each and every change in location, the name and complete address of each and every operator, the full name and address of the owner, or if other than an individual the principal officers or members thereof and their addresses. Such information shall be shown completely and separately for each and every machine. [Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.11. Violations of Act; Penalty; Suit to Recover Penalty

If any "owner" of a coin-operated machine within this State shall (a) permit any coin-operated machine under his control to be operated, exhibited or displayed within this State without said permit being attached thereto, or (b) if any person shall exhibit, display or have in his possession within this State any coin-operated machine without having annexed or attached thereto a permit issued by the commission showing the payment of the tax due thereon for the current year, or (c) if any person required to keep records of coin-operated machines in this State shall falsify such records, or (d) shall fail to keep such records, or (e) shall refuse or fail to present such records for inspection upon the demand of the commission or its authorized representatives, or (f) if any person in this State shall use any artful device or deceptive practice to conceal any violation of this Chapter, or (g) mislead the commission or its authorized representatives in the enforcement of this Chapter, or (h) if any person in this State shall fail to comply with the provisions of this Chapter, or violate the same, or (i) if any person in this State shall fail to comply with the rules and regulations promulgated by the commission, or violate the same, he shall forfeit to the State as a penalty, the sum of

not less than Five Dollars (\$5) nor more than Five Hundred Dollars (\$500). Each day's violation shall constitute a separate offense and incur another penalty, which, if not paid shall be recovered in a suit by the Attorney General of this State in a court of competent jurisdiction in Travis County, Texas, or any court having jurisdiction.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.12. Offenses; Penalty

(a) If any person shall exhibit, display or have in his possession within this State any coin-operated machine without having annexed or attached thereto a valid permit issued by the commission showing the payment of the tax due thereon for the current year, or

(b) if any person required to keep records of coin-operated machines in this State shall falsify such records or

(c) shall fail to keep such records, or

(d) shall refuse or fail to present such records for inspection upon the demand of the commission or its authorized representatives, or

(e) if any person in this State shall use any artful device or deceptive practice to conceal any violation of this Chapter, or

(f) mislead the commission or its authorized representatives in the enforcement of this Chapter, or

(g) if any person in this State shall fail to comply with the provisions of this Chapter, or violate the same, or

(h) if any person in this State shall fail to comply with the rules and regulations promulgated by the commission, or violate the same, he shall be guilty of a Class C misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.13. Sealing Machine to Prevent Operations; Penalty for Breaking Seal

Provided that the commission or its authorized representatives, may seal any such machine upon which the tax has not been paid in a manner that will prevent further operation. Whoever shall break the seal affixed by said commission or its authorized representatives, or whoever shall exhibit or display any such coin-operated machine after said seal has been broken or shall remove any coin-operated machine from location after the same has been sealed by the commission shall be guilty of a misdemeanor and upon conviction shall be punished as set out in Article 13.12 of this Chapter. The commission shall charge a fee of \$25.00 for the release of any coin-operated machine sealed for nonpayment of tax.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.14. Apportionment of Tax; Tax Levy by Counties and Cities

Except as herein provided in this Chapter, one-fourth (1/4) of the net revenue derived from this Chapter shall be credited to the Available School Fund of the State of Texas and three-fourths (3/4) of the net revenue derived from this Chapter shall be credited to the Clearance Fund, established by Article XX of House Bill No. 8, Chapter 184, Acts of the 47th Legislature, Regular Session, 1941. Provided that all counties and cities within this State may levy an occupation tax on coin-operated machines in this State in an amount not to exceed one half (1/2) of the State tax levied herein.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.15. Sealing of Machines by City or County

Any city or county levying an occupation tax on coin-operated machines is hereby authorized to seal any such machine on which the tax has not been paid. Any city or county levying an occupation tax on coin-operated machines is hereby authorized to charge a fee not exceeding Five Dollars (\$5) for the release of any machine sealed as provided herein for nonpayment of tax. Whoever shall break the seal affixed in the name of any city or county or exhibit, display or remove from location any machine on which the seal has been broken shall be guilty of a Class C misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.16. Taxes, Penalties and Interest Under Re-enacted or Repealed Statutes; Offenses and Penalties Under Prior Laws

All occupation taxes, penalties and interest accruing to the State of Texas by virtue of any of the re-enacted or repealed provisions as set out in this Chapter before the effective date of this Chapter shall be and remain valid and binding obligations to the State of Texas for all taxes, penalties, and interest accruing under the provisions of prior or pre-existing laws, and all such taxes, penalties and interest now or hereafter becoming delinquent to the State of Texas before the effective date of this Chapter are hereby expressly preserved and declared to be legal and valid obligations to the State.

The passage of this Chapter shall not affect offenses committed, or prosecutions begun, under any pre-existing law, but any such offenses or prosecutions may be conducted under the law as it existed at the time of the commission of the offense. [Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

Art. 13.17. Regulation of Music and Skill or Pleasure Coin-Operated Machines**Purpose**

Sec. 1. The purpose of this Article is to provide comprehensive regulation of music and skill or pleasure coin-operated machines.

Construction

Sec. 1(a). Notwithstanding any language in this Chapter or any other Chapter to the contrary, the term "music or skill or pleasure coin-operated machine" shall include coin-operated billiard and pool games and shall exclude coin-operated amusement machines designed exclusively for children.

Definitions

Sec. 2. In this Article, unless the context requires a different definition,

(1) "person" includes any natural person, association of natural persons, trustee, receiver, partnership, corporation, organization, or the manager, agent, servant, or employee of any of them;

(2) "financial interest" includes any legal or equitable interest, and specifically includes the ownership of shares or bonds of a corporation.

Administration

Sec. 3. The commission shall administer this Article. The commission may initiate investigations, hearings, and take other necessary measures to ensure compliance with the provisions of this Article or to determine whether violations may exist. If the commission finds evidence of a violation, it shall notify the Attorney General who may institute a civil action in the name of the commission against a person who violates a provision of this Article. If the commission finds evidence of violation of penal provisions, it shall present it to the District or County Attorney of the county wherein such violation occurred.

Powers of Commission

Sec. 4. In addition to its other authority, the commission may, for the purpose of administering this Article,

(1) prescribe all necessary regulations and rules to ensure that all persons affected by this Article are afforded due process of law;

(2) hold hearings and prescribe rules of procedure and evidence for the conduct of hearings;

(3) issue licenses;

(4) prescribe the procedure for registration of music and skill or pleasure coin-operated machines and the method of securely attaching registration stamps;

(5) disclose confidential information to appropriate officials; and

- (6) prescribe the form and content of
- (a) license applications;
 - (b) registration certificates;
 - (c) tax permits;
 - (d) reports concerning the location of coin-operated machines; and
 - (e) reports of the consideration of each party to contracts concerning the placement of coin-operated machines in establishments owned by a person other than the licensee.

Delegation of Authority

Sec. 5. The commission may delegate to an authorized representative any authority given it by this Article, including the conduct of investigations and the holding of hearings.

Agency Cooperation

Sec. 6. All state agencies are directed to cooperate with the commission in its investigatory functions under this Article, and shall provide it access to their relevant records and reports including those declared or designated as confidential by other law.

Confidentiality; Penalty for Disclosure

Sec. 7. (1) All information derived from books, records, reports, and applications required to be made available under this Article to the commission or the Attorney General is confidential unless specifically designated a public record, and may be used only for the purpose of enforcing the provisions of this Article.

(2) Any employee of the commission or Attorney General who discloses confidential information obtained from the administration of this Article to an unauthorized person is guilty of a Class C misdemeanor.

License or Registration Certificate Required; Penalty; Exceptions

Sec. 8. (1) No person shall engage in business to manufacture, own, buy, sell, or rent, lease, trade, lend, or furnish to another, or repair, maintain, service, transport within the state, store, or import, a music coin-operated machine or a skill or pleasure coin-operated machine without a license or registration certificate issued under this Article.

(2) A person who knowingly violates this Section is guilty of a Class B misdemeanor.

(3) No license is required for a corporation or association organized and operated exclusively for religious, charitable, educational, or benevolent purposes, no part of the net earnings of which inure to the benefit of any private shareholder or individual, to own, or lease or rent from another, a music or skill or pleasure coin-operated machine for the corporation's or association's exclusive use and in furtherance of the purposes for which it is established. No tax may be assessed against any of these entities if otherwise prohibited by law.

(4) No license or tax is required for an individual to own a music or skill or pleasure coin-operated machine for personal use and amusement in his private residence.

(5) No license is required for any person subject to regulation by the Railroad Commission of Texas to transport or store in the due course of business a music or skill or pleasure coin-operated machine not owned by him.

(6) A person who knowingly secures or attempts to secure a license under this Article by fraud, misrepresentation or subterfuge is guilty of a third-degree felony.

Nature of License

Sec. 9. A license issued under this Article

(1) is an annual license which expires on December 31st of each year, unless it expires as provided in subdivision (5) of this Section or is suspended or cancelled earlier;

(2) is effective for a single business entity;

(3) vests no property or right in the licensee except to conduct the licensed business during the period the license is in effect;

(4) is nontransferable, nonassignable, and not subject to execution; and

(5) expires upon the death of an individual licensee, or upon the dissolution of any other licensee.

Temporary Extension of License

Sec. 10. When a license issued under this Article expires because of the death of an individual licensee, or the dissolution of any other licensee, or upon conditions involving receivership or bankruptcy, the commission, except for good cause shown, shall permit the successor in interest to operate the business under the same license through December 31st of the year. The commission shall give this permission in writing upon certification by the County Judge of the county in which the business is located that the person requesting the extension is the successor in interest. The extended license is subject to suspension or cancellation as is any other license issued under this Article. An original license application is necessary upon expiration of the extension.

Display; Penalty

Sec. 11. (1) A person licensed to do business under this Article shall prominently display his current license certificate at his place of business at all times.

(2) A person who violates this Section is guilty of a Class C misdemeanor.

Application for License

Sec. 12. (1) An application for a license to do business under this Article shall contain a complete

statement regarding the ownership of the business to be licensed. This statement of ownership must specify

(a) the nature of the business entity to be licensed;

(b) the name and residence address of every person who has a financial interest in the business, and the nature, type, and extent of that financial interest, except corporate applicants may omit any shareholder holding less than 10% of the corporate shares.

(2) The application shall designate a single individual who is responsible for keeping a record and reporting to the commission the following information regarding each music or skill or pleasure coin-operated machine owned, possessed or controlled by the licensee:

(a) the make, type, and serial number of machine;

(b) the date put in operation;

(c) the dates of the first, and the most recent registration of the machine;

(d) the specific location of each machine;

(e) any change in ownership of a machine.

(3) The application shall be accompanied by a sworn written statement executed by the individual designated to maintain the records and make reports that he is aware of and accepts this responsibility.

(4) The individual designated to maintain the records and to make reports must have the following relationship to the business to be licensed:

(a) the owner of a sole proprietorship;

(b) a partner of the partnership;

(c) an officer of the corporation;

(d) a trustee of the trust;

(e) a receiver of the receivership; or

(f) an officer or principal member of the association, joint venture, organization, or other entity not specified.

(5) The commission may require any other pertinent information to be included in the application.

(6) The application must contain a statement that the information contained in it is true and complete, and this statement shall be made under oath.

(7) The statement of ownership contained in the application becomes a public record upon issuance of a license. Other information in the application is confidential.

(8) The application shall designate an office in this state where the applicant proposes to maintain the records which he is required to maintain by this Article, otherwise by law, or by rule or regulation of the commission.

Fee with Application

Sec. 13. The application must be accompanied by the annual license fee in the form of a cashier's check or money order payable to the commission.

Records and Reports; Offenses; Penalty

Sec. 14. (1) The licensee shall keep records and make reports to the commission of the information specified in Subsection (2) of Section 12 of this Article at intervals specified by the commission, and upon demand by the commission. He shall immediately notify the commission in writing of any change in ownership of the licensed business.

(2) It is an offense for a person to willfully fail or refuse to make reports required by this Section.

(3) It is an offense for a person to willfully withhold or conceal any information required to be reported by this Section from a person who has the duty to make the report.

(4) A person who violates this Section is guilty of a Class B misdemeanor.

Types of Licenses

Sec. 15. (1) A person who wishes to engage in certain business dealing with music coin-operated machines or skill or pleasure coin-operated machines shall apply for a general business license, or an import license, or a repair license, or any combination of these.

(2) A general business licensee may engage in business to manufacture, own, buy, sell, rent, lease, trade, repair, maintain, service, transport or exhibit within the state, and store music and skill or pleasure coin-operated machines.

(3) An import licensee may engage in business to import, transport, own, buy, repair, sell, and deliver, music and skill or pleasure coin-operated machines, for sale and delivery within this State.

(4) A repair licensee may engage in the business of repairing, maintaining, servicing, transporting, or storing music, skill, or pleasure coin-operated machines.

Fees

Sec. 16. (1) The annual license fee for a general business license shall be as follows:

For an applicant with 50 or fewer machines,
\$200;

For an applicant with 51–200 machines, \$400;

For an applicant with over 200 machines,
\$500.

(2) The annual license fee for an import license is \$500.

(3) The annual license fee for a repair license is \$50.

(4) The commission may not refund any part of a license fee after the license is issued. In the event a license is not issued, the commission may retain \$25 to cover administrative costs, and may refund the balance.

(5) Cities and counties within this state may charge a license fee in an amount not to exceed one-half of the license fee required herein.

Exemptions

Sec. 16A. (1) A person who owns or exhibits coin-operated machines is exempt from the licensing and record keeping requirements imposed by this Article if:

(a) he operates or exhibits his machines exclusively on premises occupied by him, and in connection with his business; and

(b) he owns no machine subject to the occupation tax imposed by this chapter located on the business premises of another person; and

(c) he has no financial interest, direct or indirect, in the coin-operated music, skill, or pleasure machine industry, except for the interest he owns in his machines used exclusively on premises occupied by him.

(2) Machines which are exhibited by a nonlicensed owner exempt under this section must be registered with the commission. The owner shall obtain a registration certificate each year. The registration certificate shall show the name and address of the location of each machine and shall certify that the machine has a valid tax stamp affixed to it. The owner shall obtain his registration certificate by filing sworn application.

(3) Each time the location of a machine is changed, the owner of the registration certificate shall notify the commission of the change by filing an amendment to the registration certificate within 10 days of the change.

(4) The fee for registration of machines affected by this section is \$10 for the business entity in which the owner's machines are exhibited.

Removal of Stamp Prohibited; Penalty

Sec. 17. (1) No person other than the commission may intentionally remove a current registration stamp from a music or skill or pleasure coin-operated machine.

(2) A person who violates this Section is guilty of a Class C misdemeanor.

License as Consent to Entry

Sec. 18. Acceptance of a license issued under this Article constitutes consent by the licensee that the commission or any peace officer may freely enter upon the licensed business premises during normal business hours for the purpose of ensuring compliance with this Article.

Mandatory Grounds for Refusal, Suspension, or Revocation of License

Sec. 19. (1) The commission shall not issue a general business or import license for a business under this Article if it finds that the applicant

(a) has been finally convicted of a felony in a court of competent jurisdiction during the five years preceding the filing of the application; or

(b) has been on probation or parole as a result of a felony conviction during the two years preceding the filing of the application.

(2) The commission may not issue or renew a license for a business under this Article, and shall suspend for any period of time, or cancel a license, if it finds that the applicant or licensee is indebted to the State by judgment for any fees, costs, penalties, or delinquent taxes.

(3) The commission may not issue or renew a license for a business pursuant to the terms of this Article if the applicant does not designate and maintain an office in this state or if the applicant does not permit inspection by the commission of all records which the applicant or licensee is required to maintain.

(4) The commission shall issue an original license to an applicant who complies with the requirements of Subsections (1) and (2) of this Section.

Discretionary Grounds for Refusal, Suspension, or Revocation of License

Sec. 20. (1) A license issued pursuant to the authority of this Article may be revoked, or renewal refused, if:

(a) the licensee has intentionally violated a provision of this Article or a regulation promulgated pursuant to the authority of this Article;

(b) the licensee has intentionally failed to answer a question, or intentionally made a false statement in, or in connection with, his application or renewal;

(c) the licensee extends credit without registering his intent to do so with the consumer credit commission;

(d) the licensee uses coercion to accomplish a purpose or to engage in conduct regulated by the commission;

(e) a contract or agreement between the licensee and a location owner contains a restriction, of any kind and to any degree, on the right of the location owner to purchase, agree to purchase, or use a product, commodity, or service not regulated under the terms of this Article;

(f) issuance of, or failure to suspend or cancel, the license would be contrary to the intent and purpose of this Article.

(2) The commission shall conduct a hearing to ascertain whether a licensee has engaged in conduct which would be grounds for revocation. The commission shall make findings of fact, and, if the commission determines that grounds for revocation exist, the commission shall file those findings with the Attorney General. The Attorney General upon receipt of the record may institute an action to impose the penalties provided by this Act in Article 13.11 or to revoke the license. The action shall be instituted in a district court in the county of the licensee's place of business.

Applicant and Licensee Defined

Sec. 21. In Sections 19 and 20 of this Article, unless the context requires a different definition, the words "applicant" and "licensee" include each partner of a partnership; each trustee of a trust; each receiver of a receivership; each officer and director of a corporation; and each shareholder owning not less than 25 percent of the outstanding shares; any individual applicant or licensee; each officer, director, and member of any association or other entity not specified and, when applicable in context, the business entity itself.

Notice and Hearing

Sec. 22. (1) An applicant or licensee is entitled to at least ten days' notice and a hearing in the following instances:

- (a) after his original application for a license has been refused;
- (b) before his application for a renewal of a license may be refused;
- (c) before the commission may file a recommendation of revocation, denial, or other sanction, with the Attorney General.

(2) Notice of hearing for refusal, cancellation, or suspension may be served personally by the commission or its authorized representative or sent by United States certified mail addressed to the applicant or licensee at his last known address. In the event that notice cannot be effected by either of these methods after due diligence, the commission may prescribe any reasonable method of notice calculated to inform a person of average intelligence and prudence in the conduct of his affairs. The commission shall publish notice of a hearing in a newspaper of general circulation in the area in which the licensee conducts his business activities.

Notice of Commission's Order

Sec. 23. (1) Any order refusing an application or renewal application shall state the reasons for refusal, and a copy of the order shall be delivered immediately to the applicant or licensee.

(2) An order recommending cancellation or suspension of a license shall state the reasons for the

cancellation or suspension, and a copy of the order shall be delivered immediately to the licensee.

(3) Delivery of the commission's recommendation of refusal, cancellation, or suspension may be given by

- (a) personal service upon an individual applicant or licensee;
- (b) personal service upon any officer or director or partner or trustee or receiver, as the case may be;
- (c) personal service upon the person in charge of the business premises, temporarily or otherwise, of the applicant or licensee;
- (d) sending such notice by United States certified mail addressed to the business premises of the applicant or licensee;
- (e) posting notice upon the outside door of the business premises of the applicant or licensee.

(4) Notice is complete upon performance of any of the above.

Review of Commission Action

Sec. 24. (1) Appeal by an affected person from all actions of the commission other than a recommendation to the Attorney General for the revocation of a license as provided in Article 13.07(2) and Article 13.17 Section 20(2) of this Act or from denial of requested action shall be to a District Court of the county of the licensee's place of business. The review shall be conducted by the court and shall be confined to the record. If the record is found to be incomplete, the court may order that additional evidence be taken before the commission. The commission may modify its findings and decision or order by reason of the additional evidence and shall file such evidence and any modifications, new findings, decisions, or orders with the court. In cases of alleged irregularities in procedure before the commission, not shown in the record, proof thereon may be taken in the court.

(2) The court shall not substitute its judgment for that of the commission as to the weight of the evidence on questions of fact committed to commission discretion. The court may affirm the decision of the commission in whole or in part; the court shall reverse or remand the case for further proceeding if substantial rights of the appellant have been prejudiced because the commission's findings, inferences, conclusion, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the commission;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;

(e) not reasonably supported by substantial evidence in view of the reliable and probative evidence in the record as a whole; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

Appeals

Sec. 25. Appeal from any final judgment of the District Court may be taken by any party, including the commission, in the manner provided for in civil actions generally; provided that the commission may not appeal a decision on motion of the Attorney General to revoke a license.

Prohibited Financial Relationships; Credit Transactions; Penalty

Sec. 26. (1) It shall be unlawful for a person who has a financial interest in a business required to be licensed by this Article or for any agent on behalf of such person to contract either orally or in writing to convey an interest in real property whether by lease, sub-lease or otherwise if such contract contains a provision or provisions in any way limiting the other party's right to secure music or skill or pleasure coin-operated machines from any source.

(2) It shall be unlawful for a person to secure or attempt to secure a contract of lease or bailment of a music or skill or pleasure coin-operated machine by coercion, threats or intimidation, through the commission of, or threat to commit, any act prohibited by the penal laws of this State or the Consumer Credit Code of this State.

(3) A person who violates Subsection (1) of this Section shall be guilty of a third-degree felony.

(4) Any person required to be licensed by this Article may make an extension of credit or lend the licensee's credit to a lessee or a bailee of a music or skill or pleasure coin-operated machine, or on behalf of either for business or commercial purposes when the following terms and conditions have been met and the following duties and obligations satisfactorily assumed and discharged.

(a) Before making the first such extension of credit, the licensee under this Article shall first notify the Consumer Credit Commissioner of the State of Texas of the intent of such licensee to make extensions of credit in the conduct of the licensee's business.

(b) The consideration for such extensions of credit shall not be less than one-half percent or exceed interest or its equivalent at the rate of one and one-half percent (1½%) per month, computed according to the United States Rule. Consideration excludes court costs and attorney's fees as determined by the court, but includes the aggregate interest, fees, bonuses, commissions, brokerage, discounts, expenses, and other forms of costs charged, contracted

for, or received by a licensee or any other person in connection with investigating, arranging, negotiating, procuring, guaranteeing, making, servicing, collecting, and enforcing an extension of credit or forbearance of money, credit, goods, or things in action, or any other service rendered. If in any transaction any consideration in excess of that provided above is charged or received by the licensee directly, or indirectly, except as the result of an accidental and bona fide error corrected upon discovery, the unpaid balance of the indebtedness created by such transaction shall be void, and that portion of any indebtedness so created which has been paid to the licensee, either the principal or its equivalent or interest or its equivalent, or both, shall be repaid by the licensee to the person.

(c) No extension of credit may be made by any person required to be licensed by this Article unless it is evidenced by a written agreement signed by the parties thereto specifying both the amount of credit extended, the consideration for such extension of credit, and the terms according to which such extension of credit is to be repaid.

(d) Each licensee making extensions of credit authorized by this Section shall keep in this State books and records, which shall be consistent with accepted accounting and auditing practices, relating to all such extensions of credit authorized by this Section sufficient to enable any competent person to determine whether or not such licensee is complying with this Section. Such records shall be preserved for four (4) years from the date of the transaction to which they relate, or two (2) years from the date of the final entry made with regard to such transaction, whichever is later.

(e) At such times as the Consumer Credit Commissioner may deem necessary, or at the request of the commission or the Attorney General, the Consumer Credit Commissioner, or his duly authorized representative, may make an examination of the place of business of each licensee hereunder, and may inquire into and examine the transactions, books, accounts, papers, correspondence, or records of such licensee insofar as they pertain to the extensions of credit regulated by this Section. In the course of such examinations, the Consumer Credit Commissioner or his duly authorized representative shall have free access to the office, place of business, files, safes and vaults of such licensee, and shall have the right to make copies of such books, accounts, papers, correspondence and records. The Consumer Credit Commissioner or his duly authorized representative may, during the course of such examination, administer oaths

and examine any person under oath upon any subject pertinent to any matter about which the Commissioner is authorized or required by this Section to consider, investigate or secure information. Any licensee who shall fail or refuse to let the Consumer Credit Commissioner or his duly authorized representative examine or make copies of such books or other relative documents shall thereby be deemed in violation of this Section. The information obtained in the course of such examination shall be confidential. Each licensee shall pay to the Consumer Credit Commissioner an amount assessed by the Commissioner to cover the direct and indirect costs of such examination, including a proportionate share of general administrative expenses, which amount shall be retained and held by the Consumer Credit Commissioner, and no part of such fee shall ever be paid into the General Revenue Fund of this State. All expenses incurred by the Consumer Credit Commissioner in conducting such examinations shall be paid only from such fees, and no such expense shall ever be charged against the funds of this State.

(f) The Consumer Credit Commissioner may make regulations necessary for the enforcement of this Section and consistent with all its provisions. Before making a regulation the Consumer Credit Commissioner shall give each licensee at least thirty (30) days' written notice of a public hearing, stating the time and place thereof and the terms or substance of the proposed regulation. At the hearing, any licensee or other person may be heard and may introduce evidence, data, or arguments or place the same on file. The Consumer Credit Commissioner, after consideration of all relevant matters presented, shall adopt and promulgate every regulation in written form, stating the date of adoption and date of promulgation. Each regulation shall be entered in a permanent record book which shall be a public record and be kept in the Consumer Credit Commissioner's office. A copy of every regulation shall be mailed to each licensee, and no regulation shall become effective until the expiration of at least twenty (20) days after such mailing. On the application of any person and payment of the cost thereof, the Consumer Credit Commissioner shall furnish such person a certified copy of any such regulation.

(4) Any person who violates Subsection (3) of this Section is guilty of a Class C misdemeanor.

[Amended by Acts 1975, 64th Leg., p. 1046, ch. 407, § 3, eff. Sept. 1, 1975.]

CHAPTER FOURTEEN. INHERITANCE TAX AND FEDERAL ESTATE TAX CREDIT

Art. 14.015. Exempt Transfers

The inheritance tax imposed by Article 14.01 shall not apply to the following transfers of property:

[See *Compact Edition, Volume 2* for text of (1) to (3)]

(4) The value of an annuity or other payment received by any beneficiary (other than a personal representative of the decedent) which qualifies for exemption from the Federal Estate Tax under Subsections (c), (d), or (e) of Section 2039 of the Internal Revenue Code of 1954, as now or hereafter amended, said Subsections (c), (d), and (e) being codified as 26 United States Code Annotated Sections 2039(c), (d), (e).

[Amended by Acts 1977, 65th Leg., p. 194, ch. 96, § 1, eff. Aug. 29, 1977.]

Section 2 of the 1977 amendatory act provided:

"The amendment made by Section 1, (a) to the extent that it adds a reference to Section 2039(d) of the Internal Revenue Code of 1954, as amended, shall apply only with respect to estates of decedents who died on or after the date seven years and nine months prior to the date upon which this bill becomes law and (b) to the extent that it adds a reference to Section 2039(e) of such code, shall apply only with respect to estates of decedents dying after December 31, 1976. No interest shall be allowed or paid on any overpayment of estate tax resulting from the application of the amendment made by Section 1, except as otherwise provided by Chapter 1, Title 122A, Taxation—General, Revised Civil Statutes of Texas, 1925."

CHAPTER 19. MISCELLANEOUS OCCUPATION TAX

Art. 19.01. Miscellaneous Occupation Taxes

There shall be levied on and collected from every person, firm, company or association of persons, pursuing any of the occupations named in the following numbered subdivisions of this Article, an annual occupation tax, which shall be paid annually in advance except where herein otherwise provided, on every such occupation or separate establishment, as follows:

(1) Repealed by Acts 1975, 64th Leg., p. 827, ch. 320, § 12, eff. Sept. 1, 1975.

[See *Compact Edition, Volume 2* for text of (2) to (10)]

[Amended by Acts 1975, 64th Leg., p. 830, ch. 320, § 12, eff. Sept. 1, 1975.]

CHAPTER 20. LIMITED SALES, EXCISE AND USE TAX

Art. 20.01. Title—Definitions

This Chapter is known and may be cited as the "Limited Sales, Excise and Use Tax Act," and the

following words shall have the following meanings unless a different meaning clearly appears from the context:

[See Compact Edition, Volume 2 for text of (A) to (K)]

(L) Sales Price.

[See Compact Edition, Volume 2 for text of (1) and (2)]

(3) "Sales Price" does not include any of the following:

(a) Cash discounts allowed on sales.

(b) The amount charged for tangible personal property returned by customers when the entire amount charged therefor is refunded either in cash or credit, or refunds on the sales price of taxable services.

(c) The amount of any tax imposed by the United States upon or with respect to retail sales or wholesale sales of tires and fishing equipment whether imposed upon the retailer, wholesaler, or the consumer, under Subtitles D and E, Title 26 (Internal Revenue Code), United States Code.¹

(d) The amount charged for finance charges, carrying charges, service charges or interest from credit extended on sales of taxable items under conditional sale contracts or other contracts providing for deferred payments of the purchase price.

(e) The value of tangible personal property taken by a seller in trade as all or a part of the consideration for a sale of a taxable item of any kind or nature.

(f) Charges for transportation of tangible personal property after sale.

(g) The amount charged for labor or services rendered in installing, applying, remodeling, or repairing the tangible personal property sold.

(h) The face value of United States of America coin or currency in a sale of United States of America coin or currency in which the total consideration given by the purchaser exceeds the face value of the coin or currency.

(i) Voluntary gratuities and reasonable mandatory charges for the service of meals and food products, including soft drinks and candy, for immediate human consumption when the service charge is separated from the sales price of the meal or food product and identified as a gratuity or tip and when the total amount of the service charge is disbursed by the employer to employees who customarily and regularly provide such service.

[See Compact Edition, Volume 2 for text of (M) to (X)]

(Y)(1) Newspaper. "Newspaper" means those publications printed on newsprint whose average sales price per copy over a 30-day period does not exceed 75 cents which are printed and distributed periodically at daily, weekly, or other short intervals for the dissemination of news of a general character and of a general interest. For purposes of this section, advertising is considered to be news of a general character and of a general interest. The term "newspaper" does not include magazines, handbills, circulars, flyers, sales catalogs, or the like, unless such items, when printed, are printed for the purpose of distribution as a part of a publication which itself constitutes a newspaper within the meaning of this section, and are in fact actually distributed as part of a newspaper as herein defined.

(2) Magazines. "Magazine" means those publications usually paperbacked and sometimes illustrated, that appear at regular intervals and contain stories, articles, and essays by various writers, and advertisements.

[Amended by Acts 1975, 64th Leg., p. 262, ch. 108, § 1, eff. April 30, 1975; Acts 1975, 64th Leg., p. 2307, ch. 719, art. VIII, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2307, ch. 719, art. XI, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 146, ch. 71, § 1, eff. April 25, 1977; Acts 1977, 65th Leg., p. 161, ch. 81, § 1, eff. Aug. 29, 1977.]

¹ 26 U.S.C.A. (I.R.C.1954), §§ 4041 et seq., 5001 et seq.

Art. 20.021. Method of Collection; Bracket System

[See Compact Edition, Volume 2 for text of (A) to (E)]

(F) Presumption of Taxability: Resale Certificate. For the purpose of the proper administration of this Chapter and to prevent evasion of the limited sales tax it shall be presumed that all gross receipts are subject to the tax until the contrary is established.

The burden of proving that a sale of tangible personal property is not a sale at retail is upon the person who makes the sale unless he takes from the purchaser a certificate to the effect that the tangible personal property is purchased for the purpose of reselling, leasing or renting it in the regular course of business or for the purpose of subsequently transferring it as an integral part of a taxable service rendered in the regular course of business.

Provided, however, any purchase of liquor, wine, beer or malt liquor by the holder of a retail license or permit issued under the provisions of the Texas Liquor Control Act from any holder of a manufacturer's license, wholesaler's permit, General Class B Wholesaler's permit, Local Class B Wholesaler's per-

mit, Local Distributor's permit, General, Local, Branch or City Distributor's license issued under the provisions of the Texas Liquor Control Act shall be presumed to be a purchase for resale. The holder of any such manufacturer's license, wholesaler's permit, General Class B Wholesaler's permit, Local Class B Wholesaler's permit, Local Distributor's permit, General, Local, Branch or City Distributor's license shall not be required to secure a resale certificate covering sales to the holders of any such retail licenses or permits.

[See Compact Edition, Volume 2 for text of (G) to (K)]

(L) Bad Debts.

(1) If during the reporting period in which a sale is made a retailer determines that all or part of the payment for the sale will not be made, the retailer is not required to pay the tax on the portion of the payment remaining unpaid if the retailer enters the unpaid portion in his books as a bad debt and if either during the reporting period or during a subsequent reporting period the bad debt is claimed as a deduction for federal tax purposes. If the portion of the payment is paid during a later reporting period, the retailer shall report and pay the tax during the reporting period in which the payment is made.

(2) Credit shall be allowed or reimbursement made to the retailer for taxes paid on sales represented by that portion of an account determined to be worthless and actually charged off for federal income tax purposes or on the portion of the purchase price remaining unpaid at the time of a repossession made under the terms of a conditional sales contract.

[See Compact Edition, Volume 2 for text of (M) and (N)]

[Amended by Acts 1977, 65th Leg., p. 1159, ch. 439, § 1, eff. June 15, 1977; Acts 1977, 65th Leg., p. 1656, ch. 652, § 1, eff. Aug. 29, 1977.]

Art. 20.031. Administrative and Enforcement of Use Tax

[See Compact Edition, Volume 2 for text of (A) to (M)]

(N) Federal Tax Information. The Comptroller shall supply to each retailer engaged in selling taxable items subject to a tax under Subtitles D and E, Title 26 (Internal Revenue Code), United States Code,¹ information concerning the amount of the federal tax collected from the manufacturer, wholesaler, retailer, or consumer and shall provide to the retailer tables for the calculation of the sales price of taxable items as defined by this Chapter. It is a violation of this Chapter for a retailer to collect from any consumer any tax imposed by this Chapter

if the retailer includes in the amount of the sales price of the taxable item the amount of any tax imposed under Subtitles D and E, Title 26, United States Code.

[Amended by Acts 1975, 64th Leg., p. 2307, ch. 719, art. 8, § 2, eff. Sept. 1, 1975.]

¹ 26 U.S.C.A. (I.R.C.1954) § 4001 et seq.

Art. 20.04. Exemptions

[See Compact Edition, Volume 2 for text of (A) to (C)]

(D) Items Taxed Under Existing Statutes.

[See Compact Edition, Volume 2 for text of (D)(1) to (3)]

(4) There are exempted from the taxes imposed by this Chapter the receipts from the sale, preparation, or service of mixed beverages or of ice or nonalcoholic beverages, if the receipts are taxable under Chapter 202, Alcoholic Beverage Code.

[See Compact Edition, Volume 2 for text of (D)(5), (E)]

(F) Certain Meals and Food Products. There are exempted from the taxes imposed by this Chapter the receipts from the sale of, and the storage, use or other consumption in this State of:

(1) Meals and food products (including soft drinks and candy) for human consumption served by public or private schools, school districts, student organizations, or Parent-Teacher Associations pursuant to an agreement with the proper school authorities, in an elementary or secondary school during the regular school day or by a Parent-Teacher Association during a fund-raising sale the proceeds of which do not go to the benefit of an individual.

(2) Meals and food products (including soft drinks and candy) for human consumption when sold by a church or at a function of said church.

(3) Meals and food products (including soft drinks and candy) for human consumption when served to patients and inmates of hospitals and other institutions licensed by the State for the care of human beings.

[See Compact Edition, Volume 2 for text of (G)]

(H) United States; State; Political Subdivision; Religious, Eleemosynary Organizations. There are exempted from the computation of the amount of the taxes imposed by this Chapter, the receipts from the sale, lease or rental of any taxable items to, or the storage, use or other consumption of taxable items by:

(1) The United States, its unincorporated agencies and instrumentalities.

(2) Any incorporated agency or instrumentality of the United States wholly owned by the

United States or by a corporation wholly owned by the United States.

(3) The State of Texas, its unincorporated agencies and instrumentalities.

(4) Any county, city, special district or other political subdivision of this State.

(5) Any organization created for religious, educational, charitable or eleemosynary purposes, provided that no part of the net earnings of any such organization inures to the benefit of any private shareholder or individual.

[Text of subsec. (H)(6) effective until June 1, 1978]

(6) Any nonprofit organization engaged in commemorating the Bicentennial of the American Revolution, provided such taxable items are used by the organization in commemorating the Bicentennial of the American Revolution, provided that no part of the net earnings of the organization inures to the benefit of any private shareholder or individual, and provided further that this exemption will expire on June 1, 1978.

(7) An organization qualifying for exemption from federal income tax under Internal Revenue Code Section 501(c)(3) provided, however, that no item purchased shall be used for the personal benefit of any private stockholder or individual and the items purchased must be related to the purpose of said organization or corporation.

[See Compact Edition, Volume 2 for text of (I) to (L)]

(M) Drugs, Medicines, Prosthetic Devices, Needles. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of insulin and of drugs and medicines when prescribed or dispensed for humans or animals by a licensed practitioner of the healing arts. There are also exempted from the taxes imposed by this Chapter, the receipts from sales of and the storage, use or other consumption of syringes and hypodermic needles used for medical purposes, braces, spectacles, hearing aids, orthopedic and dental prosthetic appliances, ileostomy, colostomy, and ileal bladder appliances and related supplies, and replacement parts designed specifically for such products.

(N) Animal Life; Feed; Seeds; Plants; Fertilizer. There are exempted from the taxes imposed by this Chapter the receipts from sales of, and the storage, use or other consumption of:

(1) Any form of animal life of a kind the products of which ordinarily constitute food for human consumption. Horses, mules and work animals.

(2) Feed for farm and ranch animals and for animals which are held for sale in the regular course of business.

(3) Seeds and annual plants the products of which ordinarily constitute food for human consumption or are to be sold in the regular course of business.

(4) Fungicides, insecticides, herbicides, defoliants and desiccants exclusively used or employed on farms or ranches in the production of food for human consumption, feed for any form of animal life, or other agricultural products to be sold in the regular course of business.

(5) Fertilizer.

(6) Machinery or equipment exclusively used or employed on farms or ranches in the production of food for human consumption, production of grass, the building or maintaining of roads and water facilities, feed for any form of animal life, or other agricultural products to be sold in the regular course of business, and machinery, equipment, and gooseneck trailers exclusively used in the processing, packing, or marketing of agricultural products by the original producer at a location operated by the original producer exclusively for processing, packing, or marketing his own products.

[See Compact Edition, Volume 2 for text of (O)]

(P) Vessels.

(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, or the storage, use or other consumption in this State of materials, equipment and machinery which enter into and become component parts of ships or vessels exclusively and directly used in a commercial enterprise, including commercial fishing vessels, and vessels used commercially as vessels for pleasure fishing by individuals as paying passengers thereon, of eight (8) tons displacement and over, and the receipts from the sale of such ships or vessels exclusively and directly used in a commercial enterprise when sold by the builder thereof, and repair services, renovation, and/or conversion, including labor and materials to such ships or vessels exclusively and directly used in a commercial enterprise.

[See Compact Edition, Volume 2 for text of (P)(2), (3)]

(Q) Certain Aircraft. There are exempted from the taxes imposed by this Chapter the receipts from the sale, use, storage, lease or other consumption of aircraft sold to persons using such aircraft as certified or licensed carriers of persons or property, or sold to persons and used for the exclusive purpose of training or instructing pilots in a licensed course of instruction, or sold to any foreign government or

sold to persons who are not residents of this State and repair services to aircraft operated by a certificated or licensed carrier of persons or property.

[See Compact Edition, Volume 2 for text of (R) to (Y)]

(Z) There are exempted from the taxes imposed by this Chapter the receipts from the leasing or licensing of motion picture films of any kind to or by motion picture theatres and to or by licensed television stations.

(AA) A "volunteer fire department" means any company, department or association organized for the purpose of answering fire alarms and extinguishing fires, or answering fire alarms, extinguishing fires, and providing emergency medical services, the members of which received no compensation or nominal compensation for their services thus rendered. There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease, or rental in this State of taxable items to any volunteer fire department for its exclusive use.

(BB) Newspapers.

(1) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease, or rental of, and the storage, use, or other consumption in this State of:

(a) tangible personal property which will enter into and become an ingredient or component part of a newspaper, as that term is defined in Article 20.01(Y) of this Chapter, whether or not such newspaper is printed for ultimate sale at retail within or without this State; and

(b) tangible personal property used or consumed in or during any phase of actual printing or processing of such newspaper, provided that the use or consumption of such tangible personal property is necessary or essential to the performance of such printing or processing operations. Chemicals, catalysts, and other materials which are used for the purpose of producing or inducing a chemical or physical change during such printing or processing operations or for removing impurities or otherwise placing a newspaper in its final distributable form are included within the exemption, as are other articles of tangible personal property used in such a manner as to be necessary or essential in the actual printing or processing operations. The exemption provided herein does not include the following:

(i) machinery, equipment, and replacement parts and accessories therefor, having a useful life when new in excess of six (6) months;

(ii) machinery, equipment, materials, and supplies used in a manner that is merely incidental to the printing or processing,

such as, for example, intraplant transportation equipment, and maintenance and janitorial equipment and supplies;

(iii) hand tools used in the printing and processing; and

(iv) tangible personal property used by the newspaper printer in any activities other than the actual printing or processing operation, such as, for example, office equipment and supplies, equipment and supplies used in selling or in distributing activities, in gathering information for publication, or in transportation activities.

(2) Wrapping, Packing and Packaging Supplies.

(a) There are exempted from the taxes imposed by this Chapter the receipts from sales of all internal and external wrapping, packing, and packaging supplies and materials to any person for use in wrapping, packing, or packaging any newspaper for the purpose of expediting or furthering in any way either the sale of that newspaper or the distribution of that newspaper if distributed without charge.

(b) For the purpose of this Section, wrapping, packing, and packaging supplies shall include, but shall not be limited to:

(i) wrapping paper, wrapping twine, bags, cartons, crates, crating materials, tape, rope, rubber bands, labels, staples, glue, and mailing tubes; and

(ii) property used inside a package in order to shape, form, preserve, stabilize, or protect newspapers contained therein.

(3) Notwithstanding any provision in this Chapter to the contrary, there are exempted from the taxes imposed by this Chapter the receipts from the following transactions:

(a) Transactions involving a transfer for a consideration of the title or possession of a newspaper, as defined in Article 20.01(Y) of this Chapter, which has been produced, fabricated, or printed to the special order of the customer, provided such customer was responsible for gathering substantially all the information contained in such newspaper, formulating the layout, design, and format of such newspaper, and further provided that such customer would otherwise have been entitled to the exemption contained in Section (1) of this Article 20.04(BB) except for the fact that such customer did not own and operate or otherwise possess or control a printing facility capable of printing and processing such newspaper; and

(b) Transactions involving a transfer for a consideration of the title or possession of items such as handbills, circulars, flyers, advertising supplements, or the like, which have been printed to the special order of the customer, provided that such items, when printed, are printed for

the exclusive purpose of being distributed as a part of a newspaper, as defined in Article 20-01(Y) of this Chapter, are actually distributed as part of such a newspaper, and further provided that such items, after being printed, are not delivered to such customer but are instead delivered to the person responsible for the distribution of the newspaper of which the items were originally intended to be a part.

(4) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease, or rental of and the use, storage, or other consumption in this State of newspapers whether or not the newspaper is sold or distributed by individual copy or subscription.

(CC) There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease or rental of, and the storage, use, or other consumption in this State of solar energy devices. A "solar energy device" is a system or series of mechanisms designed primarily to provide heating or cooling or to produce electrical or mechanical power or both by means of collecting and transferring solar-generated energy and includes mechanical or chemical devices having the capacity for storing solar-generated energy for use in heating or cooling or in the production of power.

(DD) There are exempted from the computation of the amount of taxes imposed by this Chapter the receipts from the sale, lease, or rental of any taxable items to, or the storage, use, or other consumption of taxable items by, any nonprofit corporation or association engaged exclusively in providing athletic competition among persons under nineteen (19) years of age, provided that no financial benefit inures to any individual or shareholder. The contracting for the sale of or the sale of concessions at any game or event conducted by a nonprofit corporation or association does not prevent the application of this exemption to the nonprofit corporation or association.

(EE)(1) There are exempted from the taxes imposed by this chapter the receipts from the sale of food products, and candy, carbonated beverages, and diluted juices, whether or not the product is sold for immediate consumption, if the sale:

(i) is made by a person under 18 years of age who is a member of a nonprofit organization devoted to the exclusive purposes of education or physical or religious training, and groups associated with public or private elementary or secondary schools;

(ii) is made as a part of a fund-raising drive sponsored by the organization;

(iii) all net proceeds from the sale go to the organization for its exclusive use.

(2) There are exempted from the taxes imposed by this chapter the storage, consumption, or other use in this state of food products acquired in a sale exempted by the provisions of Subsection (1) of this

section. The exemption allowed by this subsection applies only to the purchaser at the exempt sale.

[Text of § (FF) added by Acts 1977, 65th Leg., p. 162, ch. 81, § 3]

(FF) Magazines. There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease, or rental of and the use, storage, or other consumption in this State of subscriptions to magazines entered as second class mail and sold for a semiannual or longer period of time. Other sales of magazines are taxable.

[Text of § (FF) added by Acts 1977, 65th Leg., p. 2094, ch. 840, § 1]

(FF) Broadcasting Stations. There are exempted from the taxes imposed by this Chapter the receipts from the sale, lease, rental, or use of film, tapes, photographs, transparencies, and graphic art materials to or by a licensed radio or television station subject to regulatory jurisdiction of the Federal Communications Commission if used or consumed in or during any phase of broadcasting operation and program services. The exemption does not include machinery, equipment, and replacement parts and accessories for the machinery or equipment having a useful life when new in excess of six months.

(GG)(1) A religious, educational, charitable, or eleemosynary organization exempted under Subdivision (5) of Section (H) of this article is not required to collect the taxes imposed by this chapter for the sale of taxable items at a tax-free sale or auction held by the organization. The organization may hold only one tax-free sale or auction during each calendar year, and the tax-free sale or auction may continue for one day only. The organization may employ an auctioneer to conduct the auction and pay the auctioneer a reasonable fee. If two or more organizations jointly hold a tax-free sale or auction, neither may hold another tax-free sale or auction during the calendar year.

(2) There are exempted from the taxes imposed by this chapter the receipts from the sale and the use, storage, and other consumption in this state of taxable items sold or acquired at a tax-free sale permitted under Subsection (1) of this section. The exemption provided by this subsection does not apply at any retail sale of the item subsequent to the tax-free sale, or to the use, storage, or other consumption of the item subsequent to a sale or other transfer of the item after the tax-free sale.

[Amended by Acts 1975, 64th Leg., p. 669, ch. 282, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2306, ch. 719, art. 6, § 1, eff. Sept. 1, 1975; Acts 1975, 64th Leg., p. 2309, ch. 719, arts. 11, § 2, 13, § 1, 16, § 1, 18, § 1, 21, § 1 and 22, § 1, eff. Sept. 1, 1975; Acts 1977, 65th Leg., p. 162, ch. 81, §§ 2, 3, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 558, ch. 194, § 5, eff. Sept. 1, 1977; Acts 1977, 65th Leg., p. 607, ch. 218, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 614, ch. 224, § 1, eff. May 24, 1977; Acts 1977, 65th Leg., p. 1035, ch. 380, § 1, eff. June 10, 1977; Acts 1977, 65th Leg., p. 1393, ch. 559, § 2, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 1718, ch. 685, § 1, eff. Aug. 29, 1977; Acts 1977, 65th Leg., p. 2094, ch. 840, § 1, eff. Aug. 29, 1977.]

CHAPTER 21. ADMISSIONS TAX

Art. 21.02. Tax Imposed

[See Compact Edition, Volume 2 for text of (1)]

(2) There is hereby levied on each admission to entertainments such as motion pictures, operas, plays and like amusements held at a fixed or regularly established motion picture theater, and on each admission to a skating rink, where the admission charged is in excess of One Dollar and Five Cents (\$1.05) and not more than One Dollar and Fifteen Cents (\$1.15) a tax of one cent (1¢); and where the admission charged is in excess of One Dollar and Fifteen Cents (\$1.15) a tax of two cents (2¢) plus one cent (1¢) on each ten cents (10¢) or fractional part thereof in excess of One Dollar and Twenty-five Cents (\$1.25).

(3) There is hereby levied a tax of one cent (1¢) on each ten cents (10¢) or fractional part thereof paid as admission to horse racing, dog racing, and like mechanical or animal contests and exhibitions, except automobile racing and motorcycle racing.

(4) There is hereby levied a tax of one cent (1¢) on each ten cents (10¢) or a fractional part thereof paid as admission to dance halls, night clubs, and any and all other like places of amusements, contests, and exhibitions where the admission charged is in excess of fifty-one cents (51¢).

[See Compact Edition, Volume 2 for text of
(5) and (6)]

[Amended by Acts 1975, 64th Leg., p. 2307, ch. 719, art. 9, § 1, art. 24, § 1, eff. Sept. 1, 1975.]

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