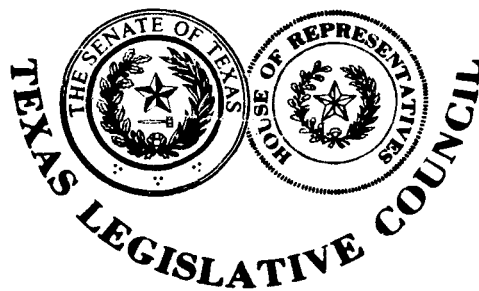


THIRD REVISOR'S REPORT

CIVIL PRACTICE AND REMEDIES CODE

A NONSUBSTANTIVE REVISION
OF THE STATUTES RELATING TO
CIVIL PROCEDURE AND CIVIL
REMEDIES AND LIABILITIES

(Including amendments made by
Acts of the 68th Legislature, Regular Session
and First Called Session, 1983)



To be submitted to the Legislature
as part of the
Texas Legislative Council's
Statutory Revision Program

Austin, Texas
April, 1984

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of the

68th LEGISLATURE OF TEXAS

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INTRODUCTION TO THIRD REVISOR'S REPORT

This Third Revisor's Report on the Civil Practice and Remedies Code (originally entitled the Civil Code) contains changes made to the code since the original Revisor's Report was published in January, 1983. Some changes were made prior to passage of House Bill 1186, which adopted the code but was vetoed; other changes were made necessary because of bills passed by the 68th Legislature; and additional changes were made as a result of comments and suggestions received during the review process of the previous year.

This Third Revisor's Report inserts in the proper place in the proposed code all material printed in the Second Revisor's Report and the proposed changes to the code published in the staff response to comments memorandums of January 1, March 21, and April 11.

The council staff expresses its gratitude to the following for their assistance in reviewing the code: the supreme court; the staffs of the governor, lieutenant governor, and speaker of the house; the Texas Association of Defense Counsel; the Texas Trial Lawyers Association; and the State Bar of Texas. The council staff held public meetings with representatives of these groups and with interested individuals to receive comments and suggestions; approximately 130 persons received copies of the Second Revisor's Report and all memorandums relating to the code. Because of the meetings and because of the assistance of these groups and individuals, the code is a better product.

Please refer to the Foreword for additional information concerning the Revisor's Report.

THIRD REVISOR'S REPORT
CIVIL PRACTICE AND REMEDIES CODE

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FOREWORD

The Texas Legislative Council is required by law (Article 5429b-1, Vernon's Texas Civil Statutes) to carry out a complete nonsubstantive revision of the Texas statutes. The process involves reclassifying and rearranging the statutes in a more logical order, employing a numbering system and format that will accommodate future expansion of the law, eliminating repealed, invalid, duplicative, and other ineffective provisions, and improving the draftsmanship of the law if practicable--all toward promoting the stated purpose of making the statutes "more accessible, understandable and usable" without altering the sense, meaning, or effect of the law.

Under the new classification scheme adopted by the council, our statutes will eventually consist of 26 codes. To date, the council has produced and the legislature has enacted the Business & Commerce Code, Education Code, Water Code, Parks and Wildlife Code, Alcoholic Beverage Code, Natural Resources Code, Property Code, Tax Code, Agriculture Code, and Human Resources Code. The council staff also assisted the state bar in the Penal Code and Family Code projects, which were substantive revisions, and revised the retirement laws into the new Title 110B of the Revised Statutes.

The Civil Practice and Remedies Code is a nonsubstantive revision of the Texas statutes relating to civil procedure and civil remedies and liabilities. Because of the wide range of subjects that the council staff determined should be included in the code, the source law for the code is not compiled in Vernon's Texas Civil Statutes as a single group of statutes.

The code is divided into titles, chapters, subchapters, and sections. Sections are numbered decimally, and the number to the left of the decimal point is the same as the chapter number. Gaps in chapter and section numbering are for future expansion.

The council staff encourages examination and review of the code by any interested person. Meticulous care has been taken within the staff to include in the proposed code all source law assigned to the code and to ensure that no substantive change has been made in the law. However, a complete and adequate outside review is necessary.

The revisor's report is arranged to facilitate review. The report states the Revised Law, which is the text of the proposed new language, and then provides the Source Law, which is the text of the current law from which the revised law is taken. If further explanation of either the revised law or the source law is required, a Revisor's Note is included after the source law. All substance in the source law should be revised in the revised law or the reason for its omission should be explained in a revisor's note.

Because of the extensive reorganization of many statutes, and even sentences within a statute, it may be helpful for a reviewer to refer to the source law as printed in Vernon's Texas Civil Statutes (so that the quoted source law may be seen in present context) and to the cross-reference table (showing where the current statutes appear, as revised, in the code). The cross-reference table is printed as Appendix C to the revisor's report.

The revision will require conforming amendments to several

statutes not included in the code; these amendments are printed in Appendix A to the revisor's report. A subject index is printed as Appendix B to the revisor's report.

Vernon's Texas Civil Statutes has continued to print the text of some articles repealed by the Texas Rules of Civil Procedure. The printed articles were amended by the 46th Legislature, and the amendments became effective subsequent to the effective date of the Rules of Practice Act, May 15, 1939. The articles were then included in the Texas Supreme Court's list of articles deemed repealed effective September 1, 1941. Because the articles are repealed, they are not set out in the source law material.

In reviewing the proposed code, the reader should keep in mind the following:

(1) The Code Construction Act (Article 5429b-2, Vernon's Texas Civil Statutes) applies to the code. That Act sets out certain principles of statutory construction applicable to new codes and also provides some definitions. The Act is printed as Appendix D to the revisor's report.

(2) The proposed code is written in modern American English. Like some of the newer translations of the Bible, the style and language of the new code may take some getting used to, but it is hoped that it will be clearer and more readable as the reader becomes accustomed to it. Where possible, the present tense is used; the active rather than the passive voice is preferred; and the singular is used in preference to the plural.

(3) This is a nonsubstantive revision. The staff's authority does not include improving the substance of law. The sole purpose of this draft is to compile all the relevant law, arrange it in a logical fashion, and rewrite it without altering its meaning or legal effect. If a particular source statute is ambiguous and the ambiguity cannot be resolved without a potential substantive effect, the ambiguity is preserved.

The Civil Practice and Remedies Code project is under the direction of Rita Arneil, Legislative Counsel, of the council staff. Questions, comments, or suggestions may be directed to her at P.O. Box 12128, Capitol Station, Austin, Texas 78711, or at telephone number (512) 475-2736.

1 CIVIL PRACTICE AND REMEDIES CODE

2 TITLE 1. GENERAL PROVISIONS

3 CHAPTER 1. GENERAL PROVISIONS

4 Sec. 1.001. PURPOSE OF CODE

5 Sec. 1.002. CONSTRUCTION OF CODE

6 Sec. 1.003. INTERNAL REFERENCES

7 CIVIL PRACTICE AND REMEDIES CODE

8 TITLE 1. GENERAL PROVISIONS

9 CHAPTER 1. GENERAL PROVISIONS

10 Revised Law

11 Sec. 1.001. PURPOSE OF CODE. (a) This code is enacted as a
12 part of the state's continuing statutory revision program, begun by
13 the Texas Legislative Council in 1963 as directed by the
14 legislature in Chapter 448, Acts of the 58th Legislature, Regular
15 Session, 1963 (Article 5429b-1, Vernon's Texas Civil Statutes).
16 The program contemplates a topic-by-topic revision of the state's
17 general and permanent statute law without substantive change.

18 (b) Consistent with the objectives of the statutory revision
19 program, the purpose of this code is to make the law encompassed by
20 this code more accessible and understandable, by:

21 (1) rearranging the statutes into a more logical
22 order;

23 (2) employing a format and numbering system designed
24 to facilitate citation of the law and to accommodate future
25 expansion of the law;

26 (3) eliminating repealed, duplicative,
27 unconstitutional, expired, executed, and other ineffective
28 provisions; and

29 (4) restating the law in modern American English to
30 the greatest extent possible. (New.)

1 (2) a reference to a subtitle, subchapter, subsection,
2 subdivision, paragraph, or other numbered or lettered unit without
3 further identification is a reference to a unit of the next larger
4 unit of this code in which the reference appears. (New.)

5 Revisor's Note

6 This section is added as a drafting convenience
7 to avoid unnecessary identification of the code unit to
8 which reference is made. A reader who reads a
9 reference to "Chapter 32" is advised by this section
10 that the reference is to Chapter 32 of this code.
11 Similarly, a reference to "Subdivision (1)" is a
12 reference to "Subdivision (1) of this subsection."
13 Most internal citations are clearly understood from the
14 context, and this section simply aids that
15 understanding and expressly allows a shorter citation
16 form.

17 [Chapters 2-4 reserved for expansion]

1 TITLE 2. TRIAL, JUDGMENT, AND APPEAL

2 SUBTITLE A. GENERAL PROVISIONS

3 CHAPTER 5. RULE OF DECISION

4 Sec. 5.001. RULE OF DECISION

5 TITLE 2. TRIAL, JUDGMENT, AND APPEAL

6 SUBTITLE A. GENERAL PROVISIONS

7 CHAPTER 5. RULE OF DECISION

8 Revised Law

9 Sec. 5.001. RULE OF DECISION. The rule of decision in this
10 state consists of the constitution of this state, the laws of this
11 state, and those portions of the common law of England that are not
12 inconsistent with the constitution or the laws of this state.
13 (V.A.C.S. Art. 1.)

14 Source Law

15 Art. 1. The common law of England, so far as it
16 is not inconsistent with the Constitution and laws of
17 this State, shall together with such Constitution and
18 laws, be the rule of decision, and shall continue in
19 force until altered or repealed by the Legislature.

20 Revisor's Note

21 The revised law omits the source law material
22 relating to the continuance of the common law until
23 altered or repealed by the legislature. Since the
24 legislature has the inherent authority to alter or
25 repeal law, the material is unnecessary.

1 CHAPTER 6. GOVERNMENTAL EXEMPTION FROM BOND
2 AND SECURITY REQUIREMENTS

3 Sec. 6.001. STATE AND FEDERAL AGENCIES EXEMPT FROM BOND
4 FOR COURT COSTS OR APPEAL

5 Sec. 6.002. CITIES EXEMPT FROM SECURITY FOR COURT COSTS

6 Sec. 6.003. WATER DISTRICTS EXEMPT FROM APPEAL BOND

7 CHAPTER 6. GOVERNMENTAL EXEMPTION FROM BOND
8 AND SECURITY REQUIREMENTS

9 Revised Law

10 Sec. 6.001. STATE AND FEDERAL AGENCIES EXEMPT FROM BOND FOR
11 COURT COSTS OR APPEAL. (a) A governmental entity or officer
12 listed in Subsection (b) may not be required to file a bond for
13 court costs incident to a suit filed by the entity or officer or
14 for an appeal or writ of error taken out by the entity or officer,
15 and is not required to give a surety for the issuance of a bond to
16 take out a writ of attachment, writ of sequestration, distress
17 warrant, or writ of garnishment in a civil suit.

18 (b) The following are exempt from the bond requirements:

- 19 (1) this state;
20 (2) a department of this state;
21 (3) the head of a department of this state;
22 (4) a county of this state;
23 (5) the Federal Housing Administration;
24 (6) the Federal National Mortgage Association;
25 (7) the Government National Mortgage Association;
26 (8) the Veterans Administration;
27 (9) the administrator of veterans affairs; and
28 (10) any national mortgage savings and loan insurance

29 corporation created by an act of congress as a national relief
30 organization that operates on a statewide basis.

31 (c) Notwithstanding Subsection (a), a county or district

1 attorney is not exempted from filing a bond to take out an
2 extraordinary writ unless the commissioners court of the county
3 approves the exemption in an action brought in behalf of the county
4 or unless the attorney general approves the exemption in an action
5 brought in behalf of the state. (V.A.C.S. Arts. 279a, 2072 (part),
6 2072a, 2276 (part).)

7 Source Law

8 Art. 279a. Neither the State of Texas, nor any
9 county, nor any state department, nor the head of any
10 state department, nor the Federal Housing
11 Administration, nor any National Mortgage Association,
12 nor any National Mortgage Savings and Loan Insurance
13 Corporation created and/or to be created by or under
14 authority of any Act of the Congress of the United
15 States of America as a National Relief Organization
16 operating territorially on a state-wide basis, nor the
17 Veterans Administration, nor the Administrator of
18 Veterans Affairs, shall be required to give any bond
19 incident to any suit filed by any such agency,
20 official, and/or entity, for costs of court or for any
21 appeal or writ of error taken out by it or either of
22 them, nor any surety for the issuance of any bond for
23 the taking out of writs of attachment, sequestration,
24 distress warrants, or writs of garnishment in any civil
25 suit. Provided that no county or district attorney
26 shall be exempted from the filing of bonds in the
27 taking out of an extraordinary writ, unless said county
28 or district attorney shall first obtain the approval by
29 proper order of the Commissioners Court of the county
30 in behalf of which such action is taken or the approval
31 of the Attorney General in actions brought in behalf of
32 the State.

33 Art. 2072. No security for costs shall be
34 required of the State

35 Art. 2072a. That hereafter neither the Banking
36 Commissioner of Texas nor the State Banking Board shall
37 be required to give any cost bonds in trial courts in
38 cases to which they may be a party in their official
39 capacities, nor shall they be required to give any cost
40 bond on appeal or supersedeas bond on appeal, or writ
41 of error, in any civil case which they may be
42 prosecuting, or defending in their official capacities.

43 Art. 2276. Neither the State of Texas, nor any
44 county in the State of Texas, nor the Railroad
45 Commission of Texas, nor the head of any department of
46 the State of Texas, prosecuting or defending in any
47 action in their official capacity, shall be required to
48 give bond on any appeal or writ of error taken by it,
49 or either of them, in any civil case.

1 give bond on an appeal or writ of error taken in a civil case that
2 the entity is prosecuting or defending in its official capacity.

3 (b) The following are exempt from the appeal bond
4 requirements:

5 (1) a water improvement district, a water control and
6 improvement district, or a water control and preservation district
7 organized under state law;

8 (2) a levee improvement district organized under state
9 law; and

10 (3) a drainage district organized under state law.
11 (V.A.C.S. Art. 2276a.)

12 Source Law

13 Art. 2276a. No water improvement district, nor
14 any water control and improvement district, nor any
15 water control and preservation district, nor any levee
16 improvement district, nor any drainage district,
17 organized under the laws of this State, prosecuting or
18 defending in any action in its official capacity, shall
19 be required to give bond on any appeal or writ of error
20 taken by it, or either of them, in any civil case.

21 Revisor's Note
22 (End of Chapter)

23 The revised law omits a part of V.A.C.S. Article
24 2276 relating to appeal bond exemptions for executors,
25 administrators, and guardians because a similar
26 provision exists in Section 29, Texas Probate Code.
27 The omitted provision reads as follows:

28 Executors, administrators and
29 guardians appointed by the courts of this
30 State shall not be required to give bond on
31 any appeal or writ of error taken by them
32 in their fiduciary capacity.

1 CHAPTER 7. LIABILITY OF COURT OFFICERS

2 SUBCHAPTER A. LIABILITY OF OFFICER

3 Sec. 7.001. LIABILITY FOR REFUSAL OR NEGLECT IN
4 PERFORMANCE OF OFFICIAL DUTIES

5 Sec. 7.002. LIABILITY FOR DEPOSITS PENDING SUIT

6 Sec. 7.003. LIABILITY REGARDING EXECUTION OF WRITS

7 [Sections 7.004-7.010 reserved for expansion]

8 SUBCHAPTER B. LIABILITY OF ATTORNEY

9 Sec. 7.011. ATTORNEY'S LIABILITY FOR COSTS

10 [Sections 7.012-7.020 reserved for expansion]

11 SUBCHAPTER C. SUIT ON OFFICIAL BONDS

12 Sec. 7.021. SUIT ON OFFICIAL BONDS

13 CHAPTER 7. LIABILITY OF COURT OFFICERS

14 SUBCHAPTER A. LIABILITY OF OFFICER

15 Revised Law

16 Sec. 7.001. LIABILITY FOR REFUSAL OR NEGLECT IN PERFORMANCE
17 OF OFFICIAL DUTIES. (a) A clerk, sheriff, or other officer who
18 neglects or refuses to perform a duty required under Title 42,
19 Revised Statutes, or under a provision of this code derived from
20 that title is liable for damages in a suit brought by a person
21 injured by the officer's neglect or refusal.

22 (b) The officer may be punished for contempt of court for
23 neglect or refusal in the performance of those duties. (V.A.C.S.
24 Art. 2287.)

25 Source Law

26 Art. 2287. Any clerk, sheriff, or other officer
27 who neglects or refuses to perform any duty required of
28 him under any provision of this title shall be liable
29 to damages at the suit of any person injured, and may
30 be punished for contempt of court.

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1 form of instrument. Since all instruments are written,
2 the source law reference to an "instrument of writing"
3 is also omitted.

4 (2) The revised law omits as unnecessary the
5 requirement that the officer's inventory be "correct."
6 The requirement that the officer prepare the inventory
7 presumes the requirement that the inventory be correct.
8 An officer who presents a false inventory is guilty of
9 the offense of tampering with a governmental record
10 under Section 37.10, Penal Code.

11 Revised Law

12 Sec. 7.003. LIABILITY REGARDING EXECUTION OF WRITS. (a)
13 Except as provided by Section 34.061, an officer is not liable for
14 damages resulting from the execution of a writ issued by a court of
15 this state if the officer:

16 (1) in good faith executes the writ as provided by law
17 and by the Texas Rules of Civil Procedure; and

18 (2) uses reasonable diligence in performing his
19 official duties.

20 (b) An officer shall execute a writ issued by a court of
21 this state without requiring that bond be posted for the
22 indemnification of the officer. (V.A.C.S. Art. 3799a, Secs. 1,
23 2.)

24 Source Law

25 Art. 3799a

26 Sec. 1. Except as provided by Article 3799,
27 Revised Civil Statutes of Texas, 1925, an officer is
28 not liable for damages resulting from the execution of
29 a writ issued by a Texas court if the officer in good
30 faith executes the writ as provided by law and by the
31 Texas Rules of Civil Procedure and uses reasonable
32 diligence in performing his official duties.

33 Sec. 2. An officer shall execute a writ issued
34 by a Texas court without requiring that bond be posted
35 for indemnification of the officer.

36 [Sections 7.004-7.010 reserved for expansion]

1 SUBCHAPTER B. LIABILITY OF ATTORNEY

2 Revised Law

3 Sec. 7.011. ATTORNEY'S LIABILITY FOR COSTS. An attorney who
4 is not a party to a civil proceeding is not liable for payment of
5 costs incurred by a party to the proceeding. (V.A.C.S. Art.
6 320c.)

7 Source Law

8 Art. 320c. Regardless of any law or rule to the
9 contrary, an attorney who is not a party to a civil
10 proceeding is not liable for payment of costs incurred
11 by any party to the proceeding.

12 [Sections 7.012-7.020 reserved for expansion]

13 SUBCHAPTER C. SUIT ON OFFICIAL BONDS

14 Revised Law

15 Sec. 7.021. SUIT ON OFFICIAL BONDS. Suit may be brought in
16 the name of this state alone on an official bond for the benefit of
17 all the parties entitled to recover on the bond if:

18 (1) the bond is made payable to this state or to an
19 officer of this state; and

20 (2) a recovery on the bond is authorized by or would
21 inure to the benefit of parties other than this state. (V.A.C.S.
22 Art. 1991.)

23 Source Law

24 Art. 1991. Whenever an official bond is made
25 payable to the State of Texas, or any officer thereof,
26 and a recovery thereon is authorized by, or would inure
27 to the benefit of parties other than the State, suit
28 may be brought on such bond in the name of the State
29 alone for the benefit of all parties entitled to
30 recover thereon.

31 [Chapters 8-14 reserved for expansion]

SUBTITLE B. TRIAL MATTERS

CHAPTER 15. VENUE

SUBCHAPTER A. GENERAL RULE; MANDATORY VENUE

Sec. 15.001. VENUE: GENERAL RULE

Sec. 15.002. LAND

Sec. 15.003. INJUNCTION AGAINST SUIT

Sec. 15.004. INJUNCTION AGAINST EXECUTION OF JUDGMENT

Sec. 15.005. HEAD OF STATE DEPARTMENT

Sec. 15.006. COUNTIES

Sec. 15.007. OTHER MANDATORY VENUE

Sec. 15.008. LIBEL, SLANDER, OR INVASION OF PRIVACY

[Sections 15.009-15.020 reserved for expansion]

SUBCHAPTER B. PERMISSIVE VENUE

Sec. 15.021. EXECUTOR; ADMINISTRATOR; GUARDIAN

Sec. 15.022. INSURANCE

Sec. 15.023. BREACH OF WARRANTY BY MANUFACTURER

Sec. 15.024. RAILWAY PERSONAL INJURIES

Sec. 15.025. CONTRACT IN WRITING

Sec. 15.026. CORPORATIONS AND ASSOCIATIONS

Sec. 15.027. FOREIGN CORPORATIONS

Sec. 15.028. OTHER PERMISSIVE VENUE

Sec. 15.029. TRANSIENT PERSON

Sec. 15.030. NONRESIDENTS; RESIDENCE UNKNOWN

[Sections 15.031-15.050 reserved for expansion]

SUBCHAPTER C. SUITS BROUGHT IN JUSTICE COURT

Sec. 15.051. APPLICATION

Sec. 15.052. VENUE: GENERAL RULE

Sec. 15.053. RESIDENCE OF A SINGLE MAN

Sec. 15.054. FORCIBLE ENTRY AND DETAINER

Sec. 15.055. EXECUTOR; ADMINISTRATOR; GUARDIAN

Sec. 15.056. COUNTIES

Sec. 15.057. OPTION: SUIT IN DEFENDANT'S COUNTY OF RESIDENCE

Sec. 15.058. NONRESIDENT; RESIDENCE UNKNOWN

1 Sec. 15.059. TRANSIENT PERSON
2 Sec. 15.060. PERSONAL PROPERTY
3 Sec. 15.061. RENTS
4 Sec. 15.062. CONTRACT
5 Sec. 15.063. TORTS
6 Sec. 15.064. CORPORATION; ASSOCIATION; JOINT-STOCK COMPANY
7 Sec. 15.065. RAILROAD COMPANIES; CARRIERS
8 Sec. 15.066. STEAMBOAT OR OTHER VESSEL
9 Sec. 15.067. INSURANCE COMPANIES
10 Sec. 15.068. PLEADING REQUIREMENTS
11 Sec. 15.069. MORE THAN ONE JUSTICE
12 Sec. 15.070. DISQUALIFIED JUSTICE

13 [Sections 15.071-15.080 reserved for expansion]

14 SUBCHAPTER D. MISCELLANEOUS PROVISIONS

15 Sec. 15.081. JOINDER OF DEFENDANTS OR CLAIMS
16 Sec. 15.082. COUNTERCLAIMS, CROSS CLAIMS, AND
17 THIRD-PARTY CLAIMS
18 Sec. 15.083. TRANSFER
19 Sec. 15.084. HEARINGS
20 Sec. 15.085. WATERCOURSE OR ROADWAY FORMING
21 COUNTY BOUNDARY

22 SUBTITLE B. TRIAL MATTERS

23 CHAPTER 15. VENUE

24 SUBCHAPTER A. GENERAL RULE; MANDATORY VENUE

25 Revised Law

26 Sec. 15.001. VENUE: GENERAL RULE. Except as otherwise
27 provided by this subchapter or Subchapter B of this chapter, all
28 lawsuits shall be brought in the county in which all or part of the
29 cause of action accrued or in the county of defendant's residence
30 if defendant is a natural person. (V.A.C.S. Art. 1995, Sec. 1.)

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Revised Law

Sec. 15.008. LIBEL, SLANDER, OR INVASION OF PRIVACY. A suit for damages for libel, slander, or invasion of privacy shall be brought and can only be maintained in the county in which the plaintiff resided at the time of the accrual of the cause of action, or in the county in which the defendant resided at the time of filing suit, or in the county of the residence of defendants, or any of them, or the domicile of any corporate defendant, at the election of the plaintiff. (V.A.C.S. Art. 1995, Sec. 2(g).)

Source Law

(g) Libel, slander, or invasion of privacy. A suit for damages for libel, slander, or invasion of privacy shall be brought and can only be maintained in the county in which the plaintiff resided at the time of the accrual of the cause of action, or in the county where the defendant resided at the time of filing suit, or in the county of the residence of defendants, or any of them, or the domicile of any corporate defendant, at the election of the plaintiff.

[Sections 15.009-15.020 reserved for expansion]

SUBCHAPTER B. PERMISSIVE VENUE

Revised Law

Sec. 15.021. EXECUTOR; ADMINISTRATOR; GUARDIAN. If the suit is against an executor, administrator, or guardian, as such, to establish a money demand against the estate which he represents, the suit may be brought in the county in which the estate is administered, or if the suit is against an executor, administrator, or guardian growing out of a negligent act or omission of the person whose estate the executor, administrator, or guardian represents, the suit may be brought in the county in which the negligent act or omission of the person whose estate the executor, administrator, or guardian represents occurred. (V.A.C.S. Art. 1995. Sec. 3(a).)

Source Law

Sec. 3. PERMISSIVE VENUE. (a) Executors, administrators, etc. If the suit is against an executor, administrator, or guardian, as such, to establish a money demand against the estate which he represents, the suit may be brought in the county in which such estate is administered, or if the suit is against an executor, administrator, or guardian growing out of a negligent act or omission of the person whose estate the executor, administrator, or guardian represents, the suit may be brought in the county where the negligent act or omission of the person whose estate the executor, administrator, or guardian represents occurred.

Revised Law

Sec. 15.022. INSURANCE. Suit against fire, marine, or inland insurance companies may also be commenced in any county in which the insured property was situated. A suit on a policy may be brought against any life insurance company, or accident insurance company, or life and accident, or health and accident, or life, health, and accident insurance company in the county in which the home office of the company is located or in the county in which the loss has occurred or in which the policyholder or beneficiary instituting the suit resides. (V.A.C.S. Art. 1995, Sec. 3(b).)

Source Law

(b) Insurance. Suit against fire, marine, or inland insurance companies may also be commenced in any county in which the insured property was situated. Suits on policies may be brought against any life insurance company, or accident insurance company, or life and accident, or health and accident, or life, health, and accident insurance company in the county where the home office of such company is located or in the county where loss has occurred or where the policyholder or beneficiary instituting such suit resides.

Revised Law

Sec. 15.023. BREACH OF WARRANTY BY MANUFACTURER. A suit for breach of warranty by a manufacturer of consumer goods may be brought in any county in which all or a part of the cause of action accrued, in any county in which the manufacturer may have an agency

1 or representative, in the county in which the principal office of
2 the company may be situated, or in the county in which the
3 plaintiff or plaintiffs reside. (V.A.C.S. Art. 1995, Sec. 3(c).)

4 Source Law

5 (c) Breach of warranty by a manufacturer. Suits
6 for breach of warranty by a manufacturer of consumer
7 goods may be brought in any county where the cause of
8 action or a part thereof accrued, or in any county
9 where such manufacturer may have an agency or
10 representative, or in the county in which the principal
11 office of such company may be situated, or in the
12 county where the plaintiff or plaintiffs reside.

13 Revised Law

14 Sec. 15.024. RAILWAY PERSONAL INJURIES. A suit against a
15 railroad corporation or against any assignee, trustee, or receiver
16 operating any railway in this state for damages arising from
17 personal injuries, resulting in death or otherwise, shall be
18 brought either in the county in which the injury occurred or in the
19 county in which the plaintiff resided at the time of the injury.
20 If the defendant railroad corporation does not run or operate its
21 railway in or through the county in which the plaintiff resided at
22 the time of the injury and has no agent in that county, then the
23 suit shall be brought either in the county in which the injury
24 occurred, or in the county nearest that in which the plaintiff
25 resided at the time of the injury, in which the defendant
26 corporation runs or operates its road, or has an agent. When an
27 injury occurs within one-half mile of the boundary line dividing
28 two counties, suit may be brought in either of those counties. If
29 the plaintiff is a nonresident of this state, the suit shall be
30 brought in the county in which the injury occurred or in the county
31 in which the defendant railroad corporation has its principal
32 office. (V.A.C.S. Art. 1995, Sec. 3(d).)

2 Source Law

3 (f) Corporations and associations. Suits
4 against a private corporation, association,
5 partnership, or joint-stock company may be brought in
6 the county in which its principal office is situated,
7 or in the county in which the cause of action or part
8 thereof arose, or in the county in which the plaintiff
9 resided at the time the cause of action or part thereof
10 arose, provided such corporation, association,
11 partnership, or joint-stock company has an agency or
12 representative in such county, or, if the corporation,
13 association, partnership, or joint-stock company had no
14 agency or representative in the county in which the
15 plaintiff resided at the time the cause of action or
16 part thereof arose, then suit may be brought in the
17 county nearest that in which plaintiff resided at said
18 time in which the corporation, association,
19 partnership, or joint-stock company then had an agency
20 or representative. Suits against a railroad
21 corporation or against any assignee, trustee, or
22 receiver operating its railway may also be brought in
23 any county through or into which the railroad of such
24 corporation extends or is operated. Suits against
25 receivers of persons and corporations may also be
26 brought as otherwise provided by law.

27 Revised Law

28 Sec. 15.027. FOREIGN CORPORATIONS. Foreign corporations,
29 private or public, joint-stock companies or associations, not
30 incorporated by the laws of this state, and doing business in this
31 state, may be sued in any county in which all or a part of the
32 cause of action accrued, or in any county in which the company may
33 have an agency or representative, or in the county in which the
34 principal office of the company may be situated, or, if the
35 defendant corporation has no agent or representative in this state,
36 then in the county in which the plaintiffs or either of them
37 reside. (V.A.C.S. Art. 1995, Sec. 3(g).)

38 Source Law

39 (g) Foreign corporations. Foreign corporations,
40 private or public, joint-stock companies or
41 associations, not incorporated by the laws of this
42 state, and doing business within this state, may be
43 sued in any county where the cause of action or a part
44 thereof accrued, or in any county where such company
45 may have an agency or representative, or in the county

1 in which the principal office of such company may be
2 situated, or, when the defendant corporation has no
3 agent or representative in this state, then in the
4 county where the plaintiffs or either of them reside.

5 Revised Law

6 Sec. 15.028. OTHER PERMISSIVE VENUE. An action governed by
7 any other statute prescribing permissive venue may be brought in
8 the county allowed by that statute. (V.A.C.S. Art. 1995, Sec.
9 3(h).)

10 Source Law

11 (h) Other permissive venue. An action governed
12 by any other statute prescribing permissive venue may
13 be brought in the county allowed by such statute.

14 Revised Law

15 Sec. 15.029. TRANSIENT PERSON. A transient person may be
16 sued in any county in which he may be found. (V.A.C.S. Art. 1995,
17 Sec. 3(i).)

18 Source Law

19 (i) Transient persons. A transient person may
20 be sued in any county in which he may be found.

21 Revised Law

22 Sec. 15.030. NONRESIDENTS; RESIDENCE UNKNOWN. If one or all
23 of several defendants reside outside this state or if their
24 residence is unknown, suit may be brought in the county in which
25 the plaintiff resides. (V.A.C.S. Art. 1995, Sec. 3(j).)

26 Source Law

27 (j) Nonresidents; residence unknown. If one or
28 all of several defendants reside without the state or
29 if their residence is unknown, suit may be brought in
30 the county in which the plaintiff resides.

31 [Sections 15.031-15.050 reserved for expansion]

1 SUBCHAPTER C. SUITS BROUGHT IN JUSTICE COURT

2 Revised Law

3 Sec. 15.051. APPLICATION. This subchapter applies only to
4 suits brought in a justice court. (V.A.C.S. Art. 2390 (part).)

5 Source Law

6 Art. 2390. Every suit in the justice court shall
7 be commenced

8 Revised Law

9 Sec. 15.052. VENUE: GENERAL RULE. Except as otherwise
10 provided by this subchapter or by any other law, a suit in justice
11 court shall be brought in the county and precinct in which one or
12 more defendants reside. (V.A.C.S. Art. 2390 (part).)

13 Source Law

14 [Suits in justice court must be brought] in the county
15 and precinct in which the defendant or one or more of
16 the several defendants resides, except in the following
17 cases and such other cases as are or may be provided by
18 law:
19

20 Revised Law

21 Sec. 15.053. RESIDENCE OF A SINGLE MAN. A single man's
22 residence is where he boards. (V.A.C.S. Art. 2391.)

23 Source Law

24 Art. 2391. The residence of a single man is
25 where he boards.

26 Revised Law

27 Sec. 15.054. FORCIBLE ENTRY AND DETAINER. A suit for
28 forcible entry and detainer shall be brought in the precinct in
29 which all or part of the premises is located. (V.A.C.S. Art. 2390,
30 Subdiv. 1.)

1 plaintiff's option, be brought either in the county and
2 precinct of the defendant's residence or in that
3 provided in each exception:
4 . . .

5 Revised Law

6 Sec. 15.058. NONRESIDENT; RESIDENCE UNKNOWN. A suit against
7 a nonresident of this state or against a person whose residence is
8 unknown may be brought in the county and precinct in which the
9 plaintiff resides. (V.A.C.S. Art. 2390, Subdiv. 8.)

10 Source Law

11 8. Suits against non-residents of the State or
12 persons whose residence is unknown, may be brought in
13 the county and precinct where the plaintiff resides.

14 Revised Law

15 Sec. 15.059. TRANSIENT PERSON. A suit against a transient
16 person may be brought in any county and precinct in which the
17 transient person is found. (V.A.C.S. Art. 2390, Subdiv. 7.)

18 Source Law

19 7. Suits against transient persons may be
20 brought in any county and precinct where such defendant
21 is to be found.

22 Revised Law

23 Sec. 15.060. PERSONAL PROPERTY. A suit to recover personal
24 property may be brought in the county and precinct in which the
25 property is located. (V.A.C.S. Art. 2390, Subdiv. 9.)

26 Source Law

27 9. Suits for the recovery of personal property
28 may be brought in any county and precinct in which the
29 property may be.

30 Revised Law

31 Sec. 15.061. RENTS. A suit to recover rents may be brought

1 in the county and precinct in which all or part of the rented
2 premises is located. (V.A.C.S. Art. 2390, Subdiv. 5.)

3 Source Law

4 5. Suits for the recovery of rents may be
5 brought in the county and precinct in which the rented
6 premises, or a part thereof are situated.

7 Revised Law

8 Sec. 15.062. CONTRACT. (a) Except as otherwise provided by
9 this section, a suit on a written contract that promises
10 performance at a particular place may be brought in the county and
11 precinct in which the contract was to be performed.

12 (b) A suit on an oral or written contract for labor actually
13 performed may be brought in the county and precinct in which the
14 labor was performed.

15 (c) A suit by a creditor on a contract for goods, services,
16 or loans intended primarily for personal, family, household, or
17 agricultural use may be brought only in the county and precinct in
18 which the contract was signed or in which the defendant resides.

19 (d) A contract described by Subsection (c) may not waive the
20 venue provided by that subsection. (V.A.C.S. Art. 2390, Subdiv.
21 4.)

22 Source Law

23 4. (a) Suits upon a contract in writing
24 promising performance at any particular place, may be
25 brought in the county and precinct in which such
26 contract was to be performed, provided that in all
27 suits to recover for labor actually performed, suit may
28 be brought and maintained where such labor is
29 performed, whether the contract for same be oral or in
30 writing.

31 (b) Suits by creditors upon contracts for goods,
32 services, or loans, intended primarily for personal,
33 family, household, or agricultural use may only be
34 brought in the county and precinct in which the
35 contract was signed or in the county and precinct of
36 the defendant's residence, notwithstanding any
37 provision in the contract to the contrary.

1 Revised Law

2 Sec. 15.063. TORTS. A tort suit for damages may be brought
3 in the county and precinct in which the injury was inflicted.
4 (V.A.C.S. Art. 2390, Subdiv. 6.)

5 Source Law

6 6. Suits for damages for torts may be brought in
7 the county and precinct in which the injury was
8 inflicted.

9 Revised Law

10 Sec. 15.064. CORPORATION; ASSOCIATION; JOINT-STOCK COMPANY.
11 A suit against a private corporation, association, or joint-stock
12 company may be brought in the county and precinct in which:

13 (1) all or part of the cause of action arose;

14 (2) the corporation, association, or company has an
15 agency or representative; or

16 (3) the principal office of the corporation,
17 association, or company is located. (V.A.C.S. Art. 2390, Subdiv.
18 10.)

19 Source Law

20 10. Suits against private corporations,
21 associations and joint stock companies may be brought
22 in any county and precinct in which the cause of action
23 or a part thereof arose, or in which such corporation,
24 association or company has an agency or representative,
25 or in which its principal office is situated.

26 Revised Law

27 Sec. 15.065. RAILROAD COMPANIES; CARRIERS. A suit against a
28 railroad company, a canal company, or the owners of a line of
29 transportation vehicles for injury to a person or property on the
30 railroad, canal, or line of vehicles or for liability as a carrier
31 may be brought in a precinct through which that railroad, canal, or
32 line of vehicles passes, or in a precinct in which the route of
33 that railroad, canal, or vehicle begins or ends. (V.A.C.S. Art.

1 2390, Subdiv. 11.)

2 Source Law

3 11. Suits against railroad and canal companies,
4 or the owners of any line of transportation vehicles of
5 any character, for any injury to person or property
6 upon the road, canal, or line of vehicles of the
7 defendant, or upon any liability as a carrier, may be
8 brought in any precinct through which the road, canal
9 or line of vehicles may pass, or in any precinct where
10 the route of such railroad, canal, or vehicle may begin
11 or terminate.

12 Revised Law

13 Sec. 15.066. STEAMBOAT OR OTHER VESSEL. A suit against the
14 owner of a steamboat or other vessel may be brought in the county
15 or precinct in which:

- 16 (1) the steamboat or vessel may be found;
17 (2) the cause of action arose; or
18 (3) the liability accrued or was contracted.
19 (V.A.C.S. Art. 2390, Subdiv. 13 (part).)

20 Source Law

21 13. Suits against the owners of a steamboat or
22 other vessel may be brought in any county or precinct
23 where such steamboat or vessel may be found, or where
24 the cause of action arose or the liability was
25 contracted or accrued.

26 Revised Law

27 Sec. 15.067. INSURANCE COMPANIES. (a) A suit against a
28 fire, marine, or inland marine insurance company may be brought in
29 the county and precinct in which all or part of the insured
30 property was located.

31 (b) A suit against an accident and life insurance company or
32 association may be brought in the county and precinct in which one
33 or more of the insured persons resided when the injury or death
34 occurred. (V.A.C.S. Art. 2390, Subdiv. 12.)

Source Law

12. Suits against fire, marine or inland insurance companies may be brought in any county and precinct in which any part of the insured property was situated; and suits against life and accident insurance companies or associations may be brought in the county and precinct in which the persons insured, or any of them resided at the time of such injury or death.

Revised Law

Sec. 15.068. PLEADING REQUIREMENTS. If a suit is brought in a county or precinct in which the defendant does not reside, the citation or pleading must affirmatively show that the suit comes within an exception provided for by this subchapter. (V.A.C.S. Art. 2390, Subdiv. 13 (part).)

Source Law

In every suit commenced in a county or precinct in which the defendants or one of them may reside, it shall be affirmatively shown in the citation or pleading, if any, that such suit comes within one of the exceptions named in this article.

Revisor's Note

The source law provided that if suit is brought in a county in which the defendant resided, the pleading must show that venue of the suit was proper under an exception to the general rule of suit in the defendant's county of residence. Since there would be no need to plead an exception if suit is brought in the defendant's county of residence, the revised law reflects what was obviously meant.

Revised Law

Sec. 15.069. MORE THAN ONE JUSTICE. If there is more than one justice of the peace in a precinct or in an incorporated city or town, suit may be brought before any justice of the peace in that precinct or incorporated city or town. (V.A.C.S. Art. 2392.)

1 Source Law

2 Art. 2392. Where, in any one precinct,
3 incorporated city or town there may be more than one
4 justice of the peace, the suit may be brought before
5 either of them.

6 Revised Law

7 Sec. 15.070. DISQUALIFIED JUSTICE. If the justice in the
8 proper precinct is not qualified to try the suit, suit may be
9 brought before the nearest qualified justice in the county.
10 (V.A.C.S. Art. 2393.)

11 Source Law

12 Art. 2393. If there be no justice qualified to
13 try the suit in the proper precinct, the suit may be
14 commenced before the nearest justice of the county who
15 is not disqualified to try the same.

16 [Sections 15.071-15.080 reserved for expansion]

17 SUBCHAPTER D. MISCELLANEOUS PROVISIONS

18 Revised Law

19 Sec. 15.081. JOINDER OF DEFENDANTS OR CLAIMS. When two or
20 more parties are joined as defendants in the same action or two or
21 more claims or causes of action are properly joined in one action
22 and the court has venue of an action or claim against any one
23 defendant, the court also has venue of all claims or actions
24 against all defendants unless one or more of the claims or causes
25 of action is governed by one of the provisions of Subchapter A of
26 this chapter requiring transfer of the claim or cause of action, on
27 proper objection, to the mandatory county. (V.A.C.S. Art. 1995,
28 Sec. 4(a).)

29 Source Law

30 Sec. 4. GENERAL PROVISIONS. (a) Joinder of
31 defendants or claims. When two or more parties are
32 joined as defendants in the same action and/or two or

1 more claims or causes of action are properly joined in
2 one action and the court has venue of an action or
3 claim against any one defendant, the court also has
4 venue of all claims or actions against all defendants
5 unless one or more of the claims or causes of action is
6 governed by one of the provisions of Section 2 of this
7 article requiring transfer of such claim or cause of
8 action, upon proper objection, to the mandatory county.

9 Revised Law

10 Sec. 15.082. COUNTERCLAIMS, CROSS CLAIMS, AND THIRD-PARTY
11 CLAIMS. Venue of the main action shall establish venue of a
12 counterclaim, cross claim, or third-party claim properly joined
13 under the Texas Rules of Civil Procedure. (V.A.C.S. Art. 1995,
14 Sec. 4(b).)

15 Source Law

16 (b) Counterclaims, cross-claims, and third party
17 claims. Venue of the main action shall establish venue
18 of a counterclaim, cross-claim, or third party claim
19 properly joined under the Texas Rules of Civil
20 Procedure.

21 Revised Law

22 Sec. 15.083. TRANSFER. The court, on motion filed and
23 served concurrently with or before the filing of the answer, shall
24 transfer an action to another county of proper venue if:

25 (1) the county in which the action is pending is not a
26 proper county as provided by this chapter;

27 (2) an impartial trial cannot be had in the county in
28 which the action is pending; or

29 (3) written consent of the parties to transfer to any
30 other county is filed at any time. (V.A.C.S. Art. 1995, Sec.
31 4(c).)

32 Source Law

33 (c) Transfer. The court, upon motion filed and
34 served concurrently with or before the filing of the
35 answer, shall transfer an action to another county of
36 proper venue where:

37 (1) the county where the action is pending is

1 not a proper county as provided by this Act; or
2 (2) an impartial trial cannot be had in the
3 county where the action is pending; or
4 (3) written consent of the parties to transfer
5 to any other county is filed at any time.

6 Revised Law

7 Sec. 15.084. HEARINGS. (a) In all venue hearings, no
8 factual proof concerning the merits of the case shall be required
9 to establish venue. The court shall determine venue questions from
10 the pleadings and affidavits. No interlocutory appeal shall lie
11 from the determination.

12 (b) On appeal from the trial on the merits, if venue was
13 improper it shall in no event be harmless error and shall be
14 reversible error. In determining whether venue was or was not
15 proper, the appellate court shall consider the entire record,
16 including the trial on the merits. (V.A.C.S. Art. 1995, Sec.
17 4(d).)

18 Source Law

19 (d) Hearings. (1) In all venue hearings, no
20 factual proof concerning the merits of the case shall
21 be required to establish venue; the court shall
22 determine venue questions from the pleadings and
23 affidavits. No interlocutory appeal shall lie from
24 such determination.

25 (2) On appeal from the trial on the merits, if
26 venue was improper it shall in no event be harmless
27 error and shall be reversible error. In determining
28 whether venue was or was not proper the appellate court
29 shall consider the entire record, including the trial
30 on the merits.

31 Revised Law

32 Sec. 15.085. WATERCOURSE OR ROADWAY FORMING COUNTY BOUNDARY.
33 If a river, watercourse, highway, road, or street forms the
34 boundary line between two counties, the courts of each county have
35 concurrent jurisdiction over the parts of the watercourse or
36 roadway that form the boundary of the county in the same manner as
37 if the watercourse or roadway were in that county. (V.A.C.S. Art.
38 1996.)

Source Law

Art. 1996. Where any part of a river, water course, highway, road or street is the boundary line between two counties, the several courts of each of said counties shall have concurrent jurisdiction in all cases over such parts of said river, water course, highway, road or street as shall be the boundary of such county in the same manner as if such parts of said river, water course, highway, road or street were within the body of such county.

1 CHAPTER 16. LIMITATIONS

2 SUBCHAPTER A. LIMITATIONS OF PERSONAL ACTIONS

3 Sec. 16.001. EFFECT OF DISABILITY

4 Sec. 16.002. ONE-YEAR LIMITATIONS PERIOD

5 Sec. 16.003. TWO-YEAR LIMITATIONS PERIOD

6 Sec. 16.004. FOUR-YEAR LIMITATIONS PERIOD

7 Sec. 16.005. ACTION FOR CLOSING STREET OR ROAD

8 Sec. 16.006. CARRIERS OF PROPERTY

9 Sec. 16.007. RETURN OF EXECUTION

10 Sec. 16.008. ARCHITECTS AND ENGINEERS FURNISHING DESIGN,
11 PLANNING, OR INSPECTION OF CONSTRUCTION
12 OF IMPROVEMENTS

13 Sec. 16.009. PERSONS FURNISHING CONSTRUCTION OR REPAIR
14 OF IMPROVEMENTS

15 [Sections 16.010-16.020 reserved for expansion]

16 SUBCHAPTER B. LIMITATIONS OF REAL PROPERTY ACTIONS

17 Sec. 16.021. DEFINITIONS

18 Sec. 16.022. EFFECT OF DISABILITY

19 Sec. 16.023. TACKING OF SUCCESSIVE INTERESTS

20 Sec. 16.024. ADVERSE POSSESSION: THREE-YEAR LIMITATIONS
21 PERIOD

22 Sec. 16.025. ADVERSE POSSESSION: FIVE-YEAR LIMITATIONS
23 PERIOD

24 Sec. 16.026. ADVERSE POSSESSION: 10-YEAR LIMITATIONS
25 PERIOD

26 Sec. 16.027. ADVERSE POSSESSION: 25-YEAR LIMITATIONS
27 PERIOD NOTWITHSTANDING DISABILITY

28 Sec. 16.028. ADVERSE POSSESSION WITH RECORDED INSTRUMENT:
29 25-YEAR LIMITATIONS PERIOD

30 Sec. 16.029. EVIDENCE OF TITLE TO LAND BY LIMITATIONS

31 Sec. 16.030. TITLE THROUGH ADVERSE POSSESSION

32 Sec. 16.031. ENCLOSED LAND

33 Sec. 16.032. ADJACENT LAND

1 Sec. 16.033. TECHNICAL DEFECTS IN INSTRUMENT

2 Sec. 16.034. ATTORNEY'S FEES

3 Sec. 16.035. LIEN DEBT ON REAL PROPERTY

4 Sec. 16.036. EXTENSION OF LIEN DEBT

5 Sec. 16.037. EFFECT OF EXTENSION OF LIEN DEBT

6 ON THIRD PARTIES

7 [Sections 16.038-16.050 reserved for expansion]

8 SUBCHAPTER C. RESIDUAL LIMITATIONS PERIOD

9 Sec. 16.051. RESIDUAL LIMITATIONS PERIOD

10 [Sections 16.052-16.060 reserved for expansion]

11 SUBCHAPTER D. MISCELLANEOUS PROVISIONS

12 Sec. 16.061. RIGHTS NOT BARRED

13 Sec. 16.062. EFFECT OF DEATH

14 Sec. 16.063. TEMPORARY ABSENCE FROM STATE

15 Sec. 16.064. EFFECT OF LACK OF JURISDICTION

16 Sec. 16.065. ACKNOWLEDGMENT OF CLAIM

17 Sec. 16.066. ACTION ON FOREIGN JUDGMENT

18 Sec. 16.067. CLAIM INCURRED PRIOR TO ARRIVAL IN THIS STATE

19 Sec. 16.068. AMENDED AND SUPPLEMENTAL PLEADINGS

20 Sec. 16.069. COUNTERCLAIM OR CROSS CLAIM

21 Sec. 16.070. CONTRACTUAL LIMITATIONS PERIOD

22 Sec. 16.071. NOTICE REQUIREMENTS

23 Sec. 16.072. SATURDAY, SUNDAY, OR HOLIDAY

24 CHAPTER 16. LIMITATIONS

25 SUBCHAPTER A. LIMITATIONS OF PERSONAL ACTIONS

26 Revised Law

27 Sec. 16.001. EFFECT OF DISABILITY. (a) For the purposes of
28 this subchapter, a person is under a legal disability if the person
29 is:

30 (1) younger than 18 years of age, regardless of
31 whether the person is married;

1 (2) imprisoned; or

2 (3) of unsound mind.

3 (b) If a person entitled to bring a personal action is under
4 a legal disability when the cause of action accrues, the time of
5 the disability is not included in a limitations period.

6 (c) A person may not tack one legal disability to another to
7 extend a limitations period.

8 (d) A disability that arises after a limitations period
9 starts does not suspend the running of the period. (V.A.C.S. Arts.
10 5535, 5544.)

11 Source Law

12 Art. 5535. If a person entitled to bring any
13 action mentioned in this subdivision of this title be
14 at the time the cause of action accrues either a minor,
15 a married person under twenty-one years of age, a
16 person imprisoned or a person of unsound mind, the time
17 of such disability shall not be deemed a portion of the
18 time limited for the commencement of the action and
19 such person shall have the same time after the removal
20 of his disability that is allowed to others by the
21 provisions of this title.

22 Art. 5544. The period of limitation shall not be
23 extended by the connection of one disability with
24 another; and, when the law of limitation shall begin to
25 run, it shall continue to run, notwithstanding any
26 supervening disability of the party entitled to sue or
27 liable to be sued.

28 Revisor's Note

29 (1) The revised law changes the age of majority
30 because V.A.C.S. Article 5923b, enacted subsequent to
31 the enactment of the source law, requires that a law
32 that extends a right, privilege, or obligation to a
33 person on the basis of a minimum age of 21 be
34 interpreted as prescribing a minimum age of 18.

35 (2) The revised law omits the superfluous source
36 law material relating to suits brought after the
37 removal of a disability, since the material merely
38 states the result of the application of the rule

1 revised as Subsection (b).

2 Revised Law

3 Sec. 16.002. ONE-YEAR LIMITATIONS PERIOD. A person must
4 bring suit for malicious prosecution, libel, slander, or breach of
5 promise of marriage not later than one year after the day the cause
6 of action accrues. (V.A.C.S. Art. 5524.)

7 Source Law

8 Art. 5524. There shall be commenced and
9 prosecuted within one year after the cause of action
10 shall have accrued, and not afterward, all actions or
11 suits in courts of the following description:

12 1. Actions for malicious prosecution or for
13 injuries done to the character or reputation of another
14 by libel or slander.

15 2. Actions for damages for seduction, or breach
16 of promise of marriage.

17 Revisor's Note

18 The offense of seduction was repealed in 1973 by
19 the enactment of the Penal Code. The source law
20 reference to a civil action for damages for seduction
21 is therefore omitted from the revised law.

22 Revised Law

23 Sec. 16.003. TWO-YEAR LIMITATIONS PERIOD. (a) A person
24 must bring suit for trespass for injury to the estate or to the
25 property of another, conversion of personal property, taking or
26 detaining the personal property of another, personal injury,
27 forcible entry and detainer, and forcible detainer not later than
28 two years after the day the cause of action accrues.

29 (b) A person must bring suit not later than two years after
30 the day the cause of action accrues in an action for injury
31 resulting in death. The cause of action accrues on the death of
32 the injured person. (V.A.C.S. Art. 5526.)

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Source Law

Art. 5527. There shall be commenced and prosecuted within four years after the cause of action shall have accrued, and not afterward, all actions or suits in court of the following description:

1. Actions for debt.

2. Actions for the penalty or for damages on the penal clause of a bond to convey real estate.

3. Actions by one partner against his co-partner for a settlement of the partnership accounts, actions upon stated or open accounts, or upon mutual and current accounts concerning the trade of merchandise between merchant and merchant, their factors or agents; and the cause of action shall be considered as having accrued on a cessation of the dealings in which they were interested together.

Art. 5528. All suits on the bond of any executor, administrator or guardian shall be commenced and prosecuted within four years next after the death, resignation, removal or discharge of such executor, administrator or guardian, and not thereafter.

Art. 5531. Any action for the specific performance of a contract for the conveyance of real estate shall be commenced within four years next after the cause of action shall have accrued, and not thereafter.

Revised Law

Sec. 16.005. ACTION FOR CLOSING STREET OR ROAD. (a) A person must bring suit for any relief from the following acts not later than two years after the day the cause of action accrues:

(1) the passage by a governing body of an incorporated city or town of an ordinance closing and abandoning, or attempting to close and abandon, all or any part of a public street or alley in the city or town, other than a state highway; or

(2) the adoption by a commissioners court of an order closing and abandoning, or attempting to close and abandon, all or any part of a public road or thoroughfare in the county, other than a state highway.

(b) The cause of action accrues when the order or ordinance is passed or adopted.

(c) If suit is not brought within the period provided by this section, the person in possession of the real property

1 receives complete title to the property by limitations and the
2 right of the city or county to revoke or rescind the order or
3 ordinance is barred. (V.A.C.S. Art. 5526a.)

4 Source Law

5 Art. 5526a

6 Sec. 1. In all cases where the governing body of
7 any incorporated city or town has heretofore passed, or
8 shall hereafter pass, an ordinance closing and
9 abandoning, or attempting to close and abandon, any
10 public street or alley, or any part thereof, other than
11 a State highway, within such city or town, and in all
12 cases where the commissioners' court of any county has
13 heretofore passed, or shall hereafter pass, an order
14 closing and abandoning, or attempting to close and
15 abandon, any public road or thoroughfare, or any part
16 thereof, other than a State highway, within such
17 county, any person, firm, private corporation or public
18 corporation having a cause of action (not already
19 barred by existing limitation laws of this State at the
20 time this Act takes effect) for the recovery of any
21 kind of relief in the matter, whether damages or
22 reopening or both, may bring suit upon such cause of
23 action within the following time, to wit: (1) within
24 two (2) years after the effective date of this Act in
25 cases where the cause of action has accrued or shall
26 accrue before such effective date and not thereafter;
27 (2) within two (2) years after the passage of the
28 ordinance or order for closing and abandonment, and not
29 thereafter, in cases where the cause of action shall
30 accrue on or after the effective date of this Act.

31 Sec. 2. In all cases where suit is not brought
32 within the time fixed by Section 1 hereof, the person,
33 firm or corporation (public or private) having
34 possession of the land in question shall thereupon
35 become vested with a complete limitation title to same;
36 and not only shall the causes of action mentioned in
37 said Section 1 hereof be barred, but also the right of
38 the city, town or county to revoke or rescind the
39 ordinance or order hereinbefore referred to shall be
40 barred.

41 Revisor's Note

42 (1) The revised law omits the reference to firms
43 and public and private corporations in the source law.
44 The Code Construction Act (V.A.C.S. Article 5429b-2)
45 includes business entities and governmental entities
46 within the definition of "person."

47 (2) The revised law omits the source law
48 material that provides for suits to be brought within
49 two years of the effective date of V.A.C.S. Article

1 5526a (March 7, 1934) because the two-year period has
2 expired.

3 Revised Law

4 Sec. 16.006. CARRIERS OF PROPERTY. (a) A carrier of
5 property for compensation or hire must bring suit for the recovery
6 of charges not later than three years after the day on which the
7 cause of action accrues.

8 (b) Except as provided by Subsections (c) and (d), a person
9 must bring suit for overcharges against a carrier of property for
10 compensation or hire not later than three years after the cause of
11 action accrues.

12 (c) If the person has presented a written claim for the
13 overcharges within the three-year period, the limitations period is
14 extended for six months from the date written notice is given by
15 the carrier to the claimant of disallowance of the claim in whole
16 or in part, as specified in the carrier's notice.

17 (d) If on or before the expiration of the three-year period,
18 the carrier brings an action under Subsection (a) to recover
19 charges relating to the service, or, without beginning an action,
20 collects charges relating to that service, the limitations period
21 is extended for 90 days from the day on which the action is begun
22 or the charges are collected.

23 (e) A cause of action regarding a shipment of property
24 accrues on the delivery or tender of the property by the carrier.

25 (f) In this section, "overcharge" means a charge for
26 transportation services in excess of the lawfully applicable
27 amount. (V.A.C.S. Art. 5526b.)

28 Source Law

29 Art. 5526b

30 Sec. 1. All actions at law by carriers of
31 property for compensation or hire for the recovery of
32 their charges, or any part thereof, shall be begun
33 within three years from the time the cause of action
34 accrues, and not after.

1 Sec. 2. For recovery of overcharges, action at
2 law shall be begun against carriers of property for
3 compensation or hire within three years from the time
4 the cause of action accrues, and not after, subject to
5 Section 3 of this Article, except that if claim for the
6 overcharge has been presented in writing to the carrier
7 within the three-year period of limitation said period
8 shall be extended to include six months from the time
9 notice in writing is given by the carrier to the
10 claimant of disallowance of the claim, or any part or
11 parts thereof, specified in the notice.

12 Sec. 3. If on or before expiration of the
13 three-year period of limitation in Section 2 a carrier
14 of property for compensation or hire begins action
15 under Section 1 for recovery of charges in respect of
16 the same transportation service, or, without beginning
17 action, collects charges in respect of that service,
18 said period of limitation shall be extended to include
19 ninety days from the time such action is begun or such
20 charges are collected by the carrier.

21 Sec. 4. The cause of action in respect of a
22 shipment of property shall, for the purpose of this
23 Article, be deemed to accrue upon delivery or tender of
24 delivery thereof by the carrier, and not after.

25 Sec. 5. The term "overcharges" as used in this
26 Article shall be deemed to mean charges for
27 transportation services in excess of those lawfully
28 applicable thereto.

29 Sec. 6. Actions by carriers of property for
30 compensation or hire for the recovery of their charges,
31 or any part thereof, and actions against carriers for
32 the recovery of overcharges, on shipments made and
33 delivered prior to the effective date of this Act shall
34 be commenced within three years from effective date of
35 this Act, and not after.

36 Revisor's Note

37 The revised law omits the source law material
38 that provides for suits to be brought within three
39 years of the effective date of V.A.C.S. Article 5526b
40 (August 9, 1959) because the three-year period has
41 expired.

42 Revised Law

43 Sec. 16.007. RETURN OF EXECUTION. A person must bring suit
44 against a sheriff or other officer, or the surety of the sheriff or
45 officer, for failure to return an execution issued in the person's
46 favor, not later than five years after the date on which the
47 execution was returnable. (V.A.C.S. Art. 5533.)

Source Law

Art. 5533. Where execution has issued and no return is made thereon, the party in whose favor the same was issued may move against any sheriff or other officer and his sureties for not returning the same, within five years from the day on which it was returnable, and not after.

Revised Law

Sec. 16.008. ARCHITECTS AND ENGINEERS FURNISHING DESIGN, PLANNING, OR INSPECTION OF CONSTRUCTION OF IMPROVEMENTS. (a) A person must bring suit for damages for a claim listed in Subsection (b) against a registered or licensed architect or engineer in this state, who designs, plans, or inspects the construction of an improvement to real property or equipment attached to real property, not later than 10 years after the substantial completion of the improvement or the beginning of operation of the equipment in an action arising out of a defective or unsafe condition of the real property, the improvement, or the equipment.

(b) This section applies to suit for:

(1) injury, damage, or loss to real or personal property;

(2) personal injury;

(3) wrongful death;

(4) contribution; or

(5) indemnity.

(c) If the claimant presents a written claim for damages, contribution, or indemnity to the architect or engineer within the 10-year limitations period, the period is extended for two years from the day the claim is presented. (V.A.C.S. Art. 5536a, Sec. 1.)

Source Law

Art. 5536a

Sec. 1. There shall be commenced and prosecuted within ten years after the substantial completion of any improvement to real property or the commencement of operation of any equipment attached to real property,

1 and not afterward, all actions or suits in court for
2 damages for any injury, damages or loss to property,
3 real or personal, or for any injury to a person, or for
4 wrongful death, arising out of the defective or unsafe
5 condition of any such real property or any equipment or
6 improvement attached to such real property, for
7 contribution or indemnity for damages sustained on
8 account of such injury, damage, loss or death against
9 any registered or licensed engineer or architect in
10 this state performing or furnishing the design,
11 planning, inspection of construction of any such
12 improvement, equipment or structure or against any such
13 person so performing or furnishing such design,
14 planning, inspection of construction of any such
15 improvement, equipment, or structure; provided,
16 however, if the claim for damages, contribution or
17 indemnity has been presented in writing to the
18 registered or licensed engineer or architect performing
19 such services within the ten-year period of limitation,
20 said period shall be extended to include two years from
21 the time such notice in writing is presented.

22 Revised Law

23 Sec. 16.009. PERSONS FURNISHING CONSTRUCTION OR REPAIR OF
24 IMPROVEMENTS. (a) A claimant must bring suit for damages for a
25 claim listed in Subsection (b) against a person who constructs or
26 repairs an improvement to real property not later than 10 years
27 after the substantial completion of the improvement in an action
28 arising out of a defective or unsafe condition of the real
29 property, or a deficiency in the construction or repair of the
30 improvement.

31 (b) This section applies to suit for:

- 32 (1) injury, damage, or loss to real or personal
33 property;
34 (2) personal injury;
35 (3) wrongful death;
36 (4) contribution; or
37 (5) indemnity.

38 (c) If the claimant presents a written claim for damages,
39 contribution, or indemnity to the person performing or furnishing
40 the construction or repair work during the 10-year limitations
41 period, the period is extended for two years from the date the
42 claim is presented.

1 (d) If the damage, injury, or death occurs during the 10th
2 year of the limitations period, the claimant may bring suit not
3 later than two years after the day the cause of action accrues.

4 (e) This section does not bar an action:

5 (1) on a written warranty, guaranty, or other contract
6 that expressly provides for a longer effective period;

7 (2) against a person in actual possession or control
8 of the real property at the time that the damage, injury, or death
9 occurs; or

10 (3) based on wilful misconduct or fraudulent
11 concealment in connection with the performance of the construction
12 or repair.

13 (f) This section does not extend or affect a period
14 prescribed for bringing an action under any other law of this
15 state. (V.A.C.S. Art. 5536a, Sec. 2.)

16 Source Law

17 Sec. 2. There shall be commenced and prosecuted
18 within ten years after the substantial completion of
19 any improvement to real property, and not afterward,
20 all actions or suits in court for damages for any
21 injury, damages, or loss to property, real or personal,
22 or for any injury to a person, or for wrongful death,
23 or for contribution or indemnity for damages sustained
24 on account of such injury, damage, loss, or death
25 arising out of the defective or unsafe condition of any
26 such real property or any deficiency in the
27 construction or repair of any improvements on such real
28 property against any person performing or furnishing
29 construction or repair of any such improvement;
30 provided, however, if the claim for damages,
31 contribution or indemnity has been presented in writing
32 to the person performing such services within the
33 ten-year period of limitation, said period shall be
34 extended to include two years from the time such notice
35 in writing is presented, or if said injury, damage,
36 loss, or death occurs during the tenth year, all
37 actions or suits in court may be brought within two
38 years from the date of such injury, damage, loss, or
39 death; and provided further, however, this section
40 shall not apply and will not operate as a bar to an
41 action or suit in court (a) on a written warranty,
42 guaranty, or other contract which expressly is
43 effective for a period in excess of the period herein
44 prescribed; (b) against persons in actual possession
45 or control of the real property as owner, tenant, or
46 otherwise at the time the injury, damage, loss, or
47 death occurs; or (c) based on willful misconduct or
48 fraudulent concealment in connection with the

1 performing or furnishing of such construction or
2 repair. Nothing in this section shall be construed as
3 extending or affecting the period prescribed for the
4 bringing of any action under Articles 5526, 5527, and
5 5529, Revised Civil Statutes of Texas, 1925, or any
6 other law of this state.

7 [Sections 16.010-16.020 reserved for expansion]

8 SUBCHAPTER B. LIMITATIONS OF REAL PROPERTY ACTIONS

9 Revised Law

10 Sec. 16.021. DEFINITIONS. In this subchapter:

11 (1) "Adverse possession" means an actual and visible
12 appropriation of real property, commenced and continued under a
13 claim of right that is inconsistent with and is hostile to the
14 claim of another person.

15 (2) "Color of title" means a consecutive chain of
16 transfers to the person in possession that:

17 (A) is not regular because of a muniment that is
18 not properly recorded or is only in writing or because of a similar
19 defect that does not want of intrinsic fairness or honesty; or

20 (B) is based on a certificate of headright, land
21 warrant, or land scrip.

22 (3) "Peaceable possession" means possession of real
23 property that is continuous and is not interrupted by an adverse
24 suit to recover the property.

25 (4) "Title" means a regular chain of transfers of real
26 property from or under the sovereignty of the soil. (V.A.C.S.
27 Arts. 5508, 5514, 5515.)

28 Source Law

29 Art. 5508. By the term "title" is meant a
30 regular chain of transfers from or under the
31 sovereignty of the soil, and by "color of title" is
32 meant a consecutive chain of such transfers down to
33 such person in possession, without being regular, as if
34 one or more of the memorials or muniments be not
35 registered, or not duly registered, or be only in
36 writing, or such like defect as may not extend to or
37 include the want of intrinsic fairness and honesty; or

1 when the party in possession shall hold the same by a
2 certificate of headright, land warrant, or land scrip,
3 with a chain of transfer down to him in possession.

4 Art. 5514. "Peaceable possession" is such as is
5 continuous and not interrupted by adverse suit to
6 recover the estate.

7 Art. 5515. "Adverse possession" is an actual and
8 visible appropriation of the land, commenced and
9 continued under a claim of right inconsistent with and
10 hostile to the claim of another.

11 Revised Law

12 Sec. 16.022. EFFECT OF DISABILITY. (a) For the purposes of
13 this subchapter, a person is under a legal disability if the person
14 is:

15 (1) younger than 18 years of age, regardless of
16 whether the person is married;

17 (2) imprisoned;

18 (3) of unsound mind; or

19 (4) serving in the United States armed forces during
20 time of war.

21 (b) If a person entitled to sue for the recovery of real
22 property or entitled to make a defense based on the title to real
23 property is under a legal disability at the time title to the
24 property vests or adverse possession commences, the time of the
25 disability is not included in a limitations period.

26 (c) Except as provided by Sections 16.027 and 16.028, after
27 the termination of the legal disability, a person has the same time
28 to present a claim that is allowed to others under this chapter.
29 (V.A.C.S. Art. 5518 (part).)

30 Source Law

31 Art. 5518. If a person entitled to sue for the
32 recovery of real property or make any defense founded
33 on the title thereto, be at the time such title shall
34 first descend or the adverse possession commence:

35 1. A person, including a married person, under
36 twenty-one years of age, or

37 2. In time of war, a person in the military or
38 naval service of the United States, or

39 3. A person of unsound mind, or

40 4. A person imprisoned, the time during which

1 such disability or status shall continue shall not be
2 deemed any portion of the time limited for the
3 commencement of such suit, or the making of such
4 defense; and such person shall have the same time after
5 the removal of his disability that is allowed to others
6 by the provisions of this title

7 Revisor's Note

8 The revised law changes the age of majority
9 because V.A.C.S. Article 5923b, enacted subsequent to
10 the enactment of the source law, requires that a law
11 that extends a right, privilege, or obligation to a
12 person on the basis of a minimum age of 21 be
13 interpreted as prescribing a minimum age of 18.

14 Revised Law

15 Sec. 16.023. TACKING OF SUCCESSIVE INTERESTS. To satisfy a
16 limitations period, peaceable and adverse possession does not need
17 to continue in the same person, but there must be privity of estate
18 between each holder and his successor. (V.A.C.S. Art. 5516.)

19 Source Law

20 Art. 5516. Peaceable and adverse possession need
21 not be continued in the same person, but when held by
22 different persons successively there must be a privity
23 of estate between them.

24 Revised Law

25 Sec. 16.024. ADVERSE POSSESSION: THREE-YEAR LIMITATIONS
26 PERIOD. A person must bring suit to recover real property held by
27 another in peaceable and adverse possession under title or color of
28 title not later than three years after the day the cause of action
29 accrues. (V.A.C.S. Art. 5507.)

30 Source Law

31 Art. 5507. Suits to recover real estate, as
32 against a person in peaceable and adverse possession
33 thereof under title or color of title, shall be
34 instituted within three years next after the cause of

action accrued, and not afterward.

Revised Law

Sec. 16.025. ADVERSE POSSESSION: FIVE-YEAR LIMITATIONS PERIOD. (a) A person must bring suit not later than five years after the day the cause of action accrues to recover real property held in peaceable and adverse possession by another who:

- (1) cultivates, uses, or enjoys the property;
- (2) pays applicable taxes on the property; and
- (3) claims the property under a duly registered deed.

(b) This section does not apply to a claim based on a forged deed or a deed executed under a forged power of attorney. (V.A.C.S. Art. 5509.)

Source Law

Art. 5509. Every suit to recover real estate as against a person having peaceable and adverse possession thereof, cultivating, using or enjoying the same, and paying taxes thereon, if any, and claiming under a deed or deeds duly registered, shall be instituted within five years next after cause of action shall have accrued, and not afterward. This article shall not apply to one in possession of land, who deraigns title through a forged deed. And no one claiming under a forged deed, or deed executed under a forged power of attorney shall be allowed the benefits of this article.

Revised Law

Sec. 16.026. ADVERSE POSSESSION: 10-YEAR LIMITATIONS PERIOD. (a) A person must bring suit not later than 10 years after the day the cause of action accrues to recover real property held in peaceable and adverse possession by another who cultivates, uses, or enjoys the property.

(b) Without a title instrument, peaceable and adverse possession is limited in this section to 160 acres, including improvements, unless the number of acres actually enclosed exceeds 160. If the number of enclosed acres exceeds 160 acres, peaceable and adverse possession extends to the real property actually

1 enclosed.

2 (c) Peaceable possession of real property held under a duly
3 registered memorandum of title other than a deed that fixes the
4 boundaries of the possessor's claim extends to the boundaries
5 specified in the instrument. (V.A.C.S. Art. 5510.)

6 Source Law

7 Art. 5510. Any person who has the right of
8 action for the recovery of lands, tenements or
9 hereditaments against another having peaceable and
10 adverse possession thereof, cultivating, using or
11 enjoying the same, shall institute his suit therefor
12 within ten years next after his cause of action shall
13 have accrued, and not afterward. The peaceable and
14 adverse possession contemplated in this article, as
15 against the person having right of action, shall be
16 construed to embrace not more than one hundred and
17 sixty acres, including the improvements or the number
18 of acres actually enclosed, should the same exceed one
19 hundred and sixty acres; but when such possession is
20 taken and held under some written memorandum of title,
21 other than a deed, which fixes the boundaries of the
22 possessor's claim and is duly registered, such
23 peaceable possession shall be construed to be
24 co-extensive with the boundaries specified in such
25 instrument.

26 Revised Law

27 Sec. 16.027. ADVERSE POSSESSION: 25-YEAR LIMITATIONS PERIOD
28 NOTWITHSTANDING DISABILITY. A person, regardless of whether the
29 person is or has been under a legal disability, must bring suit not
30 later than 25 years after the day the cause of action accrues to
31 recover real property held in peaceable and adverse possession by
32 another who cultivates, uses, or enjoys the property. (V.A.C.S.
33 Art. 5518 (part).)

34 Source Law

35 . . . provided, that notwithstanding a person may be or
36 may have been laboring under any of the disabilities
37 mentioned in this Article, one having the right of
38 action for the recovery of any lands, tenements or
39 hereditaments against another having peaceable and
40 adverse possession thereof, cultivating, using or
41 enjoying same, shall institute his suit therefor within
42 twenty-five years next after his cause of action shall
43 have accrued and not thereafter.

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(c) A person who holds real property and claims title under this section has a good and marketable title to the property regardless of a disability arising at any time in the adverse claimant or a person claiming under the adverse claimant. (V.A.C.S. Art. 5519.)

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Art. 5519. No person who has a right of action for the recovery of real estate shall be permitted to maintain an action therefor against any person having peaceable and adverse possession of such real estate for a period of twenty-five years prior to the filing of such action, under claim of right, in good faith, under a deed or deeds, or any instrument or instruments, purporting to convey the same, which deed or deeds or instrument or instruments purporting to convey the same have been recorded in the deed records of the county in which the real estate or a part thereof is situated; and one so holding and claiming such real estate under such claim of title and possession shall be held to have a good marketable title thereto, and on proof of the above facts shall be held to have established title by limitation to such real estate regardless of minority, insanity or other disability in the adverse claimant, or any person under whom such adverse claimant claims, existing at the time of the accrual of the cause of action, or at any time thereafter. Such peaceable and adverse possession need not be continued in the same person, but when held by

1 different persons successively there must be a privity
2 of estate between them. The adverse possession of any
3 part of such real estate shall extend to and be held to
4 include all of the property described in such deed or
5 instrument conveying or purporting to convey, under
6 which entry was made upon such land or any part
7 thereof, and by instrument purporting to convey shall
8 be meant any instrument in the form of a deed or which
9 contains language showing an intention to convey even
10 though such instrument, for want of proper execution or
11 for other cause is void on its face or in fact.

12 Revisor's Note

13 (1) The revised law omits the source law
14 language on privity of estate. The privity of estate
15 material is set forth in Section 16.023.

16 (2) The revised law omits the source law
17 reference to "claim of right" because that is included
18 in the definition of adverse possession under Section
19 16.021.

20 Revised Law

21 Sec. 16.029. EVIDENCE OF TITLE TO LAND BY LIMITATIONS. (a)
22 In a suit involving title to real property that is not claimed by
23 this state, it is prima facie evidence that the title to the
24 property has passed from the person holding apparent record title
25 to an opposing party if it is shown that:

26 (1) for one or more years during the 25 years
27 preceding the filing of the suit the person holding apparent record
28 title to the property did not exercise dominion over or pay taxes
29 on the property; and

30 (2) during that period the opposing parties and those
31 whose estate they own have openly exercised dominion over and have
32 asserted a claim to the land, and have paid taxes on it annually
33 before becoming delinquent for as long as 25 years.

34 (b) This section does not affect a statute of limitations, a
35 right to prove title by circumstantial evidence under the case law
36 of this state, or a suit between a trustee and a beneficiary of the

1 trust. (V.A.C.S. Art. 5519a.)

2 Source Law

3 Art. 5519a. In all suits involving the title to
4 land not claimed by the State, if it be shown that
5 those holding the apparent record title thereto have
6 not exercised dominion over such land or have not paid
7 taxes thereon, one or more years during the period of
8 twenty-five years next preceding the filing of such
9 suit and during such period the opposing parties and
10 those whose estate they own are shown to have openly
11 exercised dominion over and asserted claim to same and
12 have paid taxes thereon annually before becoming
13 delinquent for as many as twenty-five years during such
14 period, such facts shall constitute prima facie proof
15 that the title thereto had passed to such persons so
16 exercising dominion over, claiming and paying taxes
17 thereon.

18 Sec. 2. This Act shall in no way affect any
19 Statute of Limitation or the right to prove title by
20 circumstantial evidence under the present Rule of
21 Decision in the Courts of this State nor to suits
22 between trustees and their beneficiaries nor to suits
23 now pending.

24 Revisor's Note

25 The revised law omits the source law reference to
26 pending actions because the provision has been
27 executed.

28 Revised Law

29 Sec. 16.030. TITLE THROUGH ADVERSE POSSESSION. (a) If an
30 action for the recovery of real property is barred under this
31 chapter, the person who holds the property in peaceable and adverse
32 possession has full title, precluding all claims.

33 (b) A person may not acquire through adverse possession any
34 right or title to real property dedicated to public use. (V.A.C.S.
35 Arts. 5513, 5517.)

36 Source Law

37 Art. 5513. Whenever an action for the recovery
38 of real estate is barred by any provision of this
39 title, the person having such peaceable and adverse
40 possession shall be held to have full title, precluding
41 all claims.

1 Art. 5517. The right of the State, all counties,
2 incorporated cities and all school districts shall not
3 be barred by any of the provisions of this Title, nor
4 shall any person ever acquire, by occupancy or adverse
5 possession, any right or title to any part or portion
6 of any road, street, alley, sidewalk, or grounds which
7 belong to any town, city, or county, or which have been
8 donated or dedicated for public use to any such town,
9 city, or county by the owner thereof, or which have
10 been laid out or dedicated in any manner to public use
11 in any town, city, or county in this State.

12 Revised Law

13 Sec. 16.031. ENCLOSED LAND. (a) A tract of land that is
14 owned by one person and that is entirely surrounded by land owned,
15 claimed, or fenced by another is not considered enclosed by a fence
16 that encloses any part of the surrounding land.

17 (b) Possession of the interior tract by the owner or
18 claimant of the surrounding land is not peaceable and adverse
19 possession as described by Section 16.026 unless:

20 (1) the interior tract is separated from the
21 surrounding land by a fence; or

22 (2) at least one-tenth of the interior tract is
23 cultivated and used for agricultural purposes or is used for
24 manufacturing purposes. (V.A.C.S. Art. 5511.)

25 Source Law

26 Art. 5511. A tract of land owned by one person,
27 entirely surrounded by a tract or tracts owned, claimed
28 or fenced by another, shall not be considered inclosed
29 by a fence inclosing the circumscribing tract or
30 tracts, or any part thereof; nor shall the possession
31 by the owner or claimant of such circumscribing land of
32 such interior tract be the peaceable and adverse
33 possession contemplated by Article 5510 unless the same
34 be segregated and separated from the circumscribing
35 land by a fence, or unless at least one-tenth thereof
36 be cultivated and used for agricultural purposes, or
37 used for manufacturing purposes.

38 Revised Law

39 Sec. 16.032. ADJACENT LAND. Possession of land that belongs
40 to another by a person owning or claiming 5,000 or more fenced
41 acres that adjoin the land is not peaceable and adverse as

described by Section 16.026 unless:

(1) the land is separated from the adjacent enclosed tract by a substantial fence;

(2) at least one-tenth of the land is cultivated and used for agricultural purposes or used for manufacturing purposes; or

(3) there is actual possession of the land. (V.A.C.S. Art. 5512.)

Source Law

Art. 5512. Possession of land belonging to another by a person owning or claiming five thousand acres or more of lands inclosed by a fence in connection therewith, or adjoining thereto, shall not be the peaceable and adverse possession contemplated by Article 5510 unless said land so belonging to another shall be segregated and separated by a substantial fence from said lands connected therewith or thereto adjoining or unless at least one-tenth thereof shall be cultivated and used for agricultural purposes or used for manufacturing purposes, or unless there be actual possession thereof.

Revised Law

Sec. 16.033. TECHNICAL DEFECTS IN INSTRUMENT. (a) A person with a right of action for the recovery of real property conveyed by an instrument with one of the following defects must bring suit not later than 10 years after the day the instrument was recorded with the county clerk of the county where the real property is located:

(1) lack of the signature of a proper corporate officer;

(2) lack of a corporate seal;

(3) failure of the record to show the corporate seal used;

(4) failure of the record to show authority of the board of directors or stockholders of a corporation;

(5) execution and delivery of the instrument by a corporation that had been dissolved, whose charter had expired, or

1 whose franchise had been canceled, withdrawn, or forfeited;

2 (6) acknowledgment of the instrument in an individual,
3 rather than a representative or official, capacity;

4 (7) execution of the instrument by a trustee without
5 record of the authority of the trustee or proof of the facts
6 recited in the instrument;

7 (8) failure of the public officer taking the
8 acknowledgment to affix the official seal to the instrument;

9 (9) failure of the record to show the notarial seal;
10 or

11 (10) wording of the stated consideration that may or
12 might create an implied lien in favor of the grantor.

13 (b) This section does not apply to a forged instrument.

14 (V.A.C.S. Art. 5523a.)

15 Source Law

16 Art. 5523a. Any person who has the right of
17 action for the recovery of land because of any one or
18 more of the following defects in any instrument, where
19 it has not been signed by the proper officer of any
20 corporation; or where the corporate seal of the
21 corporation has not been impressed on such instrument;
22 or where the record does not show such corporate seal;
23 or because the record does not show authority therefor
24 by the Board of Directors and Stockholders (or either
25 of them) of a corporation; or where such instrument was
26 executed and delivered by a corporation which had been
27 dissolved or whose charter had expired, or whose
28 corporate franchise had been canceled, withdrawn or
29 forfeited; or where the executor, administrator,
30 guardian, assignee, receiver, Master in Chancery, agent
31 or trustee, or other agency making such instrument,
32 signed or acknowledged the same individually instead of
33 in his representative or official capacity; or where
34 such instrument is executed by a trustee without record
35 of Judicial or other ascertainment of the authority of
36 such trustee or of the verity of the facts therein
37 recited; or where the officer taking the acknowledgment
38 of such instrument having an official seal did not
39 affix the same to the certificate of acknowledgment; or
40 where the notarial seal is not shown of record; or
41 where the wording of the consideration may or might
42 create an implied lien in favor of grantor (By this is
43 not meant an express vendor's lien retained); shall
44 institute his suit therefor not later than 10 years
45 next after the date when such instrument has been or
46 hereafter may be actually recorded in the office of the
47 County Clerk of the county in which such real estate is
48 situated and not afterwards; provided that such person,
49 if not already barred by limitation or otherwise, shall

1 in case of instruments of record for nine years or
2 more, prior to the effective date of this Act, have the
3 right within one year after the effective date of this
4 Act, to bring proceedings to contest the effect of such
5 instrument but not afterward; and providing further
6 that nothing herein contained shall be construed to
7 operate on any suit or action now pending or which may
8 have been heretofore determined in any court of this
9 State in which the validity of the making, execution or
10 acknowledgment of any such instrument has been or may
11 hereafter be drawn in question; and provided further,
12 this Act is cumulative of all other laws on this
13 subject and if any portion of this Act be declared
14 unconstitutional the remaining portion shall not be
15 affected thereby and shall remain in full force and
16 effect. This Act shall not apply to forged
17 instruments, and shall be subject to the provisions of
18 Article 5518, Revised Civil Statutes of 1925.

19 Revisor's Note

20 (1) The revised law omits the reference to
21 V.A.C.S. Article 5518 because the disability section,
22 Section 16.022, applies to the entire subchapter.

23 (2) The revised law deletes the savings
24 provision of the source law as unnecessary. The Code
25 Construction Act (V.A.C.S. Article 5429b-2) includes a
26 savings provision that preserves any remaining rights.

27 (3) The revised law omits the severability
28 clause as unnecessary. Severability of statutes is
29 provided by V.A.C.S. Article 11a and the Code
30 Construction Act (V.A.C.S. Article 5429b-2).

31 (4) The revised law omits the source law
32 material that provides for a suit to be brought within
33 one year of the effective date of V.A.C.S. Article
34 5523a (March 12, 1929) because the one-year period has
35 expired.

36 (5) The revised law omits the source law
37 reference to the cumulative effect of Article 5523a as
38 unnecessary because all statutes are cumulative in
39 effect.

40 (6) The revised law omits the source law
41 reference that excludes an expressly retained vendor's

lien from an implied lien because an implied lien by definition excludes an express lien.

Revised Law

Sec. 16.034. ATTORNEY'S FEES. (a) In a suit for the possession of real property between a person claiming under record title to the property and one claiming by adverse possession, if the prevailing party recovers possession of the property from a person unlawfully in actual possession, the court may award costs and reasonable attorney's fees to the prevailing party.

(b) To recover attorney's fees, the person seeking possession must give the person unlawfully in possession a written demand for that person to vacate the premises. The demand must be given by registered or certified mail at least 10 days before filing the claim for recovery of possession.

(c) The demand must state that if the person unlawfully in possession does not vacate the premises within 10 days and a claim is filed by the person seeking possession, the court may enter a judgment against the person unlawfully in possession for costs and attorney's fees in an amount determined by the court to be reasonable. (V.A.C.S. Art. 5523b.)

Source Law

Art. 5523b

Sec. 1. Subject to the provisions of Section 2 of this Act, if, in an action for possession of land between a party claiming under the record title to the land and a party claiming by adverse possession, the prevailing party recovers possession from a party unlawfully in actual possession, the court may award reasonable attorney's fees to the prevailing party, in addition to his claim, if any, and costs of suit.

Sec. 2. (a) To recover attorney's fees as provided in Section 1 of this Act, the party seeking recovery of possession must give the party unlawfully in possession written notice and demand to vacate the premises, by registered or certified mail, at least 10 days prior to filing the claim for the recovery of possession.

(b) In the written notice and demand to vacate the premises, the party seeking recovery of possession shall give notice that in the event the party unlawfully in possession has not vacated the premises

1 within 10 days and a claim is filed by the party
2 seeking recovery of possession, judgment may be entered
3 against the party unlawfully in possession for
4 attorney's fees in an amount determined by the court to
5 be reasonable, plus costs of suit.

6 Revised Law

7 Sec. 16.035. LIEN DEBT ON REAL PROPERTY. (a) A person must
8 bring suit for the recovery of real property under a lien debt or
9 the foreclosure of a lien debt not later than four years after the
10 day the cause of action accrues.

11 (b) A sale of real property under a power of sale in a
12 mortgage or deed of trust that secures a lien debt must be made not
13 later than four years after the day the cause of action accrues.

14 (c) The running of the statute of limitations is not
15 suspended against a bona fide purchaser for value, a lienholder, or
16 a lessee who has no notice or knowledge of the suspension of the
17 limitations period and who acquires an interest in the property
18 when an outstanding lien debt is more than four years past due,
19 except as provided by:

20 (1) Section 16.062, providing for suspension in the
21 event of death; or

22 (2) Section 16.036, providing for recorded extensions
23 of lien debts.

24 (d) On the expiration of the four-year limitations period,
25 it is conclusively presumed that a lien debt has been paid and the
26 lien debt and a power of sale to enforce the lien become void at
27 that time.

28 (e) If a series of notes or obligations, or a note or
29 obligation payable in installments, is secured by a lien on real
30 property, the four-year limitations period does not begin to run
31 until the maturity date of the last note, obligation, or
32 installment.

33 (f) In this section, "lien debt" means:

34 (1) a superior title retained by a vendor in a deed of

1 conveyance or a purchase money note; or

2 (2) a vendor's lien, a mortgage, a deed of trust, a
3 voluntary mechanic's lien, or a voluntary materialman's lien on
4 real estate, securing a note or other written obligation.
5 (V.A.C.S. Art. 5520 (part); New.)

6 Source Law

7 Art. 5520. All actions for the recovery of real
8 estate by virtue of a superior title retained by the
9 vendor in a deed of conveyance or purchase money note,
10 or for the foreclosure of any vendor's, mortgage, deed
11 of trust or voluntary mechanic's or materialman's lien
12 on real estate, securing a note or other written
13 obligation shall be instituted, and all sales of real
14 estate in the exercise of a power of sale under a
15 mortgage or deed of trust securing any such lien debts
16 shall be made, within four (4) years after the cause of
17 action shall have accrued, and not afterward.

18 No time shall be counted out by a toll of
19 limitations under any other Statutes, except Article
20 5538, Revised Civil Statutes of Texas, 1925, in
21 calculating any aforesaid limitation period invoked by
22 a bona fide purchaser, lien holder or lessee who has no
23 notice or knowledge of any such toll of limitations and
24 acquires his interest in the property at a time when
25 any said lien debt is more than four (4) years past due
26 and there is no written extension of record.

27 At the expiration of such four (4) year period
28 payment of any such lien debt shall be conclusively
29 presumed to have been made, and the lien for the
30 security of same and any power of sale for the
31 enforcement thereof shall be void and cease to
32 exist

33 Where a series of notes or other obligations or
34 one payable in installments is secured by such lien on
35 real estate, the aforesaid limitation period shall not
36 begin to run until the maturity date of said last note,
37 obligation or installment.

38 Provided that as to any aforesaid cause of action
39 heretofore accrued, where the period of limitation has
40 been tolled or interrupted by any other statute so that
41 the same is not barred by limitation prior to the
42 effective date of this Act, the limitation period
43 applicable thereto shall be either one (1) year from
44 the effective date of this Act or four (4) years from
45 the maturity of the lien debt, whichever is longer.

46 Revisor's Note

47 (1) The definition of "lien debt" is added as a
48 drafting convenience and derives from V.A.C.S. Article
49 5520.

50 (2) The revised law omits the source law

1 material that provides for a suit to be brought within
2 one year of the effective date of V.A.C.S. Article 5520
3 (September 3, 1945) or within four years of the
4 maturity date of a lien debt in effect on the effective
5 date of the article because the period has expired.

6 Revised Law

7 Sec. 16.036. EXTENSION OF LIEN DEBT. (a) The party or
8 parties primarily liable for a lien debt, as that term is defined
9 in Section 16.035, may suspend the running of the four-year
10 limitations period for lien debts through a written extension
11 agreement as provided by this section.

12 (b) The limitations period is suspended and the lien remains
13 in effect for four years after the extended maturity date of the
14 note if the extension agreement is:

15 (1) signed and acknowledged as provided by law for a
16 deed conveying real property; and

17 (2) filed for record in the county clerk's office of
18 the county where the real property is located.

19 (c) The parties may continue to extend the lien by entering,
20 acknowledging, and recording additional extension agreements.

21 (d) The maturity date stated in the original instrument, or
22 in the date of the recorded renewal and extension, is conclusive
23 evidence of the maturity date of the debt. (V.A.C.S. Arts. 5520
24 (part), 5522 (part).)

25 Source Law

26 [Art. 5520]

27 . . . unless said lien is extended by written agreement
28 of the party or parties primarily liable for the
29 payment of the indebtedness, as provided by law

30 [Art. 5522]

31 When the date of maturity of either debt referred
32 to in either of the foregoing articles is extended, if
33 the contract of extension is signed and acknowledged as
34 provided for in the law relating to the execution of
35 deeds of conveyance by the party or parties obligated
36 to pay such indebtedness as extended and filed for

1 record in the county clerk's office in the county in
2 which the land is situated, the lien shall continue and
3 be in force until four years after maturity of the
4 notes as provided in such extension, the same as in the
5 original contract and the lien shall so continue for
6 any succeeding or additional extension so made and
7 recorded. The date of maturity set forth in the deed
8 of conveyance or deed of trust or mortgage, or the
9 recorded renewal and extension of the same, shall be
10 conclusive evidence of the date of maturity of the
11 indebtedness therein mentioned.

12 Revised Law

13 Sec. 16.037. EFFECT OF EXTENSION OF LIEN DEBT ON THIRD
14 PARTIES. An extension agreement is void as to a bona fide
15 purchaser for value, a lienholder, or a lessee who deals with real
16 property affected by a lien debt without actual notice of the
17 agreement and before the agreement is acknowledged, filed, and
18 recorded. (V.A.C.S. Arts. 5520 (part), 5522 (part).)

19 Source Law

20 [Art. 5520]

21 . . . but any such extension agreement shall be a
22 nullity against aforesaid bona fide third persons
23 dealing with said property without actual notice
24 thereof and before same is filed and recorded in the
25 manner provided for the acknowledgment and record of
26 conveyances of real estate.

27 [Art. 5522]

28 Provided the owner of the land and the holder of the
29 note or notes may at any time enter into a valid
30 agreement renewing and extending the debt and lien, so
31 long as it does not prejudice the rights of lien
32 holders or purchasers subsequent to the date such liens
33 became barred of record under laws existing prior to
34 the taking effect of, or under this Act; as to all such
35 lien holders or purchasers any renewal or extension
36 executed or filed for record after the note or notes
37 and lien or liens were, or are, barred of record and
38 before the filing for record of such renewal or
39 extension, such renewal or extension shall be void.

40 Revisor's Note
41 (End of Subchapter)

42 The reference to "laws existing prior to
43 . . . this Act" refers to V.A.C.S. Article 5521. The
44 revised law omits the reference because that article
45 was repealed by Section 1, Chapter 136, Acts of the

1 42nd Legislature, Regular Session, 1931.

2 [Sections 16.038-16.050 reserved for expansion]

3 SUBCHAPTER C. RESIDUAL LIMITATIONS PERIOD

4 Revised Law

5 Sec. 16.051. RESIDUAL LIMITATIONS PERIOD. Every action for
6 which there is no express limitations period, except an action for
7 the recovery of real property, must be brought not later than four
8 years after the day the cause of action accrues. (V.A.C.S. Art.
9 5529.)

10 Source Law

11 Art. 5529. Every action other than for the
12 recovery of real estate, for which no limitation is
13 otherwise prescribed, shall be brought within four
14 years next after the right to bring the same shall have
15 accrued and not afterward.

16 [Sections 16.052-16.060 reserved for expansion]

17 SUBCHAPTER D. MISCELLANEOUS PROVISIONS

18 Revised Law

19 Sec. 16.061. RIGHTS NOT BARRED. A right of action of this
20 state, a county, an incorporated city or town, or a school district
21 is not barred by any of the following sections: 16.001-16.007,
22 16.021-16.033, 16.035-16.037, 16.051, 16.062-16.071, or 31.006.
23 (V.A.C.S. Art. 5517 (part).)

24 Source Law

25 Art. 5517. The right of the State, all counties,
26 incorporated cities and all school districts shall not
27 be barred by any of the provisions of this
28 Title

29 Revised Law

30 Sec. 16.062. EFFECT OF DEATH. (a) The death of a person

1 against whom or in whose favor there may be a cause of action
2 suspends the running of an applicable statute of limitations for 12
3 months after the death.

4 (b) If an executor or administrator of a decedent's estate
5 qualifies before the expiration of the period provided by this
6 section, the statute of limitations begins to run at the time of
7 the qualification. (V.A.C.S. Art. 5538.)

8 Source Law

9 Art. 5538. In case of the death of any person
10 against whom or in whose favor there may be a cause of
11 action, the law of limitation shall cease to run
12 against such cause of action until twelve months after
13 such death, unless an administrator or executor shall
14 have sooner qualified according to law upon such
15 deceased person's estate; in which case the law of
16 limitation shall only cease to run until such
17 qualification.

18 Revised Law

19 Sec. 16.063. TEMPORARY ABSENCE FROM STATE. The absence from
20 this state of a person against whom a cause of action may be
21 maintained suspends the running of the applicable statute of
22 limitations for the period of the person's absence. (V.A.C.S. Art.
23 5537.)

24 Source Law

25 Art. 5537. If any person against whom there
26 shall be cause of action shall be without the limits of
27 this State at the time of the accruing of such action,
28 or at any time during which the same might have been
29 maintained, the person entitled to such action shall be
30 at liberty to bring the same against such person after
31 his return to the State and the time of such person's
32 absence shall not be accounted or taken as a part of
33 the time limited by any provision of this title.

34 Revised Law

35 Sec. 16.064. EFFECT OF LACK OF JURISDICTION. (a) The
36 period between the date of filing an action in a trial court and
37 the date of a second filing of the same action in a different court

1 suspends the running of the applicable statute of limitations for
2 the period if:

3 (1) because of lack of jurisdiction in the trial court
4 where the action was first filed, the action is dismissed or the
5 judgment is set aside or annulled in a direct proceeding; and

6 (2) not later than the 60th day after the date the
7 dismissal or other disposition becomes final, the action is
8 commenced in a court of proper jurisdiction.

9 (b) This section does not apply if the adverse party has
10 shown in abatement that the first filing was made with intentional
11 disregard of proper jurisdiction. (V.A.C.S. Art. 5539a.)

12 Source Law

13 Art. 5539a. When an action shall be dismissed in
14 any way, or a judgment therein shall be set aside or
15 annulled in a direct proceeding, because of a want of
16 jurisdiction of the Trial Court in which such action
17 shall have been filed, and within sixty (60) days after
18 such dismissal or other disposition becomes final, such
19 action shall be commenced in a Court of Proper
20 Jurisdiction, the period between the date of first
21 filing and that of commencement in the second Court
22 shall not be counted as a part of the period of
23 limitation unless the opposite party shall in abatement
24 show the first filing to have been in intentional
25 disregard of jurisdiction.

26 Revised Law

27 Sec. 16.065. ACKNOWLEDGMENT OF CLAIM. An acknowledgment of
28 the justness of a claim that appears to be barred by limitations is
29 not admissible in evidence to defeat the law of limitations if made
30 after the time that the claim is due unless the acknowledgment is
31 in writing and is signed by the party to be charged. (V.A.C.S.
32 Art. 5539.)

33 Source Law

34 Art. 5539. When an action may appear to be
35 barred by a law of limitation, no acknowledgment of the
36 justness of the claim made subsequent to the time it
37 became due shall be admitted in evidence to take the
38 case out of the operation of the law, unless such
39 acknowledgment be in writing and signed by the party to

1 be charged thereby.

2 Revised Law

3 Sec. 16.066. ACTION ON FOREIGN JUDGMENT. (a) An action on
4 a foreign judgment is barred in this state if the action is barred
5 under the laws of the jurisdiction where rendered.

6 (b) An action against a person who has resided in this state
7 for 10 years prior to the action may not be brought on a foreign
8 judgment rendered more than 10 years before the commencement of the
9 action in this state.

10 (c) In this section "foreign judgment" means a judgment or
11 decree rendered in another state or a foreign country. (V.A.C.S.
12 Art. 5530.)

13 Source Law

14 Art. 5530. Every action upon a judgment or
15 decree rendered in any other State or territory of the
16 United States, in the District of Columbia or in any
17 foreign country, shall be barred, if by the laws of
18 such State or country such action would there be
19 barred, and the judgment or decree be incapable of
20 being otherwise enforced there; and whether so barred
21 or not, no action against a person who shall have
22 resided in this State during the ten years next
23 preceding such action shall be brought upon any such
24 judgment or decree rendered more than ten years before
25 the commencement of such action.

26 Revisor's Note

27 The revised law omits the reference to a
28 territory of the United States and the District of
29 Columbia because the Code Construction Act (V.A.C.S.
30 Article 5429b-2, Section 1.04) includes those areas in
31 the definition of "state."

32 Revised Law

33 Sec. 16.067. CLAIM INCURRED PRIOR TO ARRIVAL IN THIS STATE.

34 (a) A person may not bring an action to recover a claim against a
35 person who has moved to this state if the claim is barred by the

1 law of limitations of the state or country from which the person
2 came.

3 (b) A person may not bring an action to recover money from a
4 person who has moved to this state and who was released from its
5 payment by the bankruptcy or insolvency laws of the state or
6 country from which the person came.

7 (c) A demand that is against a person who has moved to this
8 state and was incurred prior to his arrival in this state is not
9 barred by the law of limitations until the person has lived in this
10 state for 12 months. This subsection does not affect the
11 application of Subsections (a) and (b). (V.A.C.S. Arts. 5542,
12 5543.)

13 Source Law

14 Art. 5542. No action shall be brought against an
15 immigrant to recover a claim which was barred by the
16 law of limitation of the State or country from which he
17 emigrated; nor shall any action be brought to recover
18 money from an immigrant who was released from its
19 payment by the bankrupt or insolvent laws of the State
20 or country from which he emigrated.

21 Art. 5543. No demand against a person who has
22 removed to this State, incurred prior to his removal,
23 shall be barred by the statute of limitation until he
24 shall have resided in this State for the space of
25 twelve months. Nothing in this article shall be
26 construed to affect the provisions of the preceding
27 article.

28 Revised Law

29 Sec. 16.068. AMENDED AND SUPPLEMENTAL PLEADINGS. If a filed
30 pleading relates to a cause of action, cross action, counterclaim,
31 or defense that is not subject to a plea of limitation when the
32 pleading is filed, a subsequent amendment or supplement to the
33 pleading that changes the facts or grounds of liability or defense
34 is not subject to a plea of limitation unless the amendment or
35 supplement is wholly based on a new, distinct, or different
36 transaction or occurrence. (V.A.C.S. Art. 5539b.)

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1 date file a counterclaim or cross claim in such cause
2 and the period of limitation is hereby extended for
3 such period of time provided that the counterclaim or
4 cross claim arises out of the same transaction or
5 occurrence that is the subject matter of the opposing
6 party's claim.

7 Revised Law

8 Sec. 16.070. CONTRACTUAL LIMITATIONS PERIOD. A person may
9 not enter a stipulation, contract, or agreement that purports to
10 limit the time in which to bring suit on the stipulation, contract,
11 or agreement to a period shorter than two years. A stipulation,
12 contract, or agreement that establishes a limitations period that
13 is shorter than two years is void in this state. (V.A.C.S. Art.
14 5545.)

15 Source Law

16 Art. 5545. No person, firm, corporation,
17 association or combination of whatsoever kind shall
18 enter into any stipulation, contract, or agreement, by
19 reason whereof the time in which to sue thereon is
20 limited to a shorter period than two years. And no
21 stipulation, contract, or agreement for any such
22 shorter limitation in which to sue shall ever be valid
23 in this State.

24 Revisor's Note

25 The revised law omits the source law reference to
26 a firm, corporation, association, or "combination of
27 whatsoever kind" because the definition of "person" in
28 the Code Construction Act (V.A.C.S. Article 5429b-2)
29 includes every legal entity.

30 Revised Law

31 Sec. 16.071. NOTICE REQUIREMENTS. (a) A contract
32 stipulation that requires a claimant to give notice of a claim for
33 damages as a condition precedent to the right to sue on the
34 contract is not valid unless the stipulation is reasonable. A
35 stipulation that requires notification within less than 90 days is

1 void.

2 (b) If notice is required, the claimant may notify any
3 convenient agent of the company that requires the notice.

4 (c) A contract stipulation between the operator of a
5 railroad, street railway, or interurban railroad and an employee or
6 servant of the operator is void if it requires as a condition
7 precedent to liability:

8 (1) the employee or servant to notify the system of a
9 claim for damages for personal injury caused by negligence; or

10 (2) the spouse, parent, or child of a deceased
11 employee or servant to notify the system of a claim of death caused
12 by negligence.

13 (d) This section applies to a contract between a federal
14 prime contractor and a subcontractor, except that the notice period
15 stipulated in the subcontract may be for a period not less than the
16 period stipulated in the prime contract, minus seven days.

17 (e) In a suit covered by this section or Section 16.070, it
18 is presumed that any required notice has been given unless lack of
19 notice is specifically pleaded under oath. (V.A.C.S. Art. 5546.)

20 Source Law

21 Art. 5546. (a) No stipulation in a contract
22 requiring notice to be given of a claim for damages as
23 a condition precedent to the right to sue thereon shall
24 ever be valid unless such stipulation is reasonable.
25 Any such stipulation fixing the time within which such
26 notice shall be given at a less period than ninety (90)
27 days shall be void, and when any such notice is
28 required, the same may be given to the nearest or to
29 any other convenient local agent of the company
30 requiring the same. No stipulation in any contract
31 between a person, corporation, or receiver operating a
32 railroad, or street railway, or interurban railroad,
33 and an employee or servant requiring notice of a claim
34 by an employee or servant for damages for injury
35 received to the person, or by a husband, wife, father,
36 mother, child or children of a deceased employee for
37 his or her death, caused by negligence as a condition
38 precedent to liability, shall ever be valid. In any
39 suit brought under this and the preceding Article it
40 shall be presumed that notice has been given unless the
41 want of notice is especially pleaded under oath.

42 (b) The provisions of Paragraph (a) shall apply
43 to contracts between Federal prime contractors and
44 their sub-contractors except that the notice

1 stipulation in such subcontracts may be for a period of
2 not less than the notice requirement provided in the
3 prime contract between the Federal Government and the
4 prime contractor, less seven (7) days.

5 Revised Law

6 Sec. 16.072. SATURDAY, SUNDAY, OR HOLIDAY. If the last day
7 of a limitations period under any statute of limitations falls on a
8 Saturday, Sunday, or holiday, the period for filing suit is
9 extended to include the next day that the county offices are open
10 for business. (V.A.C.S. Art. 5539d.)

11 Source Law

12 Art. 5539d. If the last day of a limitations
13 period under any statute of limitations falls on a
14 Saturday, Sunday, or holiday, the period for filing
15 suit is extended to the next day that the offices of
16 the county are open for business.

17 Revisor's Note
18 (End of Chapter)

19 The revised law omits V.A.C.S. Articles 5534 and
20 5536, relating to an action to contest a probated will.
21 These articles were repealed by implication in 1956 by
22 the enactment of Section 93 of the Probate Code. The
23 omitted articles read:

24 Art. 5534. Any person interested in
25 any will which shall have been probated
26 under the laws of this State may institute
27 suit in the proper court to contest the
28 validity thereof, within four years after
29 such will shall have been admitted to
30 probate, and not afterward.

31 Art. 5536. Any heir at law of the
32 testator, or other person interested in his
33 estate, may institute suit in the proper
34 court to cancel a will for forgery or other
35 fraud within four years after the discovery
36 of such forgery or fraud, and not
37 afterward.

38 Section 93, Probate Code, reads:

39 Sec. 93. Period for Contesting
40 Probate. After a will has been admitted to
41 probate, any interested person may
42 institute suit in the proper court to

1 contest the validity thereof, within two
2 years after such will shall have been
3 admitted to probate, and not afterward,
4 except that any interested person may
5 institute suit in the proper court to
6 cancel a will for forgery or other fraud
7 within two years after the discovery of
8 such forgery or fraud, and not afterward.
9 Provided, however, that persons non compos
10 mentis and minors shall have two years
11 after the removal of their respective
12 disabilities within which to institute such
13 contest.

1 CHAPTER 17. PARTIES; CITATION; LONG-ARM JURISDICTION
2 SUBCHAPTER A. PARTIES TO SUIT
3 Sec. 17.001. SUIT ON CONTRACT WITH SEVERAL OBLIGORS OR
4 PARTIES CONDITIONALLY LIABLE
5 Sec. 17.002. SUIT AGAINST ESTATE FOR LAND TITLE
6 Sec. 17.003. SUIT AGAINST NONRESIDENT OR TRANSIENT
7 PROPERTY OWNER
8 Sec. 17.004. SUIT AGAINST UNKNOWN HEIRS OR UNKNOWN
9 STOCKHOLDERS OF DEFUNCT CORPORATION
10 Sec. 17.005. SUIT AGAINST UNKNOWN LANDOWNER
11 [Sections 17.006-17.020 reserved for expansion]
12 SUBCHAPTER B. CITATION GENERALLY
13 Sec. 17.021. SERVICE ON CERTAIN NONCORPORATE BUSINESS
14 AGENTS
15 Sec. 17.022. SERVICE ON PARTNERSHIP
16 Sec. 17.023. SERVICE ON CORPORATION OR JOINT-STOCK
17 ASSOCIATION
18 Sec. 17.024. SERVICE ON POLITICAL SUBDIVISION
19 Sec. 17.025. ASSESSMENT OF POSTAGE COST FOR MAIL
20 SERVICE
21 [Sections 17.026-17.040 reserved for expansion]
22 SUBCHAPTER C. LONG-ARM JURISDICTION IN SUIT ON
23 BUSINESS TRANSACTION OR TORT
24 Sec. 17.041. DEFINITION
25 Sec. 17.042. ACTS CONSTITUTING BUSINESS IN THIS STATE
26 Sec. 17.043. SERVICE ON PERSON IN CHARGE OF BUSINESS
27 Sec. 17.044. SUBSTITUTED SERVICE ON SECRETARY OF STATE
28 Sec. 17.045. NOTICE TO NONRESIDENT
29 [Sections 17.046-17.060 reserved for expansion]
30 SUBCHAPTER D. LONG-ARM JURISDICTION OVER NONRESIDENT
31 MOTOR VEHICLE OPERATOR
32 Sec. 17.061. DEFINITIONS

1 Sec. 17.062. SUBSTITUTED SERVICE ON CHAIRMAN OF STATE HIGHWAY
2 AND PUBLIC TRANSPORTATION COMMISSION
3 Sec. 17.063. METHOD OF SERVICE; NOTICE TO NONRESIDENT
4 Sec. 17.064. SAME EFFECT AS PERSONAL SERVICE
5 Sec. 17.065. FAILED SUBSTITUTED SERVICE
6 Sec. 17.066. RETURN
7 Sec. 17.067. DEFAULT JUDGMENT
8 Sec. 17.068. CONTINUANCE OR POSTPONEMENT
9 Sec. 17.069. CHAIRMAN'S CERTIFICATE

10 [Sections 17.070-17.090 reserved for expansion]

11 SUBCHAPTER E. CITATION OF NONRESIDENTS--MISCELLANEOUS PROVISIONS

12 Sec. 17.091. SUBSTITUTED SERVICE IN DELINQUENT TAX CASES
13 Sec. 17.092. SERVICE ON NONRESIDENT UTILITY SUPPLIER
14 Sec. 17.093. SERVICE ON FOREIGN RAILWAY

15 CHAPTER 17. PARTIES; CITATION; LONG-ARM JURISDICTION

16 SUBCHAPTER A. PARTIES TO SUIT

17 Revised Law

18 Sec. 17.001. SUIT ON CONTRACT WITH SEVERAL OBLIGORS OR
19 PARTIES CONDITIONALLY LIABLE. (a) Except as provided by this
20 section, the acceptor of a bill of exchange or a principal obligor
21 on a contract may be sued alone or jointly with another liable
22 party, but a judgment may not be rendered against a party not
23 primarily liable unless judgment is also rendered against the
24 principal obligor.

25 (b) The assignor, endorser, guarantor, or surety on a
26 contract or the drawer of an accepted bill may be sued without
27 suing the maker, acceptor, or other principal obligor, or a suit
28 against the principal obligor may be discontinued, if the principal
29 obligor:

30 (1) is a nonresident or resides in a place where he
31 cannot be reached by the ordinary process of law;

1 (2) resides in a place that is unknown and cannot be
2 ascertained by the use of reasonable diligence;
3 (3) is dead; or
4 (4) is actually or notoriously insolvent. (V.A.C.S.
5 Arts. 1986, 1987, 2088.)

6 Source Law

7 Art. 1986. The acceptor of a bill of exchange,
8 or a principal obligor in a contract, may be sued
9 either alone or jointly with any other party who may be
10 liable thereon; but no judgment shall be rendered
11 against a party not primarily liable on such bill or
12 other contract, unless judgment be also rendered
13 against such acceptor or other principal obligor,
14 except where the plaintiff may discontinue his suit
15 against such principal obligor as hereinafter provided.

16 Art. 1987. The assignor, indorser, guarantor and
17 surety upon a contract, and the drawer of a bill which
18 has been accepted, may be sued without suing the maker,
19 acceptor or other principal obligor, when the principal
20 obligor resides beyond the limits of the State, or
21 where he cannot be reached by the ordinary process of
22 law, or when his residence is unknown and cannot be
23 ascertained by the use of reasonable diligence, or when
24 he is dead, or actually or notoriously insolvent.

25 Art. 2088. Where a suit is discontinued as to
26 the principal obligor, no judgment can be rendered
27 therein against an indorser, guarantor, surety or
28 drawer of an accepted bill who is jointly sued, unless
29 it is alleged and proved that such principal obligor
30 resides beyond the limits of the State, or in such part
31 of the same that he cannot be reached by the ordinary
32 process of law, or that his residence is unknown and
33 cannot be ascertained by the use of reasonable
34 diligence, or that he is dead or actually or
35 notoriously insolvent.

36 Revised Law

37 Sec. 17.002. SUIT AGAINST ESTATE FOR LAND TITLE. In a suit
38 against the estate of a decedent involving the title to real
39 property, the executor or administrator, if any, and the heirs must
40 be made parties defendant. (V.A.C.S. Art. 1982.)

41 Source Law

42 Art. 1982. In every suit against the estate of a
43 decedent involving the title to real estate, the
44 executor or administrator, if any, and the heirs shall
45 be made parties defendant.

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Sec. 17.004. SUIT AGAINST UNKNOWN HEIRS OR UNKNOWN STOCKHOLDERS OF DEFUNCT CORPORATION. A person with a claim against property that has accrued to or been granted to the unknown heirs of a deceased individual or the unknown stockholders of a defunct corporation may sue the heirs or stockholders or their heirs or representatives. The action must describe the defendants as the heirs of the named deceased individual or the unknown stockholders of the named corporation. (V.A.C.S. Art. 2040 (part).)

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Art. 2040. Where property in this State has been granted or has accrued to the heirs as such, of any deceased person, or to the stockholders of defunct corporation, any party having a claim or cause of action against them relative to such property, if their names be unknown to him, may bring an action against them, their heirs or legal representatives, describing them as the heirs of such named ancestor or unknown stockholder of such corporation.

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The revised law omits part of V.A.C.S. Article 2040 that relates to service of process in suits under that article. The omitted provision was repealed by Rule 111, Texas Rules of Civil Procedure, and read:

If the plaintiff, his agent, or attorney, shall make oath that the names of such heirs or stockholders are unknown to the affiant, the clerk shall issue a citation for such heirs or stockholders, addressed to the sheriff or any constable of the county in which such suit is pending. Such citation shall contain a brief statement of the cause of action, and shall command the officer to summon the defendant by making publication of such citation as provided in the preceding article.

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Sec. 17.005. SUIT AGAINST UNKNOWN LANDOWNER. (a) A person may sue the unknown owner or claimant of an interest in land if:

(1) the person bringing suit claims ownership of an

1 interest in the land or has a claim or cause of action related to
2 the land against the unknown owner or claimant; and

3 (2) the unknown owner or claimant:

4 (A) takes or holds the beneficial interest under
5 a conveyance, lease, or written contract that conveyed an interest
6 in the land to a trustee without disclosing the name of the owner
7 of the beneficial interest; or

8 (B) takes or holds the interest of a dissolved
9 association, joint-stock company, partnership, or other
10 organization under an instrument that did not disclose his name,
11 and the organization had acquired the interest under a conveyance,
12 lease, or written contract that conveyed the interest to the
13 organization in its name without disclosing the names of the
14 members, shareholders, partners, or other persons owning an
15 interest in the organization.

16 (b) A person may not sue the unknown stockholders of a
17 corporation under this section, but if the plaintiff did not know
18 that the organization was incorporated and the corporate character
19 of the organization was not disclosed in the instrument under which
20 title was acquired, the court retains jurisdiction over the unknown
21 owners even if the organization was in fact incorporated.
22 (V.A.C.S. Art. 2041a, Sec. 1.)

23 Source Law

24 Art. 2041a

25 Sec. 1. When land in this State or any interest
26 of any kind in land has been or may hereafter be
27 conveyed, or any lease or contract with reference to
28 land made by written instrument (a) to any person or
29 persons as trustee or trustees and in the conveyance or
30 instrument constituting source of title or claim of
31 title the names of the persons taking or holding the
32 equitable or beneficial title are not disclosed and are
33 unknown, or (b) to any association, joint stock company
34 or partnership, in an association, company or firm
35 name, without disclosing the names of the members,
36 shareholders or partners or persons owning interests in
37 such association, company or firm, and such
38 association, joint stock company or partnership shall
39 thereafter be dissolved and the names of the persons
40 holding or acquiring title to such lands after
41 dissolution are not disclosed in such instrument and

are unknown; in each of such cases any person claiming ownership of or any interest in such lands or having a claim or cause of action against such unknown owners or claimants relative to such property, may bring action or actions against such unknown owners or claimants as such. The provisions hereof shall apply to conveyances made to all character and kinds of companies, associations and organizations, and in which conveyance the names and identity of the persons taking and holding the beneficial or equitable title are not disclosed and are unknown; provided, however, that if the grantee in such conveyance is shown therein to be a corporation or if the grantee be known to be a corporation, in such event this Act shall not apply, but the rights of action shall be governed by Article 2040 of Revised Civil Statutes; but if the character of the organization as whether incorporated or unincorporated is not shown in such conveyance and such facts are unknown, then suit brought under the provisions of this Act against the unknown owners or claimants of property under such conveyance shall be sufficient to give the Court jurisdiction over such unknown owners or claimants regardless of whether the named grantee is in fact a corporation or unincorporated.

[Sections 17.006-17.020 reserved for expansion]

SUBCHAPTER B. CITATION GENERALLY

Revised Law

Sec. 17.021. SERVICE ON CERTAIN NONCORPORATE BUSINESS AGENTS. (a) In an action against an individual, partnership, or unincorporated association that arises in a county in which the individual, partnership, or association has an office, place of business, or agency for transacting business in this state, citation or other civil process may be served on an agent or clerk employed in the office, place of business, or agency if:

(1) the action grows out of or is connected with the business transacted in this state; and

(2) the individual, partnership, or association:

(A) is not a resident of the county;

(B) is not a resident of this state; or

(C) is a resident of the county but has not been found for service of process.

(b) To serve process on an agent or clerk under Subsection

1 (a)(2)(C), the officer making the return of unexecuted process must
2 certify that after diligent search and inquiry the individual,
3 partnership, or association cannot be found and served. The
4 process in the suit may be served on the agent or clerk in any
5 succeeding term of court.

6 (c) Service of process on an agent or clerk under this
7 section has the effect of personal service on the principal
8 individual, partnership, or unincorporated association, and
9 subjects the principal's nonexempt property to the jurisdiction and
10 judgment of the court.

11 (d) If service is made under this section, a default
12 judgment may not be rendered in the action before the 21st day
13 after the date of service.

14 (e) Service of process under this section is in addition to
15 other methods of service.

16 (f) This section does not affect venue. (V.A.C.S. Arts.
17 2033b, 2033c.)

18 Source Law

19 Art. 2033b. When an individual, partnership or
20 unincorporated association (either being referred to
21 herein as principal, whether one or more) has, for the
22 transaction or doing of any business in Texas, an
23 office, place of business, or agency in any county
24 other than that in which the principal resides, service
25 of citation or other civil process to bind any such
26 principal, may be made on any agent or clerk employed
27 in such office, place of business or agency, in all
28 suits or actions growing out of or connected with such
29 business and brought in the county in which such
30 office, place of business or agency is located; and the
31 provisions hereof shall apply as well to non-residents
32 of the state as to non-residents of such county; and
33 shall also apply to cases where a principal, though
34 claiming or alleged to be a resident of the county
35 wherein is located such office, place of business or
36 agency, has not been found in such county for service
37 on him of process in such suit, in which case, if the
38 officer making return of the process unexecuted shall
39 certify in such return that after diligent search and
40 inquiry a principal cannot be found and served, then
41 process in such suit to any succeeding term of court
42 may be served on such clerk or agent as is herein
43 provided for in case of non-residents of such county;
44 but provided that nothing herein shall prevent or
45 interfere with the application of the articles of the
46 statutes relating to venue of suits.

1 Art. 2033c. Such service of process, made in the
2 manner herein provided, shall have the same effect as
3 if made personally on the principal and shall
4 especially have effect to subject all non-exempt
5 property in Texas of the principal so served to the
6 jurisdiction and judgment of the court in such suit;
7 but provided that no default judgment shall be rendered
8 on service so obtained until after twenty days after
9 the date of such service, and provided further that the
10 method of service afforded by this Act shall be
11 cumulative.

12 Revised Law

13 Sec. 17.022. SERVICE ON PARTNERSHIP. Citation served on one
14 member of a partnership authorizes a judgment against the
15 partnership and the partner actually served. (V.A.C.S. Art. 2033.)

16 Source Law

17 Art. 2033. Citation served upon one member of a
18 partnership or firm shall be sufficient to authorize a
19 judgment against the firm and the partner actually
20 served.

21 Revisor's Note

22 The revised law omits the reference to a "firm"
23 because it is used synonymously with "partnership."

24 Revised Law

25 Sec. 17.023. SERVICE ON CORPORATION OR JOINT-STOCK
26 ASSOCIATION. (a) In an action against a corporation or
27 joint-stock association, citation may be served by:

28 (1) serving the president, vice-president, secretary,
29 cashier, assistant cashier, or treasurer of the corporation or
30 association;

31 (2) serving the local agent of the corporation or
32 association in the county in which the suit is brought; or

33 (3) leaving a copy of the citation at the principal
34 office of the corporation or association during office hours.

35 (b) If no officer on whom citation may be served resides in
36 the county in which suit is brought and the corporation or

1 association has no agent in that county, citation may be served on
2 any agent representing the corporation or association in this
3 state. (V.A.C.S. Art. 2029.)

4 Source Law

5 Art. 2029. In suits against any incorporated
6 company or joint stock association, the citation may be
7 served on the President, Vice President, Secretary,
8 Cashier, Assistant Cashier, or Treasurer of such
9 company or association, or upon the local agent of such
10 company or association in the county where the suit is
11 brought, or by leaving a copy of the same at the
12 principal office of the company during office hours.
13 If neither the President, Vice President, Secretary,
14 Assistant Secretary, Cashier, Assistant Cashier, or
15 Treasurer reside in the county in which suit is
16 brought, and such company or association has no agent
17 in the county, then the citation may be served upon any
18 agent representing such company, corporation, or
19 association in the State.

20 Revised Law

21 Sec. 17.024. SERVICE ON POLITICAL SUBDIVISION. (a) In a
22 suit against a county, citation must be served on the county judge.

23 (b) In a suit against an incorporated city, town, or
24 village, citation may be served on the mayor, clerk, secretary, or
25 treasurer.

26 (c) In a suit against a school district, citation may be
27 served on the president of the school board or on the
28 superintendent. (V.A.C.S. Art. 2027; Art. 2028, Secs. 1, 2.)

29 Source Law

30 Art. 2027. In suits against a county, the
31 citation shall be served on the county judge of such
32 county.

33 Art. 2028

34 Sec. 1. In suits against an incorporated city,
35 town or village, the citation may be served on the
36 mayor, clerk, secretary or treasurer thereof.

37 Sec. 2. In suits against a school district the
38 citation may be served on the president of the school
39 board or the superintendent.

40 Revised Law

41 Sec. 17.025. ASSESSMENT OF POSTAGE COST FOR MAIL SERVICE.

1 (a) If a public official is required or permitted by law to serve
2 legal process by mail, including process in a suit for delinquent
3 taxes, the official may:

4 (1) collect advance payment for the actual cost of the
5 postage required to serve or deliver the process; or

6 (2) assess the expense of postage as costs.

7 (b) Charges under this section are in addition to other
8 charges allowed by law for services performed by the official
9 serving the process. (V.A.C.S. Art. 204lb.)

10 Source Law

11 Art. 204lb. If a public official is required or
12 permitted by law to serve any legal process by mail,
13 including process in suits for delinquent taxes, the
14 official may collect advance payment for the actual
15 cost of the postage required to serve or deliver the
16 process, or the official may assess the expense of
17 postage as costs. The charges authorized by this Act
18 are in addition to the fees allowed by law for other
19 services performed by the official.

20 [Sections 17.026-17.040 reserved for expansion]

21 SUBCHAPTER C. LONG-ARM JURISDICTION IN SUIT ON
22 BUSINESS TRANSACTION OR TORT

23 Revised Law

24 Sec. 17.041. DEFINITION. In this subchapter, "nonresident"
25 includes:

26 (1) an individual who is not a resident of this state;
27 and

28 (2) a foreign corporation, joint-stock company,
29 association, or partnership. (New.)

30 Revisor's Note

31 This definition is added as a drafting
32 convenience and is derived from the listing used in the
33 operative provisions of V.A.C.S. Article 203lb.

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1 the constitutional limits. See Jetco Electronic
2 Industries, Inc. v. Gardiner, 473 F.2d 1228 (5th Cir.
3 1973); Hoppenfeld v. Crook, 498 S.W.2d 52 (Tex. Civ.
4 App.--Austin 1973, writ ref'd n.r.e.); and U-Anchor
5 Advertising, Inc. v. Burt, 553 S.W.2d 760 (Tex. 1977).
6 Each of those courts considered or emphasized the
7 phrase and expressly or impliedly interpreted it as
8 "catch-all language . . . intended to expand the
9 jurisdictional scope of the statute to constitutional
10 limits 'without including other acts' in the specific
11 description of acts that fall within the purview of
12 article 2031b." Thode, In Personam Jurisdiction;
13 Article 2031b, The Texas "Long Arm" Jurisdiction
14 Statute, 42 Texas L. Rev. 279, 308 (1964).

15 Revised Law

16 Sec. 17.043. SERVICE ON PERSON IN CHARGE OF BUSINESS. In an
17 action arising from a nonresident's business in this state, process
18 may be served on the person in charge, at the time of service, of
19 any business in which the nonresident is engaged in this state if
20 the nonresident is not required by statute to designate or maintain
21 a resident agent for service of process. (V.A.C.S. Art. 2031b,
22 Sec. 2 (part).)

23 Source Law

24 Sec. 2. When any foreign corporation,
25 association, joint stock company, partnership, or
26 non-resident natural person, though not required by any
27 Statute of this State to designate or maintain an
28 agent, shall engage in business in this State, in any
29 action in which such corporation, joint stock company,
30 association, partnership, or non-resident natural
31 person is a party or is to be made a party arising out
32 of such business, service may be made by serving a copy
33 of the process with the person who, at the time of the
34 service, is in charge of any business in which the
35 defendant or defendants are engaged in this
36 State

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1 joint stock company, partnership, or non-resident
2 natural person that engages in business in this State,
3 irrespective of any Statute or law respecting
4 designation or maintenance of resident agents, and does
5 not maintain a place of regular business in this State
6 or a designated agent upon whom service may be made
7 upon causes of action arising out of such business done
8 in this State, the act or acts of engaging in such
9 business within this State shall be deemed equivalent
10 to an appointment by such foreign corporation, joint
11 stock company, association, partnership, or
12 non-resident natural person of the Secretary of State
13 of Texas as agent upon whom service of process may be
14 made in any action, suit or proceedings arising out of
15 such business done in this State, wherein such
16 corporation, joint stock company, association,
17 partnership, or non-resident natural person is a party
18 or is to be made a party.

19 Sec. 6. When any corporation, association, joint
20 stock company, partnership or natural person becomes a
21 non-resident of Texas, as that term is commonly used,
22 after a cause of action shall arise in this State, but
23 prior to the time the cause of action is matured by
24 suit in a court of competent jurisdiction in this
25 State, when such corporation, association, joint stock
26 company, partnership or natural person is not required
27 to appoint a service agent in this State, such
28 corporation, association, joint stock company,
29 partnership or natural person may be served with
30 citation by serving a copy of the process upon the
31 Secretary of State of Texas, who shall be conclusively
32 presumed to be the true and lawful attorney to receive
33 service of process

34 Revisor's Note

35 For this section of the revised law and for
36 subsequent sections where appropriate, the revised law
37 replaces the fictional appointment of the secretary of
38 state with the simpler statement that the secretary of
39 state "is an agent for service of process." The
40 fiction is unnecessary and cumbersome; the revised law
41 states the substantive effect of the fiction.

42 Revised Law

43 Sec. 17.045. NOTICE TO NONRESIDENT. (a) If the secretary
44 of state is served with duplicate copies of process for a
45 nonresident, he shall require a statement of the name and address
46 of the nonresident's home or home office and shall immediately mail
47 a copy of the process to the nonresident.

1 (b) If the secretary of state is served with process under
2 Section 17.044(a)(3), he shall immediately mail a copy of the
3 process to the nonresident (if an individual), to the person in
4 charge of the nonresident's business, or to a corporate officer (if
5 the nonresident is a corporation).

6 (c) If the person in charge of a nonresident's business is
7 served with process under Section 17.043, a copy of the process and
8 notice of the service must be immediately mailed to the nonresident
9 or the nonresident's principal place of business.

10 (d) The process or notice must be sent by registered mail or
11 by certified mail, return receipt requested. (V.A.C.S. Art. 2031b,
12 Secs. 2 (part), 5, 6 (part).)

13 Source Law

14 [Sec. 2]

15 . . . provided a copy of such process, together with
16 notice of such service upon such person in charge of
17 such business shall forthwith be sent to the defendant
18 or to the defendants principal place of business by
19 registered mail, return receipt requested.

20 Sec. 5. Whenever process against a foreign
21 corporation, joint stock company, association,
22 partnership, or non-resident natural person is made by
23 delivering to the Secretary of State duplicate copies
24 of such process, the Secretary of State shall require a
25 statement of the name and address of the home or home
26 office of the non-resident. Upon receipt of such
27 process, the Secretary of State shall forthwith forward
28 to the defendant a copy of the process by registered
29 mail, return receipt requested.

30 [Sec. 6]

31 . . . provided that the Secretary of State shall
32 forward a copy of such service to the person in charge
33 of such business or an officer of such company, or to
34 such natural person by certified or registered mail,
35 return receipt requested.

36 Revisor's Note

37 Although portions of the source law require
38 notice to be sent by registered mail, V.A.C.S. Article
39 29c authorizes the use of certified mail whenever the
40 law specifies registered mail. The revised law
41 restates that rule in order to avoid any confusion.

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Revised Law

Sec. 17.063. METHOD OF SERVICE; NOTICE TO NONRESIDENT. (a)

A certified copy of the process must be served on the chairman not later than the 20th day prior to the date of return stated in the process.

(b) Immediately after being served, the chairman by properly addressed letter shall mail to the nonresident or agent:

(1) a copy of the process; and

(2) notice that the process has been served on the chairman.

(c) The notice and copy of the process must be sent to the nonresident or agent by registered mail, or by certified mail, return receipt requested, with the postage prepaid.

(d) After the chairman deposits the copy of the process in the mail, it is presumed that the process was transmitted by the chairman and received by the nonresident or agent. The presumption may be rebutted. (V.A.C.S. Art. 2039a, Secs. 1 (part), 2 (part), 5 (part).)

Source Law

[Sec. 1]

Service of such process shall be made by leaving a certified copy of the process issued in the hands of the Chairman of the State Highway Commission in Texas at least twenty (20) days prior to the return date thereof, to be stated in said process, and such service shall be sufficient upon said nonresident, his agent, servant, employee, heir, legal representative, executor, administrator or guardian, provided, however, that notice of such service and a copy of the process be forthwith sent by registered mail by the Chairman of the State Highway Commission to the nonresident defendant, his agent, servant, employee, heir, legal representative, executor, administrator or guardian.

Sec. 2. It shall be the duty of the Chairman of the State Highway Commission of the State of Texas, upon being served with process as provided in Section 1 of this Act, to immediately enclose copy of the process served upon him in a letter properly addressed to the defendant, or to his agent, servant, employee, heir, legal representative, executor, administrator or guardian, and shall forward the same by registered mail, postage prepaid.

[Sec. 5]

. . . the presumption shall obtain, unless rebutted,

1 that such process was transmitted by the Chairman of
2 the State Highway Commission and received by the
3 defendant after being deposited in the mail by the
4 Chairman of the State Highway Commission.

5 Revisor's Note

6 The revised law authorizes certified mail for
7 sending notice in order to conform this section with
8 V.A.C.S. Article 29c, which authorizes use of certified
9 mail if a statute requires registered mail.

10 Revised Law

11 Sec. 17.064. SAME EFFECT AS PERSONAL SERVICE. Service on
12 the chairman has the same effect as personal service on the
13 nonresident. (V.A.C.S. Art. 2039a, Sec. 1 (part).)

14 Source Law

15 . . . said acceptance or operation shall be a
16 signification of the agreement of said nonresident, or
17 his agent, servant, employee, heir, legal
18 representative, executor, administrator or guardian,
19 that any such process against him or against his agent,
20 servant, employee, heir, legal representative,
21 executor, administrator or guardian, served upon said
22 Chairman of the State Highway Commission or his
23 successor in office, shall be of the same legal force
24 and validity as if served personally.

25 Revised Law

26 Sec. 17.065. FAILED SUBSTITUTED SERVICE. (a) If the notice
27 of service on the chairman cannot be effected by registered or
28 certified mail or if the nonresident or agent refuses to accept
29 delivery of the notice, the plaintiff may have the defendant
30 personally served with a certified copy of the process and a notice
31 stating that the chairman has been served and the date on which he
32 was served.

33 (b) The return of service under this section shall be
34 endorsed on or attached to the original process issued and must:

35 (1) state when it was served;

1 (2) state on whom it was served; and

2 (3) be signed and sworn to by the party making the
3 service before a person authorized by law to make an affidavit
4 under his hand and seal.

5 (c) The process and notice may be served by any
6 disinterested person competent to make an oath that the process and
7 notice were served. (V.A.C.S. Art. 2039a, Sec. 2 (part).)

8 Source Law

9 If and in the event notice of service of the process
10 upon the Chairman of the State Highway Commission
11 cannot be effected by registered mail or if the person
12 to whom it is addressed refuses to accept or receive
13 the same, then the plaintiff may cause the defendant to
14 be served with a notice of the fact that the process
15 has been served upon the Chairman of the State Highway
16 Commission, stating the date of the service thereof,
17 which notice shall also be accompanied with a certified
18 copy of the process so served upon said Chairman of the
19 State Highway Commission. Such notice may be served by
20 any disinterested person competent to make oath of the
21 fact by delivering to the person to be served in person
22 a true copy of such notice, together with a certified
23 copy of the process served upon the Chairman of the
24 State Highway Commission. The return of service in
25 such case shall be endorsed on or attached to the
26 original notice stating when it was served and upon
27 whom it was served and it shall be signed and sworn to
28 by the party making such service before any person
29 authorized by the Statutes of this State to make
30 affidavit under the hand and official seal of such
31 officer.

32 Revisor's Note

33 The revised law authorizes certified mail for
34 sending notice in order to conform this section with
35 V.A.C.S. Article 29c, which authorizes use of certified
36 mail if a statute requires registered mail.

37 Revised Law

38 Sec. 17.066. RETURN. An officer who serves process on the
39 chairman under this subchapter shall state on his return the day
40 and hour of service and any other facts required generally for
41 returns of service of citation. (V.A.C.S. Art. 2039a, Sec. 3.)

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1 or happening contemplated or required by this subchapter, including
2 the wording of any registered letter received.

3 (b) The chairman may make the certification to the court
4 that issued the process or to another court in which an action is
5 pending against the nonresident or agent.

6 (c) The chairman's certificate and the certified wording of
7 a registered letter are prima facie evidence of the statements
8 contained in the certificate or letter. (V.A.C.S. Art. 2039a, Sec.
9 4.)

10 Source Law

11 Sec. 4. The Chairman of the State Highway and
12 Public Transportation Commission shall, upon request of
13 a party and upon the payment of a fee of \$25, certify
14 to the court out of which said process is issued or in
15 which any suit or action may be pending against such
16 nonresident, his agent, servant, employee, heir, legal
17 representative, executor, administrator or guardian,
18 the occurrence or performance of any of the duties,
19 acts, omissions, transactions or happenings
20 contemplated or required by this Act, including the
21 wording of any registered letter received, and his
22 certificate, as well as the wording of said registered
23 letter receipt, shall be accepted as prima facie
24 evidence and proof of the statements contained therein.

25 [Sections 17.070-17.090 reserved for expansion]

26 SUBCHAPTER E. CITATION OF NONRESIDENTS--MISCELLANEOUS PROVISIONS

27 Revised Law

28 Sec. 17.091. SUBSTITUTED SERVICE IN DELINQUENT TAX CASES.

29 (a) In a suit growing out of property taxation by the state or a
30 legal subdivision of the state in which a person who is a defendant
31 is a nonresident, the executive director of the State Property Tax
32 Board is an agent for service of process on that defendant if the
33 defendant owned, had, or claimed a taxable interest in property in
34 this state on the first day of a tax year for which taxes have not
35 been paid.

36 (b) Process may be served on the executive director in
37 accordance with this section for a nonresident who was a resident

1 at the time the cause of action accrued but has subsequently moved.

2 (c) Service of process under this section shall be made in
3 the manner provided by this chapter for substituted service on
4 nonresident motor vehicle operators, except that a copy of the
5 process must be mailed by certified mail.

6 (d) Service under this section is in addition to procedures
7 provided by Rule 117a of the Texas Rules of Civil Procedure and has
8 the same effect as personal service. (V.A.C.S. Art. 2039b.)

9 Source Law

10 Art. 2039b

11 Sec. 1. In addition to any procedures for
12 citation provided under Rule 117a, Texas Rules of Civil
13 Procedure, the acceptance by a nonresident of this
14 state, or by a person who was a resident of this state
15 at the time of the accrual of a cause of action but who
16 subsequently removes therefrom, of the rights,
17 privileges, and benefits extended by law to such
18 person(s) of owning, having, or claiming an interest in
19 property, real or personal, subject to taxation by the
20 State of Texas and its legal subdivisions, or any of
21 them, shall be deemed equivalent to appointment by such
22 nonresident of the executive director of the State
23 Property Tax Board or his successor in office, to be
24 his true and lawful attorney and agent upon whom may be
25 served all lawful process in any civil action or
26 proceeding now pending or hereafter instituted against
27 such nonresident(s) growing out of taxation by the
28 state and its legal subdivisions, or any of them, of
29 property in which such nonresident(s) owned, had, or
30 claimed a taxable interest on the first day of any tax
31 year(s) for which taxes on such property have not been
32 paid. Such service of process, as herein provided,
33 shall have the same effect as if made personally on the
34 defendant within the State of Texas.

35 Sec. 2. Service of process under this Act shall
36 be in the same manner and method as that prescribed in
37 Chapter 125, Acts of the 41st Legislature, Regular
38 Session, 1929, as last amended by Chapter 502, Acts of
39 the 56th Legislature, Regular Session, 1959 (compiled
40 as Article 2039a of Vernon's Texas Civil Statutes),
41 which relates to citation of nonresident motor vehicle
42 operators by serving the chairman of the state highway
43 commission; provided, however, in the service of such
44 process certified mail shall be used rather than
45 registered mail.

46 Sec. 3. "Nonresidents" as used in this Act
47 includes corporations, partnerships and all other legal
48 entities or representatives owning, having, or claiming
49 a taxable interest in such property at the time(s)
50 specified in Section 1 hereof.

1 (A) handles trains for two or more railway
2 corporations, at least one of which is the foreign corporation and
3 at least one of which is a domestic corporation; and

4 (B) handles trains for the railway corporations
5 over tracks that cross the state's boundary and on tracks of a
6 domestic corporation within this state; or

7 (2) an agent who:

8 (A) has an office in this state; and

9 (B) sells tickets or makes contracts for the
10 transportation of passengers or property over all or part of the
11 line of the foreign railway. (V.A.C.S. Art. 2032.)

12 Source Law

13 Art. 2032. Service may also be had on foreign
14 railway corporations by serving citation upon any train
15 conductor who is engaged in handling trains for two or
16 more railway corporations where one is a foreign
17 railway corporation, and the other a domestic
18 corporation, if said conductor handles and operates
19 trains over such foreign and domestic corporation's
20 tracks across the State line of Texas and on the track
21 of the domestic corporation within this State or upon
22 any agent who has an office in Texas who sells tickets
23 or makes contracts for the transportation of passengers
24 or property over any line of railway, or part thereof,
25 of such foreign railway corporation or company.
26 Conductors who are engaged in handling trains and
27 employed by a foreign railway corporation and a
28 domestic corporation, and who operate such trains
29 across the State line of Texas, and agents engaged in
30 selling tickets or making contracts for the
31 transportation of property, are hereby designated as
32 agents of such foreign corporation or companies upon
33 whom service of citation may be had.

34 Revisor's Note
35 (End of Chapter)

36 (1) The revised law omits V.A.C.S. Article 2286a
37 as executed. That article validated certain
38 proceedings instituted prior to its enactment in which
39 the citation or another notice was improperly directed,
40 and has no continuing effect. The omitted article

1 read:

2 Art. 2286a

3 Sec. 1. All citations and notices in
4 all cases of lunacy, guardianship, or
5 estates of decedents, or of any other
6 probate proceedings directed to the sheriff
7 or any constable of the county in which the
8 proceedings were instituted instead of to
9 any sheriff or constable within the State
10 of Texas as provided in Rule 15 of the
11 Rules of Civil Procedure, which have been
12 duly served and returned in the manner
13 provided by law by the sheriff or constable
14 within the county in which the proceedings
15 were instituted, together with all
16 uncontested orders, decrees, sales, leases
17 and judgments grounded on such citations or
18 notices are hereby validated and made as
19 effective to support proceedings in the
20 respective county courts in lunacy,
21 guardianship and probate as if directed to
22 any sheriff or constable within the State
23 of Texas, as provided in said Rule 15.

24 Sec. 2. In all cases where personal
25 service is required in lunacy,
26 guardianship, or estates of decedents, or
27 any other probate proceedings where any
28 citation or notice therein has been
29 directed to the sheriff or constable of the
30 county in which the person named in the
31 citation or notice was located instead of
32 to any sheriff or constable within the
33 State of Texas as provided in Rule 15 of
34 the Rules of Civil Procedure, and such
35 citations or notices have been duly served
36 on the person named therein by the sheriff
37 or constable of the county in which the
38 person named in the citation or notice was
39 located, together with all uncontested
40 orders, decrees, sales, leases and
41 judgments grounded on such citations or
42 notices are hereby validated and made as
43 effective to support proceedings in the
44 respective county courts in lunacy,
45 guardianship and probate as if directed to
46 any sheriff or constable in the State of
47 Texas, as provided in said Rule 15.

48 Sec. 3. The provisions of this Act
49 shall not be applicable to the issues in
50 any law suit or in any contested probate
51 proceedings pending in any court of this
52 State on the effective date of this Act.

53 (2) The revised law omits V.A.C.S. Article 2090
54 as repealed by Rule 163, Texas Rules of Civil
55 Procedure. The order of the Supreme Court effective
56 January 1, 1955, corrected the list of statutes
57 repealed by the rules to read "[Articles] 2089-2091"
58 instead of the original "[Articles] 2089, 2091."

1 CHAPTER 18. EVIDENCE

2 SUBCHAPTER A. DOCUMENTARY EVIDENCE

3 Sec. 18.001. AFFIDAVIT CONCERNING COST AND NECESSITY OF SERVICES

4 [Sections 18.002-18.030 reserved for expansion]

5 SUBCHAPTER B. PRESUMPTIONS

6 Sec. 18.031. FOREIGN INTEREST RATE

7 CHAPTER 18. EVIDENCE

8 SUBCHAPTER A. DOCUMENTARY EVIDENCE

9 Revised Law

10 Sec. 18.001. AFFIDAVIT CONCERNING COST AND NECESSITY OF
11 SERVICES. (a) This section applies to civil actions only, but not
12 to an action on a sworn account.

13 (b) Unless a controverting affidavit is filed as provided by
14 this section, an affidavit that the amount a person charged for a
15 service was reasonable at the time and place that the service was
16 provided and that the service was necessary is sufficient evidence
17 to support a finding of fact by judge or jury that the amount
18 charged was reasonable or that the service was necessary.

19 (c) The affidavit must:

20 (1) be taken before an officer with authority to
21 administer oaths;

22 (2) be made by:

23 (A) the person who provided the service; or

24 (B) the person in charge of records showing the
25 service provided and charge made; and

26 (3) include an itemized statement of the service and
27 charge.

28 (d) The party offering the affidavit in evidence or the
29 party's attorney must file the affidavit with the clerk of the
30 court and serve a copy of the affidavit on each other party to the

1 case at least 14 days before the day on which evidence is first
2 presented at the trial of the case.

3 (e) A party intending to controvert a claim reflected by the
4 affidavit must file a counteraffidavit with the clerk of the court
5 and serve a copy of the counteraffidavit on each other party or the
6 party's attorney of record not later than 10 days after the day he
7 receives a copy of the affidavit or, with leave of the court, at
8 any time before evidence is presented at trial.

9 (f) The counteraffidavit must give reasonable notice of the
10 basis on which the party filing it intends at trial to controvert
11 the claim reflected by the initial affidavit and must be taken
12 before a person authorized to administer oaths. The
13 counteraffidavit may be made on information and belief by the party
14 filing it or by the party's attorney of record. (V.A.C.S. Art.
15 3737h.)

16 Source Law

17 Art. 3737h

18 Sec. 1. (a) In a civil action other than an
19 action on sworn account, the amount charged for
20 services by a person or institution, when supported by
21 affidavit that the charges reflected in the affidavit
22 were reasonable at the time and place that the services
23 were rendered and that the services were necessary, is
24 sufficient evidence to support a finding of fact by
25 judge or jury that the services were necessary or that
26 the amount charged was reasonable, or both. The
27 affidavit shall be taken before an officer authorized
28 to administer oaths, shall be made by a person who
29 rendered the services or who is in charge of records
30 that show the services rendered and the charges made,
31 and shall include an itemized statement of the services
32 and the charges.

33 (b) As a condition precedent to applicability of
34 Subsection (a) of this Section 1, the party asserting
35 such applicability, or such party's attorney of record,
36 shall file the affidavit provided for in said
37 Subsection (a) with the clerk of the court and shall
38 serve a copy thereof on each other party to the cause,
39 or such other party's attorney of record, at least 14
40 days prior to the day on which presentation of evidence
41 at trial of the cause commences. As a condition
42 precedent to controverting a claim covered by an
43 affidavit so filed and served, any party intending to
44 controvert all or part of any such claim shall, within
45 10 days after receipt of such party's copy of such
46 affidavit, or with leave of court first had and
47 obtained at any time prior to commencement of evidence
48 at trial of the cause, file a counter-affidavit with

1 the clerk of the court and serve a copy thereof on each
2 other party to the cause, or such other party's
3 attorney of record. The counter-affidavit shall give
4 reasonable notice of the basis upon which the party
5 filing it intends at trial to controvert all or part of
6 the claim covered by the initial affidavit. The
7 counter-affidavit shall be taken before a person
8 authorized to administer oaths and may be made upon
9 information and belief by the party filing it, or such
10 party's attorney of record. When a counter-affidavit
11 is so filed and served, then Subsection (a) of this
12 Section 1 shall thereafter have no force or effect at
13 the trial of the cause.

14 Sec. 2. This Act does not apply to civil actions
15 in which judgment was rendered prior to the effective
16 date of this Act, nor to attorney fees charged in the
17 trial of the cause or preparation thereof.

18 Revisor's Note

19 (1) The word "institution" is omitted from the
20 revised law as included in the Code Construction Act
21 (V.A.C.S. Article 5429b-2) definition of "person."

22 (2) Section 2 of the source law is omitted as
23 unnecessary because it provided for the prospective
24 application of the Act.

25 [Sections 18.002-18.030 reserved for expansion]

26 SUBCHAPTER B. PRESUMPTIONS

27 Revised Law

28 Sec. 18.031. FOREIGN INTEREST RATE. Unless the interest
29 rate of another state or country is alleged and proved, the rate is
30 presumed to be the same as that established by law of this state
31 and interest at that rate may be recovered without allegation or
32 proof. (V.A.C.S. Art. 3733.)

33 Source Law

34 Art. 3733. The rate of interest in any other
35 State, territory or country is presumed to be the same
36 as that established by law in this State, and may be
37 recovered accordingly without allegation or proof
38 thereof, unless the rate of interest in such other
39 country be alleged and proved.

Revisor's Note

The word "territory" is omitted from the revised law as included in the Code Construction Act (V.A.C.S. Article 5429b-2) definition of "state."

1 CHAPTER 19. LOST RECORDS

2 Sec. 19.001. APPLICATION OF CHAPTER

3 Sec. 19.002. PAROL PROOF

4 Sec. 19.003. APPLICATION FOR RELIEF

5 Sec. 19.004. CITATION

6 Sec. 19.005. ORDER

7 Sec. 19.006. EFFECT OF ORDER

8 Sec. 19.007. METHOD NOT EXCLUSIVE

9 Sec. 19.008. RERECORDATION OF ORIGINAL DOCUMENT

10 Sec. 19.009. CERTIFIED COPY

11 CHAPTER 19. LOST RECORDS

12 Revised Law

13 Sec. 19.001. APPLICATION OF CHAPTER. This chapter applies
14 to a record of:

15 (1) a deed, bond, bill of sale, mortgage, deed of
16 trust, power of attorney, or conveyance that is required or
17 permitted by law to be acknowledged or recorded and that has been
18 acknowledged or recorded; or

19 (2) a judgment, order, or decree of a court of record
20 of this state. (V.A.C.S. Art. 6582 (part).)

21 Source Law

22 Art. 6582. All deeds, bonds, bills of sale,
23 mortgages, deeds of trust, powers of attorney and
24 conveyances which are required or permitted by law to
25 be acknowledged or recorded, and which have been so
26 acknowledged or recorded, . . . and all judgments of
27 courts of record in this State

28 Revisor's Note

29 Contrary to its apparent meaning, V.A.C.S.
30 Article 6582 does not apply to lost originals. Douglas
31 v. Baker, 15 S.W. 801 (Tex. 1891). For that reason,
32 the revised law, unlike the source law, refers to a

1 lost, destroyed, or removed record of those documents
2 rather than to a lost, destroyed, or removed original.

3 Revised Law

4 Sec. 19.002. PAROL PROOF. A person may supply a lost,
5 destroyed, or removed record by parol proof of the record's
6 contents as provided by this chapter. (V.A.C.S. Art. 6582 (part).)

7 Source Law

8 [Records of acknowledged or recorded
9 instruments] . . . which have been lost or destroyed,
10 [and records of judgments, orders, or decrees of a
11 court of record] . . . where the record of the court
12 containing such judgment has been lost, destroyed or
13 carried away, may be supplied by parol proof of the
14 contents thereof; which proof shall be taken in the
15 manner hereinafter provided.

16 Revised Law

17 Sec. 19.003. APPLICATION FOR RELIEF. (a) To supply a
18 record that has been lost, destroyed, or removed:

19 (1) a person interested in an instrument or in a
20 judgment, order, or decree of the district court may file an
21 application with the district clerk of the county in which the
22 record was lost or destroyed or from which the record was removed;
23 or

24 (2) a person interested in a judgment, order, or
25 decree of a county court may file an application with the clerk of
26 the court to which the record belonged.

27 (b) The application must be in writing and must set forth
28 the facts that entitle the applicant to relief. (V.A.C.S. Arts.
29 6583 (part), 6585 (part).)

30 Source Law

31 Art. 6583. Any person having any interest in any
32 such deed, instrument in writing, or any judgment, or
33 order or decree in the district court, the record or
34 entry of which has been lost, destroyed, or carried
35 away may . . . file with the district clerk of the

1 county where such loss or destruction took place, his
2 written application setting forth the facts entitling
3 him to the relief sought

4 Art. 6585. Whenever any judgment, order or
5 decree duly entered in the county court of any county
6 has been or may be lost, destroyed or carried away, any
7 person interested therein may file his written
8 application with the clerk of the county court to which
9 the original record belonged, setting forth the facts
10 entitling him to the relief sought

11 Revisor's Note

12 Because a deed is a written instrument, the
13 revised law omits the reference to deeds.

14 Revised Law

15 Sec. 19.004. CITATION. (a) If an application is filed to
16 supply a record, the clerk shall issue a citation to the following,
17 as applicable, or to the person's heirs or legal representatives:

18 (1) each grantor of property, in the case of a record
19 of a deed;

20 (2) an interested party, in the case of an instrument
21 other than a deed; or

22 (3) a party adversely interested to the applicant at
23 the time of the rendition, in the case of a judgment, order, or
24 decree.

25 (b) The citation must direct the person to whom it is issued
26 to appear at a designated term of the court to contest the
27 applicant's right to record a substitute.

28 (c) Process must be served in the manner provided by law for
29 civil cases. (V.A.C.S. Arts. 6583 (part), 6585 (part).)

30 Source Law

31 [Art. 6583]
32 . . . whereupon such clerk shall issue a citation to
33 the grantor in such deed, or to the party or parties
34 interested in such instrument, or to the party or
35 parties who were or may be interested adversely to the
36 applicant at the time of the rendition of any such
37 judgment, or the heirs and legal representatives of
38 such parties to appear at a term of the district court

1 to be designated in said citation, and contest the
2 right of the applicant to have such deed, writing, or
3 judgment substituted and recorded. Service shall be as
4 provided for process in other cases.

5 [Art. 6585]

6 . . . when the same proceedings shall be had

7 Revisor's Note

8 Because it is apparent from the context of the
9 source law that the reference to "such instrument" is a
10 reference to an instrument other than a deed, the
11 revised law adds clarifying language.

12 Revised Law

13 Sec. 19.005. ORDER. (a) On hearing an application to
14 supply a record, if the court is satisfied from the evidence of the
15 previous existence and content of the record and of its loss,
16 destruction, or removal, the court shall enter on its minutes an
17 order containing its findings and a description of the record and
18 its contents.

19 (b) A certified copy of the order may be recorded in the
20 proper county. (V.A.C.S. Arts. 6584, 6585 (part).)

21 Source Law

22 Art. 6584. On hearing said application, if the
23 court shall be satisfied from the evidence of the
24 previous existence of such deed, instrument, order or
25 decree, and of the loss, destruction or carrying away
26 of the same, as alleged by the applicant, and the
27 contents thereof, an order shall be entered on the
28 minutes of the district court to that effect, which
29 order shall contain a description of the lost deed,
30 instrument in writing, judgment or record, and the
31 contents thereof, and a certified copy of such order
32 may be recorded in the records of the proper county.

33 [Art. 6585]

34 [In the county court] . . . when the same proceedings
35 shall be had and the court shall enter a like judgment
36 as provided in the two preceding articles.

37 Revised Law

38 Sec. 19.006. EFFECT OF ORDER. The order supplying the

1 record:

2 (1) stands in the place of the original record;

3 (2) has the same effect as the original record;

4 (3) if recorded, may be used as evidence in a court of
5 the state as though it were the original record; and

6 (4) carries the same rights as the original record,
7 including:

8 (A) preserving liens from the date of the
9 original record; and

10 (B) giving parties the right to issue execution
11 under the order as under the original record. (V.A.C.S. Arts.
12 6586, 6589.)

13 Source Law

14 Art. 6586. Whenever such judgment, order or
15 decree rendered in the district or county court shall
16 be duly entered, it shall stand in the place of and
17 have the same force and effect as the original of said
18 lost deed, instrument in writing, judgment or record;
19 and when duly recorded may be used as evidence in any
20 court of this State with like effect as the original
21 thereof.

22 Art. 6589. Judgments, orders and decrees, when
23 substituted as hereinbefore provided, shall carry all
24 the rights thereunder in every respect as the
25 originals, especially preserving the liens from the
26 date of the originals, and giving the parties the right
27 to issue executions under the substituted judgments as
28 under the originals.

29 Revised Law

30 Sec. 19.007. METHOD NOT EXCLUSIVE. The method provided by
31 this chapter for supplying a record is in addition to other methods
32 provided by law. (V.A.C.S. Art. 6583 (part).)

33 Source Law

34 [The method provided by this chapter is] . . . in
35 addition to any mode provided by law for establishing
36 the existence and contents of such record

Revised Law

Sec. 19.008. RERECORDATION OF ORIGINAL DOCUMENT.
Rerecording of the original document within four years after the date a record of an instrument, judgment, order, or decree was lost, destroyed, or removed is effective from the time of the original recording. (V.A.C.S. Art. 6588.)

Source Law

Art. 6588. When any original paper mentioned in the first article of this subdivision may have been saved or preserved from loss, the record of said originals having been lost, destroyed or carried away, the same may be recorded again, and this last registration shall have force and effect from the filing for original registration; provided, said originals are recorded within four years next after such loss, destruction or removal of the records.

Revised Law

Sec. 19.009. CERTIFIED COPY. If the loss, destruction, or removal of an original county record is established, a certified copy of the record from the records of the county or from the records of the county from which the county was created may be recorded in the county. (V.A.C.S. Art. 6587.)

Source Law

Art. 6587. All certified copies from the records of such county, where the records have been lost, destroyed or carried away, and all certified copies from the records of the county or counties from which said county was created, may be recorded in such county; provided, the loss of the original shall first be established.

1 CHAPTER 20. DEPOSITIONS

2 Sec. 20.001. PERSONS WHO MAY TAKE A DEPOSITION

3 Sec. 20.002. TESTIMONY REQUIRED BY FOREIGN JURISDICTION

4 Sec. 20.003. WITNESS MAY BE ATTACHED

5 CHAPTER 20. DEPOSITIONS

6 Revised Law

7 Sec. 20.001. PERSONS WHO MAY TAKE A DEPOSITION. (a) A
8 deposition of a witness who is alleged to reside or to be in this
9 state may be taken by:

10 (1) a clerk of a district court;

11 (2) a judge or clerk of a county court; or

12 (3) a notary public.

13 (b) A deposition of a witness who is alleged to reside or to
14 be outside this state, but inside the United States, may be taken
15 in another state by:

16 (1) a clerk of a court of record having a seal;

17 (2) a commissioner of deeds appointed under the laws
18 of this state; or

19 (3) a notary public.

20 (c) A deposition of a witness who is alleged to reside or to
21 be outside the United States may be taken by:

22 (1) a minister, commissioner, or charge d'affaires of
23 the United States who is a resident of and is accredited in the
24 country where the deposition is taken;

25 (2) a consul general, consul, vice-consul, commercial
26 agent, vice-commercial agent, deputy consul, or consular agent of
27 the United States who is a resident of the country where the
28 deposition is taken; or

29 (3) a notary public.

30 (d) A deposition of a witness who is alleged to be a member
31 of the United States armed forces or of a United States armed

1 forces auxiliary or who is alleged to be a civilian employed by or
2 accompanying the armed forces or an auxiliary outside the United
3 States may be taken by a commissioned officer in the United States
4 armed forces or United States armed forces auxiliary or by a
5 commissioned officer in the United States armed forces reserve or
6 an auxiliary of it. If a deposition appears on its face to have
7 been taken as provided by this subsection and the deposition or any
8 part of it is offered in evidence, it is presumed, absent pleading
9 and proof to the contrary, that the person taking the deposition as
10 a commissioned officer was a commissioned officer on the date that
11 the deposition was taken, and that the deponent was a member of the
12 authorized group of military personnel or civilians. (V.A.C.S.
13 Art. 3746.)

14 Source Law

15 Art. 3746. The commission shall be addressed to
16 the following officers, either of whom may execute and
17 return the same:

18 1. If the witness be alleged to reside or be
19 within the State, to any clerk of the District Court,
20 any judge or clerk of the County Court, or any notary
21 public of the proper county.

22 2. If the witness be alleged to reside or be
23 without the State, and within the United States, to any
24 clerk of a Court of Record having a seal, any notary
25 public, or any commissioner of deeds duly appointed
26 under the laws of this State within some other State or
27 territory.

28 3. If the witness is alleged to reside or be
29 without the United States, to any notary public or any
30 minister, commissioner or charge d'affairs of the
31 United States resident in, and accredited to, the
32 country where the deposition may be taken, or any
33 consul-general, consul, vice-consul, commercial agent,
34 vice-commercial agent, deputy consul or consular agent
35 of the United States resident in such country.

36 4. If the witness is alleged to be a member of
37 the Armed Forces of the United States or of the
38 Auxiliaries thereof or a civilian employed by or
39 accompanying any such Forces or Auxiliaries, without
40 the territorial confines of the forty-eight states and
41 the District of Columbia of the United States of
42 America, such commission may be addressed to any
43 commissioned officer in the Armed Forces of the United
44 States of America, in the Auxiliaries thereto, or to
45 any commissioned officer in the Armed Force Reserve of
46 the United States of America or any Auxiliary thereto.
47 When any deposition appears on its face to have been
48 taken in compliance with the provisions of this Section
49 and when such deposition, or any part thereof, is
50 offered in evidence, it shall be presumed, in the

1 absence of pleading and proof to the contrary, that the
2 person taking such deposition as a commissioned officer
3 was such on the date on which the deposition was taken
4 and that the witness whose deposition was taken was one
5 of those with respect to whom such action is hereby
6 authorized.

7 Revisor's Note

8 (1) The reference to the commission is omitted
9 in the revised law to conform with the Texas Rules of
10 Civil Procedure. Rule 193 requiring the court to issue
11 a commission was repealed effective January 1, 1971.

12 (2) The reference to "state or territory" is
13 unnecessary. The Code Construction Act (V.A.C.S.
14 Article 5429b-2) defines "state" as including
15 "territory."

16 (3) The requirement that a notary public be "of
17 the proper county" is omitted because V.A.C.S. Article
18 5949 makes the jurisdiction of a notary public
19 coextensive with the boundaries of the state rather
20 than with the boundaries of the county from which the
21 notary is appointed.

22 Revised Law

23 Sec. 20.002. TESTIMONY REQUIRED BY FOREIGN JURISDICTION. If
24 a court of record in any other state or foreign jurisdiction issues
25 a mandate, writ, or commission that requires a witness's testimony
26 in this state, either to written questions or by oral deposition,
27 the witness may be compelled to appear and testify in the same
28 manner and by the same process used for taking testimony in a
29 proceeding pending in this state. (V.A.C.S. Art. 3769a.)

30 Source Law

31 Art. 3769a. Whenever any mandate, writ or
32 commission is issued out of any court of record in any
33 other state, territory, district or foreign
34 jurisdiction, and it is required to take the testimony
35 of a witness or witnesses in this state, either on

1 written interrogatories or by oral deposition, the
2 witnesses may be compelled to appear and testify in the
3 same manner and by the same process and proceeding as
4 may be employed for the purpose of taking testimony in
5 proceedings pending in this State.

6 Revisor's Note

7 (1) The revised law omits the reference to
8 territories and districts because they are included in
9 the definition of "state" in the Code Construction Act
10 (V.A.C.S. Article 5429b-2).

11 (2) Interrogatories are referred to as questions
12 to conform with the usage of the Texas Rules of Civil
13 Procedure.

14 Revised Law

15 Sec. 20.003. WITNESS MAY BE ATTACHED. If a witness, after
16 being duly summoned, fails to appear, or having appeared, refuses
17 to answer the written questions or testify, the officer taking the
18 deposition has the same authority the district and county courts
19 have in similar cases to issue an attachment against the witness
20 and to compel him to testify or to fine and imprison him.
21 (V.A.C.S. Arts. 3748, 3757.)

22 Source Law

23 Art. 3748. If the witness, after being duly
24 summoned, shall fail to appear, or, having appeared,
25 shall refuse to answer the interrogatories, such
26 officer shall have power to issue an attachment against
27 such witness and to fine and imprison him in like
28 manner as the district and county courts are empowered
29 to do in like cases.

30 Art. 3757. Said officer shall have the same
31 power and authority to enforce the attendance of the
32 witness, and to compel him to testify, as in cases of
33 written interrogatories.

34 Revisor's Note

35 The words "written questions" are used instead of
36 "interrogatories" to conform with the usage of the

1 Texas Rules of Civil Procedure.

2 Revisor's Note
3 (End of Chapter)

4 V.A.C.S. Article 3769b is omitted from the
5 revised law as obsolete. The article relates to the
6 authority to take depositions and to punishment for
7 failure to attend. The statutory authority to take a
8 deposition is contingent on the proper issuance of a
9 commission, but Rule 193, Texas Rules of Civil
10 Procedure, requiring the issuance of a commission was
11 repealed effective January 1, 1971. The rules of
12 procedure provide a means to compel a witness to
13 attend. Under Rule 201, Texas Rules of Civil
14 Procedure, on proof of service of notice to take a
15 deposition, the officer may issue a subpoena directing
16 a witness to appear. Rule 215a, Texas Rules of Civil
17 Procedure, gives the court where the action is pending
18 and the district court in the district in which the
19 deposition is to be taken the authority to punish the
20 witness for contempt.

21 The omitted article reads:

22 Art. 3769b. Whenever any commission
23 for the taking of the deposition of any
24 witness or party to any civil suit pending
25 in any of the courts of Texas shall have
26 been regularly and legally issued and
27 placed in the hands of a person legally
28 designated and qualified to take
29 depositions under the laws of this state
30 such officer shall have authority to issue
31 any writ authorized by law to compel the
32 attendance of a witness in court, and upon
33 disobedience of such writ by any such
34 witness he may be punished as for contempt
35 either by the court out of which such
36 commission issued, or by the Judge of any
37 District Court of the County in which such
38 witness resides.

1 CHAPTER 21. INTERPRETERS

2 SUBCHAPTER A. INTERPRETERS FOR THE DEAF

3 Sec. 21.001. DEFINITION

4 Sec. 21.002. INTERPRETERS FOR DEAF PERSONS

5 Sec. 21.003. QUALIFICATIONS

6 Sec. 21.004. INTERPRETER'S POSITION IN COURT

7 Sec. 21.005. OATH

8 Sec. 21.006. FEES AND TRAVEL EXPENSES

9 Sec. 21.007. RECORDING OF TESTIMONY

10 Sec. 21.008. PRIVILEGE OF INTERPRETER FOR THE DEAF

11 [Sections 21.009-21.020 reserved for expansion]

12 SUBCHAPTER B. SPANISH LANGUAGE INTERPRETERS IN CERTAIN
13 BORDER COUNTIES

14 Sec. 21.021. APPLICATION

15 Sec. 21.022. APPOINTMENT

16 Sec. 21.023. INTERPRETER'S QUALIFICATIONS

17 [Sections 21.024-21.030 reserved for expansion]

18 SUBCHAPTER C. INTERPRETERS FOR COUNTY COURTS AT LAW

19 Sec. 21.031. APPOINTMENT; TERMINATION OF EMPLOYMENT; DUTIES

20 Sec. 21.032. OATH

21 CHAPTER 21. INTERPRETERS

22 SUBCHAPTER A. INTERPRETERS FOR THE DEAF

23 Revised Law

24 Sec. 21.001. DEFINITION. In this subchapter, "deaf person"
25 means an individual who has a hearing impairment, regardless of
26 whether the person also has a speech impairment, that inhibits the
27 person's comprehension of proceedings or communication with others.

28 W.A.C.S. Art. 3712a, Sec. (a) (part).)

29 Source Law

30 In this Act, "deaf person" means a person who has a
31 hearing impairment, regardless of whether the person

1 also has a speech impairment, that inhibits the
2 person's comprehension of the proceedings or
3 communication with others.

4 Revised Law

5 Sec. 21.002. INTERPRETERS FOR DEAF PERSONS. (a) In a civil
6 case or in a deposition, a deaf person who is a party or witness is
7 entitled to have the proceedings interpreted by a court-appointed
8 interpreter.

9 (b) The proceedings must be interpreted in a language,
10 including sign language, that the deaf person can understand.
11 (V.A.C.S. Art. 3712a, Sec. (a) (part).)

12 Source Law

13 Art. 3712a. (a) In all civil cases or in the
14 taking of depositions, where a party or a witness is a
15 deaf person, he shall have the proceedings of the trial
16 interpreted to him in any language that he can
17 understand, including but not limited to sign
18 language

19 Revised Law

20 Sec. 21.003. QUALIFICATIONS. The interpreter must have
21 qualifications approved by the Texas Commission for the Deaf.
22 (V.A.C.S. Art. 3712a, Sec. (a) (part).)

23 Source Law

24 [A deaf person shall have the proceedings of a trial
25 interpreted to him] . . . by an interpreter appointed
26 by the court, whose qualifications have been approved
27 by the State Commission for the Deaf.

28 Revised Law

29 Sec. 21.004. INTERPRETER'S POSITION IN COURT. If a court is
30 required to appoint an interpreter under this subchapter, the court
31 may not start proceedings until the appointed interpreter is in a
32 position not more than 10 feet from and in full view of the deaf
33 person. (V.A.C.S. Art. 3712a, Sec. (b).)

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1 (V.A.C.S. Art. 3712a, Sec. (d).)

2 Source Law

3 (d) Interpreters appointed under this Act shall
4 be paid a reasonable fee determined by the court after
5 considering the recommended fees of the State
6 Commission for the Deaf. When travel of the
7 interpreter is involved all the actual expenses of
8 travel, lodging, and meals incurred by the interpreter
9 pertaining to the case he is appointed to serve shall
10 be paid at the same rate applicable to state employees.
11 The fee and expenses shall be paid from the general
12 fund of the county in which the case was instituted.

13 Revised Law

14 Sec. 21.007. RECORDING OF TESTIMONY. (a) On the court's
15 motion or a party's motion, the court may order a video recording
16 of a deaf witness's testimony and the interpreter's interpretation
17 of that testimony to use in verifying the transcription of the
18 reporter's notes.

19 (b) If a party requests, the clerk of the court shall
20 include the recording in the appellate record. (V.A.C.S. Art.
21 3712a, Sec. (e).)

22 Source Law

23 (e) On the court's motion or the motion of a
24 party, the court may order testimony of a deaf witness
25 and the interpretation of that testimony by the
26 interpreter visually, electronically recorded for use
27 in verification of the transcription of the reporter's
28 notes. The clerk of the court shall include the
29 recording in the appellate record if requested by a
30 party.

31 Revised Law

32 Sec. 21.008. PRIVILEGE OF INTERPRETER FOR THE DEAF. If a
33 deaf person communicates through an interpreter to a person under
34 circumstances in which the communication would be privileged and
35 the deaf person could not be required to testify about the
36 communication, the privilege applies to the interpreter as well.
37 (V.A.C.S. Art. 3712a, Sec. (c) (part).)

Source Law

When a deaf person communicates through an interpreter to a person under such circumstances that the communication would be privileged and the deaf person could not be compelled to testify as to the communications, the privilege applies to the interpreter as well.

[Sections 21.009-21.020 reserved for expansion]

SUBCHAPTER B. SPANISH LANGUAGE INTERPRETERS IN CERTAIN
BORDER COUNTIES

Revised Law

Sec. 21.021. APPLICATION. This subchapter applies to a county that:

(1) is part of two or more judicial districts, that has two or more district courts with regular terms, and that is part of a district in which a county borders on the international boundary of the United States and the Republic of Mexico;

(2) borders on the international boundary of the United States and the Republic of Mexico and that is in a judicial district composed of four counties;

(3) borders on the international boundary of the United States and the Republic of Mexico and that has three or more district courts or judicial districts wholly within the county; or

(4) borders on the Gulf of Mexico and that has four or more district courts or judicial districts of which two or more courts or districts are wholly within the county. (V.A.C.S. Art. 3737d-1, Sec. 1 (part).)

Source Law

Art. 3737d-1

Sec. 1. In any county, which is a part of two (2) or more Judicial Districts and in which there are two (2) or more District Courts, having regular terms, one (1) county of said district bordering on the International Boundary between the United States and the Republic of Mexico, or in any county bordering on the International Boundary of the United States and the Republic of Mexico, which said county forms a part of a

Judicial District composed of four (4) counties, or in any county bordering on the International Boundary of the United States and the Republic of Mexico, and which county has three (3) or more District Courts or Judicial Districts wholly within said county, or in any county bordering on the Gulf of Mexico, and which said county has four (4) or more District Courts or Judicial Districts of which two (2) or more are wholly within said county . . . [the commissioners court shall appoint a court interpreter.]

Revised Law

Sec. 21.022. APPOINTMENT. (a) On the request of a district judge who has made a determination of need, the commissioners court of the county shall appoint court interpreters on a full-time or part-time basis as necessary to carry out court functions.

(b) The commissioners court shall appoint the court interpreter designated by the district judge requesting the appointment. (V.A.C.S. Art. 3737d-1, Secs. 1 (part), 2.)

Source Law

[Sec. 1]
[In certain counties,] the Commissioners Court of said county, upon request of the District Judge, or District Judges, after determination by said Judges of the need therefor, shall appoint such court interpreters on a full or part-time basis as may be necessary to properly carry out the function of said courts

Sec. 2. The Commissioners Court shall appoint such interpreter or interpreters as shall be designated by the District Judges requesting such appointment.

Revised Law

Sec. 21.023. INTERPRETER'S QUALIFICATIONS. The court interpreter must be well versed in and competent to speak the Spanish and English languages. (V.A.C.S. Art. 3737d-1, Sec. 1 (part).)

Source Law

. . . that such interpreters shall be well versed in and competent to speak the Spanish language, as well as the English language

1 Revisor's Note
2 (End of Subchapter)

3 The revised law omits the following language
4 relating to interpreters' salaries in V.A.C.S. Article
5 3737d-1, Section 1:

6 . . . and shall each receive a salary as
7 fixed by the Commissioners Court of said
8 county, but not to exceed Four Thousand,
9 Eight Hundred Dollars (\$4,800) per year,
10 payable in equal monthly payments, out of
11 the General Fund of such county.

12 That language remains in V.A.C.S. Article 3737d-1 (see
13 the conforming amendments to this code) and is
14 scheduled to be codified in the Local Government Title
15 of the Government Code.

16 [Sections 21.024-21.030 reserved for expansion]

17 SUBCHAPTER C. INTERPRETERS FOR COUNTY COURTS AT LAW

18 Revised Law

19 Sec. 21.031. APPOINTMENT; TERMINATION OF EMPLOYMENT; DUTIES.

20 (a) The judge of a county court at law may appoint an official
21 interpreter for that court and may terminate that interpreter's
22 employment at any time.

23 (b) The commissioners court shall prescribe the duties of
24 the official interpreter. (V.A.C.S. Art. 1970-325, Secs. 1 (part),
25 2.)

26 Source Law

27 Art. 1970-325

28 Sec. 1. The judge of the County Court at Law of
29 any county having a County Court at Law, is authorized
30 to appoint an official interpreter for such County
31 Court at Law. And the County Commissioners
32 shall . . . prescribe the duties of such official
33 interpreter.

34 Sec. 2. The judge of the County Court at Law
35 shall have authority to terminate such employment of
36 such interpreter at any time.

1 Revisor's Note

2 The revised law omits the following language
3 relating to interpreters' salaries in V.A.C.S. Article
4 1970-325, Sec. 1:

5 And the County Commissioners shall by
6 resolution fix the salary of said official
7 interpreter and provide for the payment of
8 such salary

9 That language remains in V.A.C.S. Article 1970-325 (see
10 the conforming amendments to this code), and is
11 scheduled to be codified in the Local Government Title
12 of the Government Code.

13 Revised Law

14 Sec. 21.032. OATH. The official interpreter appointed under
15 this subchapter must take the constitutional oath of office and an
16 oath that the interpreter will faithfully interpret all testimony
17 given in court. An oath covers the interpreter's service in all
18 court cases during the interpreter's term of office. (V.A.C.S.
19 Art. 1970-325, Sec. 3.)

20 Source Law

21 Sec. 3. The official interpreter so appointed by
22 the judge of the County Court at Law shall take the
23 constitutional oath of office, and in addition thereto
24 shall make oath that as such official interpreter he
25 will faithfully interpret all testimony given in the
26 County Court at Law, and which oath shall suffice for
27 his service as official interpreter of such court in
28 all cases before such court during his term of office.
29

1 CHAPTER 22. WITNESSES

2 SUBCHAPTER A. WITNESSES

3 Sec. 22.001. WITNESS FEES

4 [Sections 22.002-22.010 reserved for expansion]

5 SUBCHAPTER B. PRIVILEGES

6 Sec. 22.011. PRIVILEGE FROM ARREST

7 CHAPTER 22. WITNESSES

8 SUBCHAPTER A. WITNESSES

9 Revised Law

10 Sec. 22.001. WITNESS FEES. (a) A witness is entitled to:

11 (1) one dollar for each day the witness attends court;

12 and

13 (2) six cents for each mile the witness travels in

14 going to and returning from court.

15 (b) After receiving the witness's affidavit, the court clerk
16 shall issue a certificate stating the fees incurred under this
17 section.

18 (c) The party who summons the witness shall pay that
19 witness's fees provided for by this section.

20 (d) The witness fees must be taxed in the bill of costs as
21 other costs. (V.A.C.S. Art. 3708.)

22 Source Law

23 Art. 3708. Witnesses shall be allowed a fee of
24 one dollar for each day they may be in attendance on
25 the court, and six cents for every mile they may have
26 to travel in going to and returning therefrom, which
27 shall be paid on the certificate of the clerk, by the
28 party summoning them; which certificate shall be given
29 on the affidavit of the witness before the clerk. Such
30 compensation and mileage of witnesses shall be taxed in
31 the bill of costs as other costs.

32 [Sections 22.002-22.010 reserved for expansion]

1 SUBCHAPTER B. PRIVILEGES

2 Revised Law

3 Sec. 22.011. PRIVILEGE FROM ARREST. (a) A witness is
4 privileged from arrest while attending, going to, and returning
5 from court.

6 (b) The privilege provided by this section extends for a
7 period computed by allowing one day of travel for each 25 miles of
8 the distance from the courthouse to the witness's residence.

9 (c) This section does not apply to an arrest for a felony,
10 treason, or breach of the peace. (V.A.C.S. Art. 3710.)

11 Source Law

12 Art. 3710. Witnesses shall be privileged from
13 arrest, except in cases of treason, felony and breach
14 of the peace, during their attendance at court, and in
15 going to and returning therefrom, allowing one day for
16 each twenty-five miles from their place of abode.

17 [Chapters 23-29 reserved for expansion]

1 CHAPTER 30. MISCELLANEOUS PROVISIONS
2 Sec. 30.001. INSTRUMENT TO WAIVE SERVICE OR CONFESS JUDGMENT
3 Sec. 30.002. EXPIRATION OF JUDGE'S TERM; DEATH OF JUDGE
4 Sec. 30.003. LEGISLATIVE CONTINUANCE

5 CHAPTER 30. MISCELLANEOUS PROVISIONS

6 Revised Law

7 Sec. 30.001. INSTRUMENT TO WAIVE SERVICE OR CONFESS
8 JUDGMENT. In an instrument executed before suit is brought, a
9 person may not accept service and waive process, enter an
10 appearance in open court, or confess a judgment. (V.A.C.S. Art.
11 2224.)

12 Source Law

13 Art. 2224. No acceptance of service and waiver
14 of process, nor entry of appearance in open court, nor
15 a confession of judgment shall be authorized in any
16 case by the contract or writing sued on, or any other
17 instrument executed prior to the institution of such
18 suit, nor shall such acceptance or waiver be made until
19 after suit brought.

20 Revisor's Note

21 The revised law omits the source law reference to
22 the contract or writing sued on because the word
23 "instrument" includes contracts and writings.

24 Revised Law

25 Sec. 30.002. EXPIRATION OF JUDGE'S TERM; DEATH OF JUDGE.
26 (a) If a district or county judge's term of office expires before
27 the adjournment of the court term at which a case may be tried or
28 during the period prescribed for filing a statement of facts and a
29 bill of exceptions or findings of fact and conclusions of law, the
30 judge may approve the statement of facts and bill of exceptions or
31 file findings of fact and conclusions of law in the case.

1 (b) If a district or county judge dies before he approves
2 the statement of facts and bill of exceptions or files findings of
3 fact and conclusions of law in a case pending at his death, they
4 may be approved or filed by the judge's successor as provided by
5 Rule 18, Texas Rules of Civil Procedure. (V.A.C.S. Art. 2248.)

6 Source Law

7 Art. 2248. Any judge of a district or county
8 court whose term of office expires before the
9 adjournment of the term of such court at which a cause
10 may be tried, or during the period prescribed for the
11 filing of the statement of facts and bills of
12 exception, or conclusions of law and fact, may approve
13 such statement of facts and bills of exception, or file
14 such findings of fact and conclusions of law in such
15 cause, as provided in this title, and where any such
16 judge shall die before the time for such approval or
17 filing, the same may be approved or filed by his
18 successor, as provided by article 2288.

19 Revisor's Note

20 The revised law refers to Rule 18, Texas Rules of
21 Civil Procedure, because V.A.C.S. Article 2288 was
22 deemed repealed by that rule.

23 Revised Law

24 Sec. 30.003. LEGISLATIVE CONTINUANCE. (a) This section
25 applies to any criminal or civil suit, including matters of
26 probate, and to any matters ancillary to the suit that require
27 action by or the attendance of an attorney, including appeals but
28 excluding temporary restraining orders.

29 (b) Except as provided by Subsection (c), at any time within
30 30 days of a date when the legislature is to be in session, at any
31 time during a legislative session, or when the legislature sits as
32 a constitutional convention, the court on application shall
33 continue a case in which a party applying for the continuance or
34 the attorney for that party is a member of the legislature and will
35 be or is attending a legislative session. The court shall continue
36 the case until 30 days after the date on which the legislature

1 adjourns.

2 (c) If the attorney for a party to the case is a member of
3 the legislature who was employed within 10 days before the date on
4 which the suit is set for trial, the continuance is discretionary
5 with the court.

6 (d) The party seeking the continuance must file with the
7 court an affidavit stating the grounds for the continuance. The
8 affidavit is proof of the necessity for a continuance. The
9 affidavit need not be corroborated.

10 (e) If the member of the legislature is an attorney for a
11 party, the affidavit must contain a declaration that it is the
12 attorney's intention to participate actively in the preparation or
13 presentation of the case.

14 (f) The continuance provided by Subsection (b) is one of
15 right and may not be charged against the party receiving it on any
16 subsequent application for continuance. (V.A.C.S. Art. 2168a.)

17 Source Law

18 Art. 2168a. In all suits, either civil or
19 criminal, or in matters of probate, pending in any
20 court of this State, and in all matters ancillary to
21 such suits which require action by or the attendance of
22 an attorney, including appeals but excluding temporary
23 restraining orders, at any time within thirty (30) days
24 of a date when the Legislature is to be in Session, or
25 at any time the Legislature is in Session, or when the
26 Legislature sits as a Constitutional Convention, it
27 shall be mandatory that the court continue such cause
28 if it shall appear to the court, by affidavit, that any
29 party applying for such continuance, or any attorney
30 for any party to such cause, is a Member of either
31 branch of the Legislature, and will be or is in actual
32 attendance on a Session of the same. If the member of
33 the Legislature is an attorney for a party to such
34 cause, his affidavit shall contain a declaration that
35 it is his intention to participate actively in the
36 preparation and/or presentation of the case. Where a
37 party to any cause or an attorney for any party to such
38 cause is a Member of the Legislature, his affidavit
39 need not be corroborated. On the filing of such
40 affidavit, the court shall continue the cause until
41 thirty (30) days after the adjournment of the
42 Legislature and such affidavit shall be proof of the
43 necessity for such continuance, and such continuance
44 shall be deemed one of right and shall not be charged
45 against the party receiving such continuance upon any
46 subsequent application for continuance. It is hereby
47 declared to be the intention of the Legislature that

1 the provisions of this Section shall be deemed
2 mandatory and not discretionary.

3 Notwithstanding the foregoing, the right to such
4 continuance, where such continuance is based upon an
5 attorney in such cause being a member of the
6 Legislature, shall be discretionary with the Court in
7 the following situations and under the following
8 circumstances, and none other, to wit:

9 (1) Where such attorney was employed within 10
10 days of the date such suit is set for trial.

11 Revisor's Note
12 (End of Chapter)

13 The revised law omits V.A.C.S. Article 1840-A,
14 which relates to the amendment of appeal bonds. That
15 statute, to the extent that it relates to the civil
16 appellate courts, was deemed repealed by the Texas
17 Rules of Civil Procedure. See Rule 430, Texas Rules of
18 Civil Procedure. Rule 14a of the Texas Rules of Civil
19 Procedure provides that Rule 430 applies to the
20 appellate process in all state courts. Article 44.15,
21 Code of Criminal Procedure, 1965, contains essentially
22 the same language providing for the amendment of appeal
23 bonds in criminal cases. V.A.C.S. Article 1840-A
24 reads:

25 When an appeal has been or shall be
26 taken from the judgment of any of the
27 courts of this State by filing a bond or
28 entering into a recognizance within the
29 time prescribed by law in such cases, and
30 it shall be determined by the court to
31 which appeal is taken that such bond or
32 recognizance is defective in form or
33 substance; such Appellate Court may allow
34 the appellant to amend such bond or
35 recognizance by filing a new bond on such
36 terms as the court may prescribe.

SUBTITLE C. JUDGMENTS

CHAPTER 31. JUDGMENTS

Sec. 31.001. PASSAGE OF TITLE

Sec. 31.002. COLLECTION OF JUDGMENT THROUGH COURT

PROCEEDING

Sec. 31.003. JUDGMENT AGAINST PARTNERSHIP

Sec. 31.004. EFFECT OF ADJUDICATION IN LOWER TRIAL COURT

Sec. 31.005. EFFECT OF ADJUDICATION IN SMALL CLAIMS OR

JUSTICE OF THE PEACE COURT

Sec. 31.006. REVIVAL OF JUDGMENT

SUBTITLE C. JUDGMENTS

CHAPTER 31. JUDGMENTS

Revised Law

Sec. 31.001. PASSAGE OF TITLE. A judgment for the conveyance of real property or the delivery of personal property may pass title to the property without additional action by the party against whom the judgment is rendered. (V.A.C.S. Art. 2214.)

Source Law

Art. 2214. Where the judgment is for the conveyance of real estate, or for the delivery of personal property, the decree may pass the title to such property without any act to be done on the part of the party against whom the judgment is rendered.

Revised Law

Sec. 31.002. COLLECTION OF JUDGMENT THROUGH COURT PROCEEDING. (a) A judgment creditor is entitled to aid from a court of appropriate jurisdiction through injunction or other means in order to reach property to obtain satisfaction on the judgment if the judgment debtor owns property, including present or future rights to property, that:

(1) cannot readily be attached or levied on by

1 ordinary legal process; and

2 (2) is not exempt from attachment, execution, or
3 seizure for the satisfaction of liabilities.

4 (b) The court may:

5 (1) order the judgment debtor to turn over nonexempt
6 property that is in the debtor's possession or is subject to the
7 debtor's control, together with all documents or records related to
8 the property, to a designated sheriff or constable for execution;

9 (2) otherwise apply the property to the satisfaction
10 of the judgment; or

11 (3) appoint a receiver with the authority to take
12 possession of the nonexempt property, sell it, and pay the proceeds
13 to the judgment creditor to the extent required to satisfy the
14 judgment.

15 (c) The court may enforce the order by contempt proceedings
16 or by other appropriate means in the event of refusal or
17 disobedience.

18 (d) The judgment creditor may move for the court assistance
19 under this section in the same proceeding in which the judgment is
20 rendered or in an independent proceeding.

21 (e) The judgment creditor may recover reasonable costs,
22 including attorney's fees. (V.A.C.S. Art. 3827a.)

23 Source Law

24 Art. 3827a. (a) A judgment creditor whose
25 judgment debtor is the owner of property, including
26 present or future rights to property, which cannot
27 readily be attached or levied on by ordinary legal
28 process and is not exempt from attachment, execution,
29 and every type of seizure for the satisfaction of
30 liabilities, is entitled to aid from a court of
31 appropriate jurisdiction by injunction or otherwise in
32 reaching the property to satisfy the judgment.

33 (b) The court may order the property of the
34 judgment debtor referred to in Subsection (a) of this
35 section, together with all documents or records related
36 to the property, that is in or subject to the
37 possession or control of the judgment debtor to be
38 turned over to any designated sheriff or constable for
39 execution or otherwise applied toward the satisfaction
40 of the judgment. The court may enforce the order by
41 proceedings for contempt or otherwise in case of

1 refusal or disobedience.

2 (c) The court may appoint a receiver of the
3 property of the judgment debtor referred to in
4 Subsection (a) of this section, with the power and
5 authority to take possession of and sell the nonexempt
6 property and to pay the proceeds to the judgment
7 creditor to the extent required to satisfy the
8 judgment.

9 (d) These proceedings may be brought by the
10 judgment creditor in the same suit in which the
11 judgment is rendered or in a new and independent suit.

12 (e) In a proceeding under this section, a
13 judgment creditor is entitled to recover reasonable
14 costs, including attorney's fees.

15 Revised Law

16 Sec. 31.003. JUDGMENT AGAINST PARTNERSHIP. If a suit is
17 against several partners who are jointly indebted under a contract
18 and citation has been served on at least one but not all of the
19 partners, the court may render judgment against the partnership and
20 against the partners who were actually served, but may not award a
21 personal judgment or execution against any partner who was not
22 served. (V.A.C.S. Art. 2223.)

23 Source Law

24 Art. 2223. Where the suit is against several
25 partners jointly indebted upon contract, and the
26 citation has been served upon some of such partners but
27 not upon all, judgment may be rendered therein against
28 such partnership and against the partners actually
29 served, but no personal judgment or execution shall be
30 awarded against those not served.

31 Revised Law

32 Sec. 31.004. EFFECT OF ADJUDICATION IN LOWER TRIAL COURT.

33 (a) A judgment or a determination of fact or law in a proceeding
34 in a lower trial court is not res judicata and is not a basis for
35 estoppel by judgment in a proceeding in a district court, except
36 that a judgment rendered in a lower trial court is binding on the
37 parties as to recovery or denial of recovery.

38 (b) This section does not apply to a judgment in probate,
39 guardianship, lunacy, or other matter in which a lower trial court
40 has exclusive subject matter jurisdiction on a basis other than the

1 amount in controversy.

2 (c) For the purposes of this section, a "lower trial court"
3 is a small claims court, a justice of the peace court, a county
4 court, or a statutory county court. (V.A.C.S. Art. 2226a, Sec. 1.)

5 Source Law

6 Art. 2226a

7 Sec. 1. A determination of fact or law or a
8 judgment in any proceeding in the Small Claims Court,
9 Justice of the Peace Court, County Court, County Civil
10 Court at Law, County Criminal Court at Law, or County
11 Court at Law shall not be res judicata and shall not
12 constitute a basis for estoppel by judgment in any
13 proceeding in a District Court, except that any such
14 judgment shall be binding on the parties thereto as to
15 the recovery or denial thereof rendered in that
16 particular case, and further except that all judgments
17 in probate, guardianship, lunacy and other matters over
18 which said inferior courts shall have exclusive
19 jurisdiction of the subject matter, on a basis other
20 than the amount in controversy, shall not be affected
21 thereby.

22 Revisor's Note

23 The revised law replaces the source law reference
24 to a county civil court at law, a county criminal court
25 at law, or a county court at law with the term
26 "statutory county court," which includes each of those
27 county courts at law. The courts, omitted by name, are
28 created under the legislative authority granted in
29 Article V, Section 1, of the Texas Constitution.

30 Revised Law

31 Sec. 31.005. EFFECT OF ADJUDICATION IN SMALL CLAIMS OR
32 JUSTICE OF THE PEACE COURT. A judgment or a determination of fact
33 or law in a proceeding in small claims court or justice of the
34 peace court is not res judicata and does not constitute a basis for
35 estoppel by judgment in a proceeding in a county court or statutory
36 county court, except that the judgment rendered is binding on the
37 parties as to recovery or denial of recovery. (V.A.C.S. Art.
38 2226a, Sec. 2.)

Source Law

Sec. 2. A determination of fact or law or a judgment in any proceeding in the Small Claims Court or Justice of the Peace Court shall not be res judicata and shall not constitute a basis for estoppel by judgment in any proceeding in a County Court, County Civil Court at Law, County Criminal Court at Law or County Court at Law, except that any such judgment shall be binding on the parties thereto as to the recovery or denial thereof rendered in that particular case.

Revisor's Note

The revised law replaces the source law reference to a county civil court at law, county criminal court at law, or county court at law with the term "statutory county court" for the reason stated in the revisor's note to Section 31.004.

Revised Law

Sec. 31.006. REVIVAL OF JUDGMENT. If execution has not issued within 12 months after the date of the rendition of a judgment in a court of record, the judgment may be revived by scire facias or by an action of debt brought not later than 10 years after the date of the rendition of the judgment. (V.A.C.S. Art. 5532 (part).)

Source Law

Art. 5532. A judgment in any court of record, where execution has not issued within twelve months after the rendition of the judgment, may be revived by scire facias or an action of debt brought thereon within ten years after date of such judgment, and not after.

Revisor's Note
(End of Chapter)

(1) The revised law omits V.A.C.S. Article 2218a relating to the enforcement of deficiency judgments. The article was declared unconstitutional by the Texas Supreme Court in *Langever v. Miller*, 76 S.W.2d 1025

1 (Tex. 1934).

2 (2) The revised law omits V.A.C.S. Article
3 2218b, which expired under its own terms on May 1,
4 1934.

1 CHAPTER 32. CONTRIBUTION

2 Sec. 32.001. APPLICATION

3 Sec. 32.002. RIGHT OF ACTION

4 Sec. 32.003. RECOVERY

5 CHAPTER 32. CONTRIBUTION

6 Revised Law

7 Sec. 32.001. APPLICATION. (a) This chapter applies only to
8 tort actions.

9 (b) This chapter does not apply if a right of contribution,
10 indemnity, or recovery between defendants is provided by other
11 statute or by common law. (V.A.C.S. Art. 2212 (part).)

12 Source Law

13 . . . in any suit on an action arising out of, or based
14 on tort, except in causes wherein the right of
15 contribution or of indemnity, or of recovery, over, by
16 and between the defendants is given by statute or
17 exists under the common law

18 Revised Law

19 Sec. 32.002. RIGHT OF ACTION. A person against whom a
20 judgment is rendered has, on payment of the judgment, a right of
21 action to recover payment from each codefendant against whom
22 judgment is also rendered. (V.A.C.S. Art. 2212 (part).)

23 Source Law

24 Art. 2212. Any person against whom, with one or
25 more others, a judgment is rendered . . . shall, upon
26 payment of said judgment, have a right of action
27 against his co-defendant or co-defendants

28 Revised Law

29 Sec. 32.003. RECOVERY. (a) The person may recover from
30 each codefendant against whom judgment is rendered an amount
31 determined by dividing the number of all liable defendants into the

1 total amount of the judgment.

2 (b) If a codefendant is insolvent, the person may recover
3 from each solvent codefendant an amount determined by dividing the
4 number of solvent defendants into the total amount of the judgment.

5 (c) Each defendant in the judgment has a right to recover
6 from the insolvent defendant the amount the defendant has had to
7 pay because of the insolvency. (V.A.C.S. Art. 2212 (part).)

8 Source Law

9 . . . and may recover from each a sum equal to the
10 proportion of all of the defendants named in said
11 judgment rendered to the whole amount of said judgment.
12 If any of said persons co-defendant be insolvent, then
13 recovery may be had in proportion as such defendant or
14 defendants are not insolvent; and the right of recovery
15 over against such insolvent defendant or defendants in
16 judgment shall exist in favor of each defendant in
17 judgment in proportion as he has been caused to pay by
18 reason of such insolvency.

1 CHAPTER 33. COMPARATIVE NEGLIGENCE

2 SUBCHAPTER A. COMPARATIVE NEGLIGENCE

3 Sec. 33.001. COMPARATIVE NEGLIGENCE

4 [Sections 33.002-33.010 reserved for expansion]

5 SUBCHAPTER B. CONTRIBUTION

6 Sec. 33.011. DEFINITIONS

7 Sec. 33.012. DAMAGES IN PROPORTION

8 Sec. 33.013. DEFENDANT JOINTLY AND SEVERALLY LIABLE

9 Sec. 33.014. SETTLEMENT: TORT-FEASOR NOT PARTY DEFENDANT

10 Sec. 33.015. SETTLEMENT: TORT-FEASOR PARTY DEFENDANT

11 Sec. 33.016. CREDIT TOWARD LIABILITY

12 Sec. 33.017. CLAIMS DETERMINED IN PRIMARY SUIT

13 CHAPTER 33. COMPARATIVE NEGLIGENCE

14 SUBCHAPTER A. COMPARATIVE NEGLIGENCE

15 Revised Law

16 Sec. 33.001. COMPARATIVE NEGLIGENCE. (a) In an action to
17 recover damages for negligence resulting in death or injury to a
18 person or property, contributory negligence does not bar recovery
19 if the contributory negligence is not greater than the negligence
20 of the person or persons against whom recovery is sought.

21 (b) Damages allowed are diminished in proportion to the
22 amount of negligence attributed to the person recovering.
23 (V.A.C.S. Art. 2212a, Sec. 1.)

24 Source Law

25 Art. 2212a

26 Sec. 1. Contributory negligence shall not bar
27 recovery in an action by any person or party or the
28 legal representative of any person or party to recover
29 damages for negligence resulting in death or injury to
30 persons or property if such negligence is not greater
31 than the negligence of the person or party or persons
32 or parties against whom recovery is sought, but any
33 damages allowed shall be diminished in proportion to
34 the amount of negligence attributed to the person or
35 party recovering.

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[Sections 33.002-33.010 reserved for expansion]

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Revised Law

Sec. 33.013. DEFENDANT JOINTLY AND SEVERALLY LIABLE. Each defendant is jointly and severally liable for the entire amount of the judgment awarded the claimant, except that a defendant whose negligence is less than that of the claimant is liable to the claimant only for that portion of the judgment that represents the percentage of negligence attributable to him. (V.A.C.S. Art. 2212a, Sec. 2(c).)

Source Law

(c) Each defendant is jointly and severally liable for the entire amount of the judgment awarded the claimant, except that a defendant whose negligence is less than that of the claimant is liable to the claimant only for that portion of the judgment which represents the percentage of negligence attributable to him.

Revised Law

Sec. 33.014. SETTLEMENT: TORT-FEASOR NOT PARTY DEFENDANT. If the existence and amount of an alleged joint tort-feasor's negligence are not submitted to the jury because the tort-feasor has paid an amount in settlement to a claimant and was not joined as a party defendant, or having been joined, was dismissed or nonsuited after settling, each defendant is entitled to deduct from the amount for which he is liable to the claimant a percentage of the amount of the settlement based on the ratio of the defendant's negligence to the total negligence of all defendants. (V.A.C.S. Art. 2212a, Sec. 2(d).)

Source Law

(d) If an alleged joint tort-feasor pays an amount to a claimant in settlement, but is never joined as a party defendant, or having been joined, is dismissed or nonsuited after settlement with the claimant (for which reason the existence and amount of his negligence are not submitted to the jury), each defendant is entitled to deduct from the amount for which he is liable to the claimant a percentage of the amount of the settlement based on the relationship the defendant's own negligence bears to the total

1 negligence of all defendants.

2 Revised Law

3 Sec. 33.015. SETTLEMENT: TORT-FEASOR PARTY DEFENDANT. If
4 an alleged joint tort-feasor settles with a claimant but is joined
5 as a party defendant when the case is submitted to the jury so that
6 the existence and amount of his negligence are submitted to the
7 jury, and his percentage of negligence is found by the jury, the
8 settlement is a complete release of the portion of the judgment
9 attributable to him. (V.A.C.S. Art. 2212a, Sec. 2(e).)

10 Source Law

11 (e) If an alleged joint tort-feasor makes a
12 settlement with a claimant but nevertheless is joined
13 as a party defendant at the time of the submission of
14 the case to the jury (so that the existence and amount
15 of his negligence are submitted to the jury) and his
16 percentage of negligence is found by the jury, the
17 settlement is a complete release of the portion of the
18 judgment attributable to the percentage of negligence
19 found on the part of that joint tort-feasor.

20 Revised Law

21 Sec. 33.016. CREDIT TOWARD LIABILITY. If, because of the
22 application of the rules of this subchapter, two claimants are
23 liable to each other in damages, the claimant who is liable for the
24 greater amount is entitled to a credit toward his liability in the
25 amount of damages owed him by the other claimant. (V.A.C.S. Art.
26 2212a, Sec. 2(f).)

27 Source Law

28 (f) If the application of the rules contained in
29 Subsections (a) through (e) of this section results in
30 two claimants being liable to each other in damages,
31 the claimant who is liable for the greater amount is
32 entitled to a credit toward his liability in the amount
33 of damages owed him by the other claimant.

Revised Law

Sec. 33.017. CLAIMS DETERMINED IN PRIMARY SUIT. All claims for contribution between named defendants must be determined in the primary suit, but a named defendant may sue a person who is not a party to the primary suit and who has not settled with the claimant. (V.A.C.S. Art. 2212a, Sec. 2(g).)

Source Law

(g) All claims for contribution between named defendants in the primary suit shall be determined in the primary suit, except that a named defendant may proceed against a person not a party to the primary suit who has not effected a settlement with the claimant.

Revisor's Note
(End of Chapter)

Section 2(h) of V.A.C.S. Article 2212a, which states that that section prevails over V.A.C.S. Article 2212 and all other laws to the extent of any conflict, is omitted as unnecessary. Article 2212, codified as Chapter 32, excepts statutory contribution schemes from its application, and it is not necessary to restate the implied repeal of other laws.

1 CHAPTER 34. EXECUTION ON JUDGMENTS

2 SUBCHAPTER A. ISSUANCE AND LEVY OF WRIT

3 Sec. 34.001. NO EXECUTION ON DORMANT JUDGMENT

4 Sec. 34.002. EFFECT OF PLAINTIFF'S DEATH

5 Sec. 34.003. EFFECT OF DEFENDANT'S DEATH

6 Sec. 34.004. LEVY ON PROPERTY CONVEYED TO THIRD PARTY

7 Sec. 34.005. LEVY ON PROPERTY OF SURETY

8 [Sections 34.006-34.020 reserved for expansion]

9 SUBCHAPTER B. RECOVERY OF SEIZED PROPERTY

10 Sec. 34.021. RECOVERY OF PROPERTY BEFORE SALE

11 Sec. 34.022. RECOVERY OF PROPERTY VALUE AFTER SALE

12 [Sections 34.023-34.040 reserved for expansion]

13 SUBCHAPTER C. SALE

14 Sec. 34.041. SALE AT PLACE OTHER THAN COURTHOUSE DOOR

15 Sec. 34.042. SALE OF CITY LOTS

16 Sec. 34.043. SALE OF RURAL PROPERTY

17 Sec. 34.044. STOCK SHARES SUBJECT TO SALE

18 Sec. 34.045. CONVEYANCE OF TITLE AFTER SALE

19 Sec. 34.046. PURCHASER CONSIDERED INNOCENT PURCHASER

20 WITHOUT NOTICE

21 Sec. 34.047. DISTRIBUTION OF SALE PROCEEDS

22 Sec. 34.048. PURCHASE BY OFFICER VOID

23 [Sections 34.049-34.060 reserved for expansion]

24 SUBCHAPTER D. DUTIES AND LIABILITIES OF EXECUTING OFFICER

25 Sec. 34.061. DUTY TOWARD SEIZED PERSONALTY; LIABILITY

26 Sec. 34.062. DUTY OF SUCCESSOR OFFICER

27 Sec. 34.063. IMPROPER ENDORSEMENT OF WRIT

28 Sec. 34.064. IMPROPER RETURN OF WRIT

29 Sec. 34.065. FAILURE TO LEVY OR SELL

30 Sec. 34.066. IMPROPER SALE

31 Sec. 34.067. FAILURE TO DELIVER MONEY COLLECTED

1 CHAPTER 34. EXECUTION ON JUDGMENTS

2 SUBCHAPTER A. ISSUANCE AND LEVY OF WRIT

3 Revised Law

4 Sec. 34.001. NO EXECUTION ON DORMANT JUDGMENT. (a) If a
5 writ of execution is not issued within 10 years after the rendition
6 of a judgment of a court of record or a justice court, the judgment
7 is dormant and execution may not be issued on the judgment unless
8 it is revived.

9 (b) If a writ of execution is issued within 10 years after
10 rendition of a judgment but a second writ is not issued within 10
11 years after issuance of the first writ, the judgment becomes
12 dormant. A second writ may be issued at any time within 10 years
13 after issuance of the first writ. (V.A.C.S. Arts. 2451, 3773.)

14 Source Law

15 Art. 2451. If no execution is issued within ten
16 (10) years after a judgment is rendered, the judgment
17 shall become dormant, and no execution shall thereafter
18 issue unless an execution shall have theretofore issued
19 on such judgment within ten (10) years after a judgment
20 is rendered. Where the first execution has issued
21 within the ten (10) years after the rendition of a
22 judgment, the judgment shall not become dormant unless
23 ten (10) years shall have elapsed between the issuance
24 of executions thereon, and execution may issue at any
25 time within ten (10) years after the issuance of the
26 preceding execution.

27 Art. 3773. If no execution is issued within ten
28 years after the rendition of a judgment in any court of
29 record, the judgment shall become dormant and no
30 execution shall issue thereon unless such judgment be
31 revived. If the first execution has issued within the
32 ten years, the judgment shall not become dormant,
33 unless ten years shall have elapsed between the
34 issuance of executions thereon, and execution may issue
35 at any time within ten years after the issuance of the
36 preceding execution.

37 Revisor's Note

38 Although not limited by its terms, V.A.C.S.
39 Article 2451 provides for the dormancy of justice court
40 judgments. The article appears in the Revised Statutes

1 in Chapter 5 of Title 45; that title is entitled
2 "Courts--Justice." The rule for justice courts is
3 identical to the rule for courts of record.

4 Revised Law

5 Sec. 34.002. EFFECT OF PLAINTIFF'S DEATH. (a) If a
6 plaintiff dies after judgment, any writ of execution must be issued
7 in the name of the plaintiff's legal representative, if any, and in
8 the name of any other plaintiff. An affidavit of death and a
9 certificate of appointment of the legal representative, given under
10 the hand and seal of the clerk of the appointing court, must be
11 filed with the clerk of the court issuing the writ of execution.

12 (b) If a plaintiff dies after judgment and his estate is not
13 administered, the writ of execution must be issued in the name of
14 all plaintiffs shown in the judgment. An affidavit showing that
15 administration of the estate is unnecessary must be filed with the
16 clerk of the court that rendered judgment. Money collected under
17 the execution shall be paid into the registry of the court, and the
18 court shall order the money partitioned and paid to the parties
19 entitled to it.

20 (c) Death of a plaintiff after a writ of execution has been
21 issued does not abate the execution, and the writ shall be levied
22 and returned as if the plaintiff were living. (V.A.C.S. Arts.
23 3775, 3830.)

24 Source Law

25 Art. 3775. Where a sole plaintiff, or one of
26 several plaintiffs, shall die after judgment, execution
27 shall issue on such judgment in the name of the legal
28 representative of such deceased sole plaintiff, or in
29 the name of the surviving plaintiffs, and the legal
30 representative of the deceased plaintiff, as the case
31 may require, upon an affidavit of such death being
32 filed with the clerk, together with the certificate of
33 the appointment of such representative under the hand
34 and seal of the clerk of the court wherein such
35 appointment was made; provided that if there be no
36 administration upon the estate of such deceased sole
37 plaintiff or plaintiffs, and none necessary as shown by
38 an affidavit filed with the clerk of the court in which

1 judgment was obtained, execution shall issue in the
2 name of all the plaintiffs, both living and deceased,
3 as shown in the judgment, and all money or moneys
4 collected thereunder by the officer levying such
5 execution, and paid unto the registry of the court, out
6 of which such execution issued shall be partitioned
7 among and paid to parties entitled to the same, and in
8 the proportions to which they are entitled to the same
9 under proper order of the presiding judge of said
10 court.

11 Art. 3830. An execution shall not be abated by
12 the death of the plaintiff therein after the execution
13 has been issued, but shall be executed and returned in
14 the same manner as if the plaintiff was still living.

15 Revised Law

16 Sec. 34.003. EFFECT OF DEFENDANT'S DEATH. The death of the
17 defendant after a writ of execution is issued stays the execution
18 proceedings, but any lien acquired by levy of the writ must be
19 recognized and enforced by the county court in the payment of the
20 debts of the deceased. (V.A.C.S. Art. 3829.)

21 Source Law

22 Art. 3829. The death of the defendant after the
23 execution is issued shall operate as a supersedeas
24 thereof; but the lien, when one has been acquired by a
25 levy, shall be recognized and enforced by the county
26 court in the payment of the debts of the deceased.

27 Revised Law

28 Sec. 34.004. LEVY ON PROPERTY CONVEYED TO THIRD PARTY.
29 Property that the judgment debtor has sold, mortgaged, or conveyed
30 in trust may not be seized in execution if the purchaser,
31 mortgagee, or trustee points out other property of the debtor in
32 the county that is sufficient to satisfy the execution. (V.A.C.S.
33 Art. 3792.)

34 Source Law

35 Art. 3792. Property which the judgment debtor
36 has sold, mortgaged or conveyed in trust shall not be
37 seized in execution, if the purchaser, mortgagee or
38 trustee shall point out other property of the debtor in
39 the county sufficient to satisfy the execution.

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Source Law

Sec. 3. (a) Unless property has been sold at an execution sale as provided by law and by the Texas Rules of Civil Procedure, a person is entitled to recover his property that has been seized through execution of a writ issued by a court if the judgment upon which the execution is issued is later reversed or set aside.

Revised Law

Sec. 34.022. RECOVERY OF PROPERTY VALUE AFTER SALE. (a) A person is entitled to recover from the judgment creditor the market value of the person's property that has been seized through execution of a writ issued by a court if the judgment on which execution is issued is reversed or set aside but the property has been sold at execution.

(b) The amount of recovery is determined by the market value at the time of sale of the property sold. (V.A.C.S. Art. 3799a, Sec. 3(b).)

Source Law

(b) If the property has been sold, a person who would otherwise be entitled to recover the property is entitled to recover from the judgment creditor the market value of the property sold at the time of the sale.

Revisor's Note
(End of Subchapter)

See Section 7.003 for the disposition of Sections 1 and 2 of V.A.C.S. Article 3799a relating to an officer's liability for damages resulting from execution of a writ.

[Sections 34.023-34.040 reserved for expansion]

SUBCHAPTER C. SALE

Revised Law

Sec. 34.041. SALE AT PLACE OTHER THAN COURTHOUSE DOOR. If

1 the public sale of land is required by law to be made at a place
2 other than the courthouse door, sales under this chapter shall be
3 made at the place designated by that law. (V.A.C.S. Art. 3805.)

4 Source Law

5 Art. 3805. Where by law the public sales of
6 lands in any county are directed to be made at any
7 other place than the courthouse door, the sales herein
8 provided to be made at the courthouse door shall be
9 made at the place designated by such law.

10 Revised Law

11 Sec. 34.042. SALE OF CITY LOTS. If real property taken in
12 execution consists of several lots, tracts, or parcels in a city or
13 town, each lot, tract, or parcel must be offered for sale
14 separately unless not susceptible to separate sale because of the
15 character of improvements. (V.A.C.S. Art. 3806.)

16 Source Law

17 Art. 3806. If real property situated in any town
18 or city, taken in execution, consist of several lots,
19 tracts or parcels, each shall be offered separately,
20 unless the same be not susceptible of a separate sale
21 by reason of the character of the improvements thereon.

22 Revised Law

23 Sec. 34.043. SALE OF RURAL PROPERTY. (a) If real property
24 taken in execution is not located in a city or town, the defendant
25 in the writ who holds legal or equitable title to the property may
26 divide the property into lots of not less than 50 acres and
27 designate the order in which those lots shall be sold.

28 (b) The defendant must present to the executing officer:

29 (1) a plat of the property as divided and as surveyed
30 by the county surveyor of the county in which the property is
31 located; and

32 (2) field notes of each numbered lot with a
33 certificate of the county surveyor certifying that the notes are

1 correct.

2 (c) The defendant must present the plat and field notes to
3 the executing officer before the sale at a time that will not delay
4 the sale as advertised.

5 (d) When a sufficient number of the lots are sold to satisfy
6 the amount of the execution, the officer shall stop the sale.

7 (e) The defendant shall pay the expenses of the survey and
8 the sale, and those expenses do not constitute an additional cost
9 in the case. (V.A.C.S. Art. 3807.)

10 Source Law

11 Art. 3807. When lands not situated in any town
12 or city are taken in execution, the defendant in such
13 writ in whom the legal or equitable title to such land
14 may be vested, shall have the right to present to the
15 officer holding such execution, at any time before the
16 sale so as not to delay the same being made as
17 advertised, a plat of said land as actually surveyed,
18 in lots of not less than fifty acres, by the county
19 surveyor of the county wherein said premises are
20 situated. The plat shall be accompanied by the field
21 notes of each lot as numbered, with the certificate of
22 the county surveyor that the same are correct, and the
23 defendant shall have the right to designate the order
24 in which the lots shall be sold. When a sufficient
25 number of such lots are sold to satisfy the amount due
26 on the execution, the sale shall cease. All of the
27 expenses attending the survey and sale of said land in
28 lots shall be paid by the defendant, and shall in no
29 case constitute any additional cost in the case.

30 Revised Law

31 Sec. 34.044. STOCK SHARES SUBJECT TO SALE. Shares of stock
32 in a corporation or joint-stock company that are owned by a
33 defendant in execution may be sold on execution. (V.A.C.S. Art.
34 3798.)

35 Source Law

36 Art. 3798. Shares of stock in any joint stock or
37 incorporated company may be sold on execution against
38 the person owning such stock.

1 Revised Law

2 Sec. 34.045. CONVEYANCE OF TITLE AFTER SALE. (a) When the
3 sale has been made and its terms complied with, the officer shall
4 execute and deliver to the purchaser a conveyance of all the right,
5 title, interest, and claim that the defendant in execution had in
6 the property sold.

7 (b) If the purchaser complies with the terms of the sale but
8 dies before the conveyance is executed, the officer shall execute
9 the conveyance to the purchaser, and the conveyance has the same
10 effect as if it had been executed in the purchaser's lifetime.
11 (V.A.C.S. Arts. 3816, 3817.)

12 Source Law

13 Art. 3816. When a sale has been made and the
14 terms thereof complied with, the officer shall execute
15 and deliver to the purchaser a conveyance of all the
16 right, title, interest and claim which the defendant in
17 execution had in and to the property sold.

18 Art. 3817. If the purchaser, having complied
19 with the terms of the sale, shall die before a
20 conveyance was executed to him, the officer shall
21 nevertheless convey the property to the purchaser, and
22 the conveyance shall have the same effect as if it had
23 been executed in the lifetime of the purchaser.

24 Revised Law

25 Sec. 34.046. PURCHASER CONSIDERED INNOCENT PURCHASER WITHOUT
26 NOTICE. The purchaser of property sold under execution is
27 considered to be an innocent purchaser without notice if the
28 purchaser would have been considered an innocent purchaser without
29 notice had the sale been made voluntarily and in person by the
30 defendant. (V.A.C.S. Art. 3818.)

31 Source Law

32 Art. 3818. A purchaser at a sale under execution
33 shall be deemed to be an innocent purchaser without
34 notice in all cases where he would be deemed to be such
35 had the sale been made voluntarily by the defendant in
36 person.

1 SUBCHAPTER D. DUTIES AND LIABILITIES OF EXECUTING OFFICER

2 Revised Law

3 Sec. 34.061. DUTY TOWARD SEIZED PERSONALTY; LIABILITY. (a)

4 The officer shall keep securely all personal property on which he
5 has levied and for which no delivery bond is given.

6 (b) If an injury or loss to an interested party results from
7 the negligence of the officer, the officer and his sureties are
8 liable for the value of the property lost or the amount of the
9 injury sustained, plus 10 percent of that value or amount. The
10 total amount is recoverable on motion of the injured party filed
11 with the court that issued the writ, following three days' notice.
12 (V.A.C.S. Art. 3799.)

13 Source Law

14 Art. 3799. The officer shall keep securely all
15 personal property levied on by him for which no
16 delivery bond has been given. If any injury or loss
17 should result by his negligence to any party
18 interested, he and his sureties shall be liable to pay
19 the value of the property so lost or the amount of the
20 injury sustained, and ten per cent thereon, to be
21 recovered by the party injured on motion, three days
22 notice being given in the court from which the
23 execution issued.

24 Revised Law

25 Sec. 34.062. DUTY OF SUCCESSOR OFFICER. If the officer who
26 receives a writ of execution dies or goes out of office before the
27 writ is returned, his successor or the officer authorized to
28 discharge the duties of the office shall proceed in the same manner
29 as the receiving officer was required to proceed. (V.A.C.S. Art.
30 3787.)

31 Source Law

32 Art. 3787. If the officer receiving an execution
33 die or go out of office before the return of any
34 execution, his successor, or other officer authorized
35 to discharge the duties of the office in such case,
36 shall proceed therein in the same manner that such

1 officer should have done.

2 Revised Law

3 Sec. 34.063. IMPROPER ENDORSEMENT OF WRIT. If an officer
4 receives more than one writ of execution on the same day against
5 the same person and fails to number them as received, or if an
6 officer falsely endorses a writ of execution, the officer and his
7 sureties are liable to the plaintiff in execution for damages
8 suffered by the plaintiff because of the failure or false
9 endorsement, plus 20 percent of the amount of the execution. The
10 total amount is recoverable on motion of the plaintiff filed with
11 the court that issued the writ, following three days' notice.
12 (V.A.C.S. Art. 3785.)

13 Source Law

14 Art. 3785. The officer receiving the execution
15 shall indorse thereon the exact hour and day when he
16 received it. If he receives more than one on the same
17 day against the same person, he shall number them as
18 received; and, on failure to do so, or in case of false
19 indorsement, he and his sureties shall be liable on
20 motion in the court from whence the execution is
21 issued, three days' notice being given, to a judgment
22 in favor of the plaintiff in execution for twenty per
23 cent on the amount of the execution, together with such
24 damages as the plaintiff in execution may have
25 sustained by such failure or such false indorsement.

26 Revisor's Note

27 The first sentence and part of the second
28 sentence of the source law were replaced by Rule 636,
29 Texas Rules of Civil Procedure. The "failure" referred
30 to in the source law applies only to the failure to
31 number writs if more than one is received. See De Witt
32 v. Dunn, 15 Tex. 106 (1855).

33 Revised Law

34 Sec. 34.064. IMPROPER RETURN OF WRIT. If an officer
35 neglects or refuses to return a writ of execution as required by

1 law, or makes a false return on a writ of execution, the officer
2 and his sureties are liable to the person entitled to receive the
3 money collected on the execution for the full amount of the debt,
4 plus interest and costs. The total amount is recoverable on motion
5 of the plaintiff filed with the court that issued the writ,
6 following five days' notice. (V.A.C.S. Art. 3826.)

7 Source Law

8 Art. 3826. Should an officer neglect or refuse
9 to return any execution as required by law, or should
10 he make a false return thereon, he and his sureties
11 shall be liable to the party entitled to receive the
12 money collected on such execution for the full amount
13 of the debt, interest and costs to be recovered as
14 provided in the preceding article.

15 Revisor's Note

16 The "preceding article" referred to in the source
17 law is revised in this chapter as Section 34.065, and
18 the method of recovery is derived from the source law
19 for that section.

20 Revised Law

21 Sec. 34.065. FAILURE TO LEVY OR SELL. If an officer fails
22 or refuses to levy on or sell property subject to execution and the
23 levy or sale could have taken place, the officer and his sureties
24 are liable to the party entitled to receive the money collected on
25 execution for the full amount of the debt, plus interest and costs.
26 The total amount is recoverable on motion of the party filed with
27 the court that issued the writ, following five days' notice to the
28 officer and his sureties. (V.A.C.S. Art. 3825.)

29 Source Law

30 Art. 3825. Should an officer fail or refuse to
31 levy upon or sell any property subject to execution,
32 when the same might have been done, he and his sureties
33 shall be liable to the party entitled to receive the
34 money collected on such execution for the full amount
35 of the debt, interest and costs, to be recovered on

1 motion before the court from which said execution
2 issued, five days previous notice thereof being given
3 to said officer and his sureties.

4 Revised Law

5 Sec. 34.066. IMPROPER SALE. If an officer sells property
6 without giving notice as required by the Texas Rules of Civil
7 Procedure, or sells property in a manner other than that prescribed
8 by this chapter and the Texas Rules of Civil Procedure, the officer
9 forfeits and shall pay to the injured party not less than \$10 nor
10 more than \$200, in addition to any other damages sustained by the
11 party. The amount is recoverable on motion of the party, following
12 five days' notice to the officer and his sureties. (V.A.C.S. Art.
13 3819.)

14 Source Law

15 Art. 3819. Any officer who shall sell any
16 property without giving the previous notice herein
17 directed, or who shall sell the same otherwise than in
18 the manner prescribed herein, shall forfeit and pay to
19 the party injured not less than ten nor more than two
20 hundred dollars in addition to such other damages as
21 the party may have sustained, to be recovered on
22 motion, five days notice thereof being given such
23 officer and his sureties.

24 Revisor's Note

25 The "previous notice herein directed" referred to
26 by the source law is contained in Rules 647-650, Texas
27 Rules of Civil Procedure, and "the manner prescribed
28 herein" is provided for by Rules 646a-653.

29 Revised Law

30 Sec. 34.067. FAILURE TO DELIVER MONEY COLLECTED. If an
31 officer fails or refuses to deliver money collected under an
32 execution when demanded by the person entitled to receive the
33 money, the officer and his sureties are liable to the person for
34 the amount collected and for damages at a rate of five percent a

1 month on that amount, plus interest and costs. The total amount is
2 recoverable on motion of the person entitled to the money filed
3 with the court that issued the writ, following five days' notice to
4 the officer and his sureties. (V.A.C.S. Art. 3824 (part).)

5 Source Law

6 If an officer fails or refuses to pay money collected
7 under an execution when demanded by the person entitled
8 to receive the same, he shall be liable to pay to such
9 person the amount so collected, with damages at the
10 rate of five per cent per month thereon, besides
11 interest and costs, which may be recovered of him and
12 his sureties by the party entitled to receive the same
13 on motion before the court from which said execution
14 issued, five days previous notice thereof being given
15 to said officer and his sureties.

CHAPTER 35. ENFORCEMENT OF JUDGMENTS OF OTHER STATES

Sec. 35.001. DEFINITION

Sec. 35.002. SHORT TITLE

Sec. 35.003. FILING AND STATUS OF FOREIGN JUDGMENTS

Sec. 35.004. AFFIDAVIT; NOTICE OF FILING

Sec. 35.005. ALTERNATE NOTICE OF FILING--JUDGMENT CREDITOR

Sec. 35.006. STAY

Sec. 35.007. FEES

Sec. 35.008. OPTIONAL PROCEDURE

CHAPTER 35. ENFORCEMENT OF JUDGMENTS OF OTHER STATES

Revised Law

Sec. 35.001. DEFINITION. In this chapter, "foreign judgment" means a judgment, decree, or order of a court of the United States or of any other court that is entitled to full faith and credit in this state. (V.A.C.S. Art. 2328b-5, Sec. 1.)

Source Law

Art. 2328b-5

Sec. 1. In this Act, "foreign judgment" means a judgment, decree, or order of a court of the United States or of any other court that is entitled to full faith and credit in this state.

Revised Law

Sec. 35.002. SHORT TITLE. This chapter may be cited as the Uniform Enforcement of Foreign Judgments Act. (V.A.C.S. Art. 2328b-5, Sec. 8.)

Source Law

Sec. 8. This Act may be cited as the Uniform Enforcement of Foreign Judgments Act.

Revised Law

Sec. 35.003. FILING AND STATUS OF FOREIGN JUDGMENTS. (a) A

1 copy of a foreign judgment authenticated in accordance with an act
2 of congress or a statute of this state may be filed in the office
3 of the clerk of any court of competent jurisdiction of this state.

4 (b) The clerk shall treat the foreign judgment in the same
5 manner as a judgment of the court in which the foreign judgment is
6 filed.

7 (c) A filed foreign judgment has the same effect and is
8 subject to the same procedures, defenses, and proceedings for
9 reopening, vacating, staying, enforcing, or satisfying a judgment
10 as a judgment of the court in which it is filed. (V.A.C.S. Art.
11 2328b-5, Sec. 2.)

12 Source Law

13 Sec. 2. A copy of any foreign judgment
14 authenticated in accordance with an act of congress or
15 statutes of this state may be filed in the office of
16 the clerk of any court of competent jurisdiction of
17 this state. The clerk shall treat the foreign judgment
18 in the same manner as a judgment of the court in which
19 the foreign judgment is filed. A filed foreign
20 judgment has the same effect and is subject to the same
21 procedures, defenses, and proceedings for reopening,
22 vacating, staying, enforcing, or satisfying as a
23 judgment of the court in which it is filed.

24 Revised Law

25 Sec. 35.004. AFFIDAVIT; NOTICE OF FILING. (a) At the time
26 a foreign judgment is filed, the judgment creditor or the judgment
27 creditor's attorney shall file with the clerk of the court an
28 affidavit showing the name and last known post office address of
29 the judgment debtor and the judgment creditor.

30 (b) The clerk shall promptly mail notice of the filing of
31 the foreign judgment to the judgment debtor at the address given
32 and shall note the mailing in the docket.

33 (c) The notice must include the name and post office address
34 of the judgment creditor and if the judgment creditor has an
35 attorney in this state, the attorney's name and address. (V.A.C.S.
36 Art. 2328b-5, Secs. 3(a), (b) (part).)

1 (b) If the judgment debtor shows the court a ground on which
2 enforcement of a judgment of the court of this state would be
3 stayed, the court shall stay enforcement of the foreign judgment
4 for an appropriate period and require the same security for
5 satisfaction of the judgment that is required in this state.
6 (V.A.C.S. Art. 2328b-5, Sec. 4.)

7 Source Law

8 Sec. 4. (a) If the judgment debtor shows the
9 court that an appeal from the foreign judgment is
10 pending or will be taken, or that a stay of execution
11 has been granted and proves that the judgment debtor
12 has furnished the security for the satisfaction of the
13 judgment required by the state in which it was
14 rendered, the court shall stay enforcement of the
15 foreign judgment until the appeal is concluded, the
16 time for appeal expires, or the stay of execution
17 expires or is vacated.

18 (b) If the judgment debtor shows the court any
19 ground on which enforcement of a judgment of the court
20 of this state would be stayed, the court shall stay
21 enforcement of the foreign judgment for an appropriate
22 period, and require the same security for satisfaction
23 of the judgment that is required in this state.

24 Revised Law

25 Sec. 35.007. FEES. (a) A person filing a foreign judgment
26 shall pay to the clerk of the court the amount as otherwise
27 provided by law for filing suit in the courts of this state.

28 (b) Filing fees are due and payable at the time of filing.

29 (c) Fees for other enforcement proceedings are as provided
30 by law for judgments of the courts of this state. (V.A.C.S. Art.
31 2328b-5, Sec. 5.)

32 Source Law

33 Sec. 5. FEES. (a) A person filing a foreign
34 judgment shall pay to the clerk of the court the amount
35 as otherwise provided by law for filing suit in the
36 courts of this state. Fees for other enforcement
37 proceedings shall be as otherwise provided by law for
38 judgments of the courts of this state.

39 (b) Filing fees are due and payable at the time
40 of filing.

Revised Law

Sec. 35.008. OPTIONAL PROCEDURE. A judgment creditor retains the right to bring an action to enforce a judgment instead of proceeding under this chapter. (V.A.C.S. Art. 2328b-5, Sec. 6.)

Source Law

Sec. 6. The judgment creditor retains the right to bring an action to enforce a judgment instead of proceeding under this Act.

Revisor's Note
(End of Chapter)

Section 7 of V.A.C.S. Article 2328b-5, which states that the "Act shall be interpreted and construed to achieve its general purpose to make the law of those states which enact it uniform," is omitted as unnecessary. Section 3.08 of the Code Construction Act (V.A.C.S. Article 5429b-2) provides for the uniform construction of uniform acts.

1 CHAPTER 36. ENFORCEMENT OF JUDGMENTS OF OTHER COUNTRIES

2 Sec. 36.001. DEFINITIONS

3 Sec. 36.002. APPLICABILITY

4 Sec. 36.003. SHORT TITLE

5 Sec. 36.004. RECOGNITION AND ENFORCEMENT

6 Sec. 36.005. GROUNDS FOR NONRECOGNITION

7 Sec. 36.006. PERSONAL JURISDICTION

8 Sec. 36.007. STAY IN CASE OF APPEAL

9 Sec. 36.008. OTHER FOREIGN COUNTRY JUDGMENTS

10 CHAPTER 36. ENFORCEMENT OF JUDGMENTS OF OTHER COUNTRIES

11 Revised Law

12 Sec. 36.001. DEFINITIONS. In this chapter:

13 (1) "Foreign country" means a governmental unit other
14 than:

15 (A) the United States;

16 (B) a state, district, commonwealth, territory,
17 or insular possession of the United States;

18 (C) the Panama Canal Zone; or

19 (D) the Trust Territory of the Pacific Islands.

20 (2) "Foreign country judgment" means a judgment of a
21 foreign country granting or denying a sum of money other than a
22 judgment for:

23 (A) taxes, a fine, or other penalty; or

24 (B) support in a matrimonial or family matter.

25 (V.A.C.S. Art. 2328b-6, Sec. 2.)

26 Source Law

27 Sec. 2. In this Act:

28 (1) "Foreign country" means a governmental unit
29 other than the United States, or a state, district,
30 commonwealth, territory, or insular possession thereof,
31 or the Panama Canal Zone, or the Trust Territory of the
32 Pacific Islands.

33 (2) "Foreign country judgment" means a judgment
34 of a foreign country granting or denying a sum of

1 money, other than a judgment for taxes, a fine or other
2 penalty, or a judgment for support in matrimonial or
3 family matters.

4 Revised Law

5 Sec. 36.002. APPLICABILITY. (a) This chapter applies to a
6 foreign country judgment:

7 (1) that is final and conclusive and enforceable where
8 rendered, even though an appeal is pending or the judgment is
9 subject to appeal; or

10 (2) that is in favor of the defendant on the merits of
11 the cause of action and is final and conclusive where rendered,
12 even though an appeal is pending or the judgment is subject to
13 appeal.

14 (b) This chapter does not apply to a judgment rendered
15 before June 17, 1981. (V.A.C.S. Art. 2328b-6, Secs. 3, 10.)

16 Source Law

17 Sec. 3. This Act applies to any foreign country
18 judgment:

19 (1) that is final and conclusive and enforceable
20 where rendered even though an appeal is pending or the
21 judgment is subject to appeal; or

22 (2) that is in favor of the defendant on the
23 merits of the cause of action and is final and
24 conclusive where rendered, even though an appeal is
25 pending or the judgment is subject to appeal.

26 Sec. 10. This Act does not apply to a judgment
27 rendered before the effective date of this Act.

28 Revisor's Note

29 The date in Subsection (b) of the revised law is
30 the effective date of the source law.

31 Revised Law

32 Sec. 36.003. SHORT TITLE. This chapter may be cited as the
33 Uniform Foreign Country Money-Judgment Recognition Act. (V.A.C.S.
34 Art. 2328b-6, Sec. 1.)

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3 Sec. 1. This Act may be cited as the Uniform
4 Foreign Country Money-Judgment Recognition Act.

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6 Sec. 36.004. RECOGNITION AND ENFORCEMENT. Except as
7 provided by Section 36.005, a foreign country judgment meeting the
8 requirements of Section 36.002 is conclusive between the parties to
9 the extent that it grants or denies recovery of a sum of money.
10 The judgment is enforceable in the same manner as a judgment of a
11 sister state that is entitled to full faith and credit. (V.A.C.S.
12 Art. 2328b-6, Sec. 4.)

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14 Sec. 4. Except as provided in Section 5 of this
15 Act, a foreign country judgment meeting the
16 requirements of Section 3 is conclusive between the
17 parties to the extent that it grants or denies recovery
18 of a sum of money. The foreign country judgment is
19 enforceable in the same manner as the judgment of a
20 sister state that is entitled to full faith and credit.

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22 Sec. 36.005. GROUNDS FOR NONRECOGNITION. (a) A foreign
23 country judgment is not conclusive if:

24 (1) the judgment was rendered under a system that does
25 not provide impartial tribunals or procedures compatible with the
26 requirements of due process of law;

27 (2) the foreign country court did not have personal
28 jurisdiction over the defendant; or

29 (3) the foreign country court did not have
30 jurisdiction over the subject matter.

31 (b) A foreign country judgment need not be recognized if:

32 (1) the defendant in the proceedings in the foreign
33 country court did not receive notice of the proceedings in
34 sufficient time to defend;

1 (2) the judgment was obtained by fraud;
2 (3) the cause of action on which the judgment is based
3 is repugnant to the public policy of this state;
4 (4) the judgment conflicts with another final and
5 conclusive judgment;
6 (5) the proceeding in the foreign country court was
7 contrary to an agreement between the parties under which the
8 dispute in question was to be settled otherwise than by proceedings
9 in that court;
10 (6) in the case of jurisdiction based only on personal
11 service, the foreign country court was a seriously inconvenient
12 forum for the trial of the action; or
13 (7) it is established that the foreign country in
14 which the judgment was rendered does not recognize judgments
15 rendered in this state that, but for the fact that they are
16 rendered in this state, conform to the definition of "foreign
17 country judgment." (V.A.C.S. Art. 2328b-6, Sec. 5.)

18 Source Law

19 Sec. 5. (a) A foreign country judgment is not
20 conclusive if:

21 (1) the judgment was rendered under a system
22 which does not provide impartial tribunals or
23 procedures compatible with the requirements of due
24 process of law;

25 (2) the foreign country court did not have
26 personal jurisdiction over the defendant; or

27 (3) the foreign country court did not have
28 jurisdiction over the subject matter.

29 (b) A foreign country judgment need not be
30 recognized if:

31 (1) the defendant in the proceedings in the
32 foreign country court did not receive notice of the
33 proceedings in sufficient time to enable him to defend;

34 (2) the judgment was obtained by fraud;

35 (3) the cause of action on which the judgment is
36 based is repugnant to the public policy of this state;

37 (4) the judgment conflicts with another final
38 and conclusive judgment;

39 (5) the proceeding in the foreign country court
40 was contrary to an agreement between the parties under
41 which the dispute in question was to be settled
42 otherwise than by proceedings in that court;

43 (6) in the case of jurisdiction based only on
44 personal service, the foreign country court was a
45 seriously inconvenient forum for the trial of the
46 action; or

(7) it is established that the foreign country in which the judgment was rendered does not recognize judgments rendered in this state that, but for the fact that they are rendered in Texas, conform to the definition of "foreign country judgment" in Section 2(2) of this Act.

Revised Law

Sec. 36.006. PERSONAL JURISDICTION. (a) A court may not refuse to recognize a foreign country judgment for lack of personal jurisdiction if:

(1) the defendant was served personally in the foreign country;

(2) the defendant voluntarily appeared in the proceedings, other than for the purpose of protecting property seized or threatened with seizure in the proceedings or of contesting the jurisdiction of the court over him;

(3) the defendant prior to the commencement of the proceedings had agreed to submit to the jurisdiction of the foreign country court with respect to the subject matter involved;

(4) the defendant was domiciled in the foreign country when the proceedings were instituted, or, if the defendant is a body corporate, had its principal place of business, was incorporated, or had otherwise acquired corporate status, in the foreign country;

(5) the defendant had a business office in the foreign country and the proceedings in the foreign country court involved a cause of action arising out of business done by the defendant through that office in the foreign country; or

(6) the defendant operated a motor vehicle or airplane in the foreign country and the proceedings involved a cause of action arising out of operation of the motor vehicle or airplane.

(b) A court of this state may recognize other bases of jurisdiction. (V.A.C.S. Art. 2328b-6, Sec. 6.)

1 Revised Law

2 Sec. 36.008. OTHER FOREIGN COUNTRY JUDGMENTS. This chapter
3 does not prevent the recognition of a foreign country judgment in
4 a situation not covered by this chapter. (V.A.C.S. Art. 2328b-6,
5 Sec. 8.)

6 Source Law

7 Sec. 8. This Act does not prevent the
8 recognition of a foreign country judgment in situations
9 not covered by this Act.

10 Revisor's Note
11 (End of Chapter)

12 Section 9 of V.A.C.S. Article 2328b-6, which
13 states that the "Act shall be construed to carry out
14 its general purpose to make uniform the law of those
15 states that enact it," is omitted as unnecessary.
16 Section 3.08, Code Construction Act (V.A.C.S. Article
17 5429b-2), provides for the uniform construction of
18 uniform acts.

1 CHAPTER 37. DECLARATORY JUDGMENTS

2 Sec. 37.001. DEFINITION

3 Sec. 37.002. SHORT TITLE, CONSTRUCTION, INTERPRETATION

4 Sec. 37.003. POWER OF COURTS TO RENDER JUDGMENT; FORM
5 AND EFFECT

6 Sec. 37.004. SUBJECT MATTER OF RELIEF

7 Sec. 37.005. DECLARATIONS RELATING TO TRUST OR ESTATE

8 Sec. 37.006. PARTIES

9 Sec. 37.007. JURY TRIAL

10 Sec. 37.008. COURT REFUSAL TO RENDER

11 Sec. 37.009. COSTS

12 Sec. 37.010. REVIEW

13 Sec. 37.011. SUPPLEMENTAL RELIEF

14 CHAPTER 37. DECLARATORY JUDGMENTS

15 Revised Law

16 Sec. 37.001. DEFINITION. In this chapter, "person" means an
17 individual, partnership, joint-stock company, unincorporated
18 association or society, or municipal or other corporation of any
19 character. (V.A.C.S. Art. 2524-1, Sec. 13.)

20 Source Law

21 Sec. 13. The word "person," wherever used in
22 this Act, shall be construed to mean any person,
23 partnership, joint stock company, unincorporated
24 association or society, or municipal or other
25 corporation of any character whatsoever.

26 Revised Law

27 Sec. 37.002. SHORT TITLE, CONSTRUCTION, INTERPRETATION. (a)
28 This chapter may be cited as the Uniform Declaratory Judgments Act.

29 (b) This chapter is remedial; its purpose is to settle and
30 to afford relief from uncertainty and insecurity with respect to
31 rights, status, and other legal relations; and it is to be

1 liberally construed and administered.

2 (c) This chapter shall be so interpreted and construed as to
3 effectuate its general purpose to make uniform the law of those
4 states that enact it, and to harmonize, as far as possible, with
5 federal laws and regulations on the subject of declaratory
6 judgments and decrees. (V.A.C.S. Art. 2524-1, Secs. 12, 15, 16.)

7 Source Law

8 Sec. 12. This Act is declared to be remedial;
9 its purpose is to settle and to afford relief from
10 uncertainty and insecurity with respect to rights,
11 status, and other legal relations; and is to be
12 liberally construed and administered.

13 Sec. 15. This Act shall be so interpreted and
14 construed as to effectuate its general purpose to make
15 uniform the law of those States which enact it, and to
16 harmonize, as far as possible, with federal laws and
17 regulations on the subject of declaratory judgments and
18 decrees.

19 Sec. 16. This Act may be cited as the Uniform
20 Declaratory Judgments Act.

21 Revised Law

22 Sec. 37.003. POWER OF COURTS TO RENDER JUDGMENT; FORM AND
23 EFFECT. (a) A court of record within its jurisdiction has power
24 to declare rights, status, and other legal relations whether or not
25 further relief is or could be claimed. An action or proceeding is
26 not open to objection on the ground that a declaratory judgment or
27 decree is prayed for.

28 (b) The declaration may be either affirmative or negative in
29 form and effect, and the declaration has the force and effect of a
30 final judgment or decree.

31 (c) The enumerations in Sections 37.004 and 37.005 do not
32 limit or restrict the exercise of the general powers conferred in
33 this section in any proceeding in which declaratory relief is
34 sought and a judgment or decree will terminate the controversy or
35 remove an uncertainty. (V.A.C.S. Art. 2524-1, Secs. 1, 5.)

Revised Law

Sec. 37.005. DECLARATIONS RELATING TO TRUST OR ESTATE. A person interested as or through an executor, administrator, trustee, guardian, other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, lunatic, or insolvent, may have a declaration of rights or legal relations in respect to the trust or estate:

(1) to ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others;

(2) to direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(3) to determine any question arising in the administration of the trust or estate, including questions of construction of wills and other writings. (V.A.C.S. Art. 2524-1, Sec. 4.)

Source Law

Sec. 4. EXECUTOR, ETC. Any person interested as or through an executor, administrator, trustee, guardian, or other fiduciary, creditor, devisee, legatee, heir, next of kin, or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, lunatic, or insolvent, may have a declaration of rights or legal relations in respect thereto:

(a) To ascertain any class of creditors, devisees, legatees, heirs, next of kin, or others; or

(b) To direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(c) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

Revised Law

Sec. 37.006. PARTIES. (a) When declaratory relief is sought, all persons who have or claim any interest that would be affected by the declaration must be made parties. A declaration does not prejudice the rights of a person not a party to the

1 proceeding.

2 (b) In any proceeding that involves the validity of a
3 municipal ordinance or franchise, the municipality must be made a
4 party and is entitled to be heard, and if the statute, ordinance,
5 or franchise is alleged to be unconstitutional, the attorney
6 general of the state must also be served with a copy of the
7 proceeding and is entitled to be heard. (V.A.C.S. Art. 2524-1,
8 Sec. 11.)

9 Source Law

10 Sec. 11. PARTIES. When declaratory relief is
11 sought, all persons shall be made parties who have or
12 claim any interest which would be affected by the
13 declaration, and no declaration shall prejudice the
14 rights of persons not parties to the proceeding. In
15 any proceeding which involves the validity of a
16 municipal ordinance or franchise, such municipality
17 shall be made a party, and shall be entitled to be
18 heard, and if the Statute, ordinance, or franchise is
19 alleged to be unconstitutional, the Attorney General of
20 the State shall also be served with a copy of the
21 proceeding and be entitled to be heard.

22 Revised Law

23 Sec. 37.007. JURY TRIAL. If a proceeding under this chapter
24 involves the determination of an issue of fact, the issue may be
25 tried and determined in the same manner as issues of fact are tried
26 and determined in other civil actions in the court in which the
27 proceeding is pending. (V.A.C.S. Art. 2524-1, Sec. 9.)

28 Source Law

29 Sec. 9. JURY TRIAL. When a proceeding under
30 this Act involves the determination of an issue of
31 fact, such issue may be tried and determined in the
32 same manner as issues of fact are tried and determined
33 in other civil actions in the Court in which the
34 proceeding is pending.

35 Revised Law

36 Sec. 37.008. COURT REFUSAL TO RENDER. The court may refuse
37 to render or enter a declaratory judgment or decree if the judgment

1 or decree would not terminate the uncertainty or controversy giving
2 rise to the proceeding. (V.A.C.S. Art. 2524-1, Sec. 6.)

3 Source Law

4 Sec. 6. DISCRETIONARY. The Court may refuse to
5 render or enter a declaratory judgment or decree where
6 such judgment or decree, if rendered or entered, would
7 not terminate the uncertainty or controversy giving
8 rise to the proceeding.

9 Revised Law

10 Sec. 37.009. COSTS. In any proceeding under this chapter,
11 the court may award costs and reasonable and necessary attorney's
12 fees as are equitable and just. (V.A.C.S. Art. 2524-1, Sec. 10.)

13 Source Law

14 Sec. 10. COSTS. In any proceeding under this
15 Act the Court may make such award of costs and
16 reasonable and necessary attorney's fees as may seem
17 equitable and just.

18 Revised Law

19 Sec. 37.010. REVIEW. All orders, judgments, and decrees
20 under this chapter may be reviewed as other orders, judgments, and
21 decrees. (V.A.C.S. Art. 2524-1, Sec. 7.)

22 Source Law

23 Sec. 7. REVIEW. All orders, judgments, and
24 decrees under this Act may be reviewed as other orders,
25 judgments, and decrees.

26 Revised Law

27 Sec. 37.011. SUPPLEMENTAL RELIEF. Further relief based on a
28 declaratory judgment or decree may be granted whenever necessary or
29 proper. The application must be by petition to a court having
30 jurisdiction to grant the relief. If the application is deemed
31 sufficient, the court shall, on reasonable notice, require any
32 adverse party whose rights have been adjudicated by the declaratory

1 judgment or decree, to show cause why further relief should not be
2 granted forthwith. (V.A.C.S. Art. 2524-1, Sec. 8.)

3 Source Law

4 Sec. 8. SUPPLEMENTAL RELIEF. Further relief
5 based on a declaratory judgment or decree may be
6 granted whenever necessary or proper. The application
7 therefor shall be by petition to a Court having
8 jurisdiction to grant the relief. If the application
9 be deemed sufficient, the Court shall, on reasonable
10 notice, require any adverse party whose rights have
11 been adjudicated by the declaratory judgment or decree,
12 to show cause why further relief should not be granted
13 forthwith.

14 Revisor's Note
15 (End of Chapter)

16 The revised law omits Section 14 (severability
17 clause) as unnecessary. Severability of statutes is
18 provided by V.A.C.S. Article 11a and the Code
19 Construction Act (V.A.C.S. Article 5429b-2).

1 CHAPTER 38. ATTORNEY'S FEES

2 Sec. 38.001. RECOVERY OF ATTORNEY'S FEES

3 Sec. 38.002. PROCEDURE FOR RECOVERY OF ATTORNEY'S FEES

4 Sec. 38.003. PRESUMPTION

5 Sec. 38.004. JUDICIAL NOTICE

6 Sec. 38.005. LIBERAL CONSTRUCTION

7 Sec. 38.006. EXCEPTIONS

8 CHAPTER 38. ATTORNEY'S FEES

9 Revised Law

10 Sec. 38.001. RECOVERY OF ATTORNEY'S FEES. A person may
11 recover reasonable attorney's fees from an individual or
12 corporation, in addition to the amount of a valid claim and costs,
13 if the claim is for:

14 (1) rendered services;

15 (2) performed labor;

16 (3) furnished material;

17 (4) freight or express overcharges;

18 (5) lost or damaged freight or express;

19 (6) killed or injured stock;

20 (7) a sworn account; or

21 (8) an oral or written contract. (V.A.C.S. Art. 2226

22 (part).)

23 Source Law

24 Art. 2226. Any person, corporation, partnership,
25 or other legal entity having a valid claim against a
26 person or corporation for services rendered, labor
27 done, material furnished, overcharges on freight or
28 express, lost or damaged freight or express, or stock
29 killed or injured, or suits founded upon a sworn
30 account or accounts, or suits founded on oral or
31 written contracts . . . may . . . also recover, in
32 addition to his claim and costs, a reasonable amount as
33 attorney's fees.

1 Revisor's Note

2 (1) The revised law omits the source law
3 reference to a "corporation, partnership, or other
4 legal entity" in the description of a claimant because
5 the Code Construction Act (V.A.C.S. Article 5429b-2)
6 includes those entities in the definition of "person."

7 (2) The revised law does not use "person" in the
8 reference to an opposing party because the Code
9 Construction Act definition of "person" is broader than
10 the source law meaning of the term.

11 Revised Law

12 Sec. 38.002. PROCEDURE FOR RECOVERY OF ATTORNEY'S FEES. To
13 recover attorney's fees under this chapter:

14 (1) the claimant must be represented by an attorney;

15 (2) the claimant must present the claim to the
16 opposing party or to a duly authorized agent of the opposing party;
17 and

18 (3) payment for the just amount owed must not have
19 been tendered before the expiration of the 30th day after the claim
20 is presented. (V.A.C.S. Art. 2226 (part).)

21 Source Law

22 . . . may present the same to such persons or
23 corporation or to any duly authorized agent thereof;
24 and if, at the expiration of 30 days thereafter,
25 payment for the just amount owing has not been
26 tendered, the claimant may, if represented by an
27 attorney, also recover . . . a reasonable amount as
28 attorney's fees.

29 Revised Law

30 Sec. 38.003. PRESUMPTION. It is presumed that the usual and
31 customary attorney's fees for a claim of the type described in
32 Section 38.001 are reasonable. The presumption may be rebutted.
33 (V.A.C.S. Art. 2226 (part).)

1 Source Law

2 The usual and customary fees in such cases shall be
3 presumed to be reasonable, but such presumption may be
4 rebutted by competent evidence.

5 Revisor's Note

6 The revised law omits the source law material
7 relating to the use of competent evidence to rebut a
8 presumption as unnecessary since all presumptions may
9 be rebutted in that way.

10 Revised Law

11 Sec. 38.004. JUDICIAL NOTICE. The court may take judicial
12 notice of the usual and customary attorney's fees and of the
13 contents of the case file without receiving further evidence in:

14 (1) a proceeding before the court; or

15 (2) a jury case in which the amount of attorney's fees
16 is submitted to the court by agreement. (V.A.C.S. Art. 2226
17 (part).)

18 Source Law

19 In a proceeding before the court, or in a jury case
20 where the issue of amount of attorney's fees is
21 submitted to the court for determination by agreement,
22 the court may in its discretion take judicial knowledge
23 of the usual and customary fees in such matters and of
24 the contents of the case file without receiving further
25 evidence.

26 Revised Law

27 Sec. 38.005. LIBERAL CONSTRUCTION. This chapter shall be
28 liberally construed to promote its underlying purposes. (V.A.C.S.
29 Art. 2226 (part).)

30 Source Law

31 This Act shall be liberally construed to promote its
32 underlying purposes.

1 Revisor's Note

2 The revised law retains the source law material
3 regarding liberal construction because this article is
4 an exception to the general rule that a statute that
5 authorizes the recovery of attorney's fees is penal in
6 character and must be strictly construed. See, e.g.,
7 First Preferred Ins. Co. v. Bell, 587 S.W.2d 798 (Tex.
8 Civ. App.--Amarillo 1979, writ ref'd n.r.e.).

9 Revised Law

10 Sec. 38.006. EXCEPTIONS. This chapter does not apply to a
11 contract issued by an insurer that is subject to the provisions of:

- 12 (1) Article 3.62, Insurance Code;
13 (2) Section 1, Chapter 387, Acts of the 55th
14 Legislature, Regular Session, 1957 (Article 3.62-1, Vernon's Texas
15 Insurance Code);
16 (3) Chapter 9, Insurance Code;
17 (4) Article 21.21, Insurance Code; or
18 (5) the Unfair Claim Settlement Practices Act (Article
19 21.21-2, Insurance Code). (V.A.C.S. Art. 2226 (part).)

20 Source Law

21 The provisions hereof shall not apply to contracts of
22 insurers issued by insurers subject to the provisions
23 of the Unfair Claim Settlement Practices Act (Article
24 21.21-2, Insurance Code), nor shall it apply to
25 contracts of any insurer subject to the provisions of
26 Article 3.62, Insurance Code, or to Chapter 387, Acts
27 of the 55th Legislature, Regular Session, 1957, as
28 amended (Article 3.62-1, Vernon's Texas Insurance
29 Code), or to Article 21.21, Insurance Code, as amended,
30 or to Chapter 9, Insurance Code, as amended, and each
31 such article or chapter shall be and remain in full
32 force and effect.

33 Revisor's Note

34 The language in V.A.C.S. Article 2226 relating to
35 the force and effect of the Insurance Code provisions

1 is omitted as unnecessary.

2 [Chapters 39-50 reserved for expansion]

SUBTITLE D. APPEALS

CHAPTER 51. APPEALS

SUBCHAPTER A. APPEALS FROM JUSTICE COURT

Sec. 51.001. APPEAL FROM JUSTICE COURT TO COUNTY

OR DISTRICT COURT

Sec. 51.002. CERTIORARI FROM JUSTICE COURT

[Sections 51.003-51.010 reserved for expansion]

SUBCHAPTER B. APPEALS FROM COUNTY OR DISTRICT COURT

Sec. 51.011. APPEAL FROM COUNTY OR DISTRICT COURT AFTER

CERTIORARI FROM JUSTICE COURT

Sec. 51.012. APPEAL OR WRIT OF ERROR TO COURT OF APPEALS

Sec. 51.013. TIME FOR TAKING WRIT OF ERROR TO COURT OF

APPEALS

Sec. 51.014. APPEAL FROM INTERLOCUTORY ORDER

SUBTITLE D. APPEALS

CHAPTER 51. APPEALS

SUBCHAPTER A. APPEALS FROM JUSTICE COURT

Revised Law

Sec. 51.001. APPEAL FROM JUSTICE COURT TO COUNTY OR DISTRICT COURT. (a) In a case tried in justice court in which the judgment or amount in controversy exceeds \$20, exclusive of costs, or in which the appeal is expressly provided by law, a party to a final judgment may appeal to the county court.

(b) In a county in which the civil jurisdiction of the county court has been transferred to the district court, a party to a final judgment in a case covered by this section may appeal to the district court. (V.A.C.S. Arts. 2454, 2455 (part), 2455-1 (part).)

Source Law

Art. 2454. A party to a final judgment in any justice court may appeal therefrom to the county court

1 where such judgment, or the amount in controversy,
2 shall exceed twenty dollars exclusive of costs, and in
3 such other cases as may be expressly provided by law.

4 Art. 2455. In all counties in which the civil
5 jurisdiction of the county courts has been transferred
6 to the district courts, appeals . . . may be prosecuted
7 to remove a case tried before a justice of the peace to
8 the district court, in the same manner and under the
9 same circumstances under which appeals . . . are
10 allowed by general law to remove causes to the county
11 court.

12 Art. 2455-1. In all counties in which the civil
13 and criminal jurisdiction, or either, of county courts
14 has been transferred to the district courts,
15 appeals . . . may be prosecuted to remove a case tried
16 before a justice of the peace to the district court in
17 the same manner and under the same circumstances under
18 which appeals . . . are allowed by general law to
19 remove causes to the county court.

20 Revisor's Note

21 The revised law omits language in V.A.C.S.
22 Article 2455-1 relating to the transfer of the criminal
23 jurisdiction of a county court to a district court.
24 That situation is provided for by Article 4.09, Code of
25 Criminal Procedure, 1965.

26 Revised Law

27 Sec. 51.002. CERTIORARI FROM JUSTICE COURT. (a) After
28 final judgment in a case tried in justice court in which the
29 judgment or amount in controversy exceeds \$20, exclusive of costs,
30 a person may remove the case from the justice court to the county
31 court by writ of certiorari.

32 (b) In a county in which the civil jurisdiction of the
33 county court has been transferred from the county court to the
34 district court, a person may remove a case covered by this section
35 from the justice court to the district court by writ of certiorari.

36 (c) If a writ of certiorari to remove a case is served on a
37 justice of the peace, the justice shall immediately make a
38 certified copy of the entries made on his docket and of the bill of
39 costs, as provided in cases of appeals, and shall immediately send
40 them and the original papers in the case to the clerk of the county

1 or district court, as appropriate.

2 (d) This section does not apply to a case of forcible entry
3 and detainer. (V.A.C.S. Arts. 941, 2455 (part), 2455-1 (part),
4 2460.)

5 Source Law

6 Art. 941. After final judgment in a justice
7 court in any cause except in cases of forcible entry
8 and detainer, the cause may be removed to the county
9 court by writ of certiorari (or if the civil
10 jurisdiction has been transferred from the county to
11 the district court, then to the district court,) in the
12 manner hereinafter directed.

13 Art. 2455. In all counties in which the civil
14 jurisdiction of the county courts has been transferred
15 to the district courts, . . . and writs of certiorari
16 may be prosecuted to remove a case tried before a
17 justice of the peace to the district court, in the same
18 manner and under the same circumstances under
19 which . . . and writs of certiorari are allowed by
20 general law to remove causes to the county court.

21 Art. 2455-1. In all counties in which the civil
22 and criminal jurisdiction, or either, of county courts
23 has been transferred to the district courts, . . . and
24 writs of certiorari may be prosecuted to remove a case
25 tried before a justice of the peace to the district
26 court in the same manner and under the same
27 circumstances under which . . . and writs of certiorari
28 are allowed by general law to remove causes to the
29 county court.

30 Art. 2460. A cause tried before a justice,
31 wherein the amount in controversy or the judgment
32 exceeds twenty dollars, exclusive of costs, may be
33 removed from such justice court to the county court by
34 certiorari under the rules prescribed in the title and
35 chapter relating thereto. Whenever a writ of
36 certiorari to remove any cause from the justice court
37 to the county court shall be served on any justice of
38 the peace, he shall immediately make out a certified
39 copy of the entries made on his docket, and of the bill
40 of costs, as provided in case of appeals, and send
41 same, together with the original papers in the cause,
42 to the clerk of the county court in the manner and
43 within the time prescribed in the preceding article.

44 Revisor's Note

45 The revised law omits language in V.A.C.S.
46 Article 2455-1 relating to the transfer of the criminal
47 jurisdiction of a county court to a district court.
48 That situation is provided for by Article 4.09, Code of
49 Criminal Procedure, 1965.

1 [Sections 51.003-51.010 reserved for expansion]

2 SUBCHAPTER B. APPEALS FROM COUNTY OR DISTRICT COURT

3 Revised Law

4 Sec. 51.011. APPEAL FROM COUNTY OR DISTRICT COURT AFTER
5 CERTIORARI FROM JUSTICE COURT. If a county or district court hears
6 a case on certiorari from a justice court, a person may take an
7 appeal or writ of error from the judgment of the county or district
8 court. The appeal or writ of error is subject to the rules that
9 apply in a case appealed from a justice court. (V.A.C.S. Art.
10 960.)

11 Source Law

12 Art. 960. Appeals and writs of error from the
13 judgments of the county or district court, in cases of
14 certiorari from justice courts, shall be allowed,
15 subject to such rules and limitations as apply in cases
16 appealed from justices' courts.

17 Revised Law

18 Sec. 51.012. APPEAL OR WRIT OF ERROR TO COURT OF APPEALS.
19 (a) In a civil case in which the judgment or amount in controversy
20 exceeds \$100, exclusive of interest and costs, a person may take an
21 appeal or writ of error to the court of appeals from a final
22 judgment of the district or county court.
23 (b) A party who participates in person or by the party's
24 attorney in the actual trial of a case in the trial court is not
25 entitled to review by the court of appeals by writ of error.
26 (V.A.C.S. Arts. 2249, 2249a.)

27 Source Law

28 Art. 2249. An appeal or Writ of Error may be
29 taken to the Court of Appeals from every final judgment
30 of the district court in civil cases, and from every
31 final judgment in the county court in civil cases of
32 which the county court has original jurisdiction, and
33 from every final judgment of the county court in civil

1 cases in which the court has appellate jurisdiction,
2 where the judgment or amount in controversy exceeds one
3 hundred dollars exclusive of interest and costs.

4 Art. 2249a

5 Sec. 1. No party who participates either in
6 person or by his attorney in the actual trial of the
7 case in the trial court shall be entitled to review by
8 the Court of Appeals through means of writ of error.

9 Sec. 2. All laws and parts of laws, insofar as
10 they conflict with this Act, are repealed. Writ of
11 error shall continue to be available under the rules
12 and regulations of the law to a party who does not
13 participate in the trial of the case in the trial
14 court.

15 Revisor's Note

16 The revised law omits V.A.C.S. Article 2249a,
17 Section 2. The repealer has already been executed and
18 the second sentence merely states the converse of
19 Subsection (b) of the revised law.

20 Revised Law

21 Sec. 51.013. TIME FOR TAKING WRIT OF ERROR TO COURT OF
22 APPEALS. In a case in which a writ of error to the court of
23 appeals is allowed, the writ of error may be taken at any time
24 within six months after the date the final judgment is rendered.
25 (V.A.C.S. Art. 2255.)

26 Source Law

27 Art. 2255. The writ of error, in cases where the
28 same is allowed, may be sued out at any time within six
29 months after the final judgment is rendered.

30 Revised Law

31 Sec. 51.014. APPEAL FROM INTERLOCUTORY ORDER. A person may
32 appeal from an interlocutory order of a district court, county
33 court at law, or county court that:

34 (1) appoints a receiver or trustee;

35 (2) overrules a motion to vacate an order that
36 appoints a receiver or trustee;

37 (3) certifies or refuses to certify a class in a suit

1 brought under Rule 42 of the Texas Rules of Civil Procedure; or
2 (4) grants or refuses, or grants or overrules a motion
3 to dissolve, a temporary injunction as provided by Chapter 65.
4 (V.A.C.S. Arts. 2250, 2251, 4662.)

5 Source Law

6 Art. 2250. An appeal shall lie from an
7 interlocutory order of the District, County Court at
8 Law, or County Court:

9 1. Appointing a receiver or trustee in any
10 cause;

11 2. Overruling a motion to vacate an order
12 appointing a receiver or trustee in any case; or

13 3. Certifying or refusing to certify a class in
14 a suit brought pursuant to Rule 42 of the Texas Rules
15 of Civil Procedure.

16 Art. 2251. Appeals from orders of the district
17 and county courts granting or dissolving temporary
18 injunctions shall lie in the cases and in the manner
19 provided in the title "Injunctions."

20 Art. 4662. Any party to a civil suit wherein a
21 temporary injunction may be granted or refused or when
22 motion to dissolve has been granted or overruled, under
23 any provision of this title, in term time or in
24 vacation, may appeal from such order or judgment to the
25 Court of Appeals.

26 Revisor's Note

27 The revised law omits the reference to "term time
28 or . . . vacation" because it is unnecessary. Section
29 65.021 authorizes the judge to conduct the proceedings
30 in term or vacation.

31 [Chapters 52-60 reserved for expansion]

1 TITLE 3. EXTRAORDINARY REMEDIES

2 CHAPTER 61. ATTACHMENT

3 SUBCHAPTER A. AVAILABILITY OF REMEDY

4 Sec. 61.001. GENERAL GROUNDS

5 Sec. 61.002. SPECIFIC GROUNDS

6 Sec. 61.003. PENDING SUIT REQUIRED

7 Sec. 61.004. AVAILABLE FOR DEBT NOT DUE

8 Sec. 61.005. CERTAIN TORTS AND UNLIQUIDATED DEMANDS

9 [Sections 61.006-61.020 reserved for expansion]

10 SUBCHAPTER B. ISSUANCE

11 Sec. 61.021. WHO MAY ISSUE

12 Sec. 61.022. AFFIDAVIT

13 Sec. 61.023. BOND

14 [Sections 61.024-61.040 reserved for expansion]

15 SUBCHAPTER C. LEVY

16 Sec. 61.041. SUBJECT PROPERTY

17 Sec. 61.042. ATTACHMENT OF PERSONALTY

18 Sec. 61.043. ATTACHMENT OF REALTY

19 Sec. 61.044. CLAIM ON ATTACHED PERSONALTY BY THIRD PARTY

20 [Sections 61.045-61.060 reserved for expansion]

21 SUBCHAPTER D. LIEN

22 Sec. 61.061. ATTACHMENT LIEN

23 Sec. 61.062. JUDGMENT AND FORECLOSURE

24 Sec. 61.063. JUDGMENT ON REPLEVIED PROPERTY

25 TITLE 3. EXTRAORDINARY REMEDIES

26 CHAPTER 61. ATTACHMENT

27 SUBCHAPTER A. AVAILABILITY OF REMEDY

28 Revised Law

29 Sec. 61.001. GENERAL GROUNDS. A writ of original attachment
30 is available to a plaintiff in a suit if:

31 (1) the defendant is justly indebted to the plaintiff;

1 (2) the attachment is not sought for the purpose of
2 injuring or harassing the defendant;
3 (3) the plaintiff will probably lose his debt unless
4 the writ of attachment is issued; and
5 (4) specific grounds for the writ exist under Section
6 61.002. (V.A.C.S. Arts. 275 (part), 276.)

7 Source Law

8 [Art. 275]

9 [The judges . . . may issue writs . . . upon the
10 plaintiff . . . making an affidavit stating:]

11 (1) That the defendant is justly indebted to the
12 plaintiff

13 Art. 276. The affidavit shall further state that
14 the attachment is not sued out for the purpose of
15 injuring or harassing the defendant; and that the
16 plaintiff will probably lose his debt unless such
17 attachment is issued.

18 Revisor's Note

19 The source law for this section and Section
20 61.002, V.A.C.S. Articles 275 and 276, stated the
21 substantive grounds for issuance of the writ as mere
22 requirements for the plaintiff's affidavit. As the
23 procedure was originally designed, the source law's
24 emphasis on the affidavit was proper because the writ
25 was issued on the basis of the affidavit alone, without
26 court hearing and without findings as to the basis for
27 the allegations. Because of the questionable due
28 process provided by the original procedure, Rule 592 of
29 the Texas Rules of Civil Procedure now requires a
30 hearing prior to issuance of the writ and specific
31 court findings of fact to support the statutory
32 grounds. On that basis, the revised law emphasizes
33 V.A.C.S. Articles 275 and 276 as grounds for the remedy
34 rather than requirements of the plaintiff's affidavit.
35 The affidavit requirements are preserved by Section

61.022.

Revised Law

Sec. 61.002. SPECIFIC GROUNDS. Attachment is available if:

(1) the defendant is not a resident of this state or is a foreign corporation or is acting as such;

(2) the defendant is about to move from this state permanently and has refused to pay or secure the debt due the plaintiff;

(3) the defendant is in hiding so that ordinary process of law cannot be served on him;

(4) the defendant has hidden or is about to hide his property for the purpose of defrauding his creditors;

(5) the defendant is about to remove his property from this state without leaving an amount sufficient to pay his debts;

(6) the defendant is about to remove all or part of his property from the county in which the suit is brought, with the intent to defraud his creditors;

(7) the defendant has disposed of or is about to dispose of all or part of his property, with the intent to defraud his creditors;

(8) the defendant is about to convert all or part of his property into money, for the purpose of placing it beyond the reach of his creditors; or

(9) the defendant owes the plaintiff for property obtained by the defendant under false pretenses. (V.A.C.S. Art. 275 (part).)

Source Law

[The judges . . . may issue writs . . . upon the plaintiff . . . making an affidavit stating:]

(2) That the defendant is not a resident of the State, or is a foreign corporation, or is acting as such; or

(3) That he is about to remove permanently out of the State, and has refused to pay or secure the debt

1 due the plaintiff; or

2 (4) That he secretes himself so that the
3 ordinary process of law can not be served on him; or

4 (5) That he has secreted his property for the
5 purpose of defrauding his creditors; or

6 (6) That he is about to secrete his property for
7 the purpose of defrauding his creditors; or

8 (7) That he is about to remove his property out
9 of the State, without leaving sufficient remaining for
10 the payment of his debts; or

11 (8) That he is about to remove his property, or
12 a part thereof, out of the county where the suit is
13 brought, with intent to defraud his creditors; or

14 (9) That he has disposed of his property, in
15 whole or in part, with intent to defraud his creditors;
16 or

17 (10) That he is about to dispose of his property
18 with intent to defraud his creditors; or

19 (11) That he is about to convert his property,
20 or a part thereof, into money, for the purpose of
21 placing it beyond the reach of his creditors; or

22 (12) That the debt is due for property obtained
23 under false pretenses.

24 Revised Law

25 Sec. 61.003. PENDING SUIT REQUIRED. A writ of attachment
26 may be issued in a proper case at the initiation of a suit or at
27 any time during the progress of a suit, but may not be issued
28 before a suit has been instituted. (V.A.C.S. Art. 277.)

29 Source Law

30 Art. 277. No such attachment shall issue until
31 the suit has been duly instituted; but it may be issued
32 in a proper cause either at the commencement of the
33 suit or at any time during its progress.

34 Revised Law

35 Sec. 61.004. AVAILABLE FOR DEBT NOT DUE. A writ of
36 attachment may be issued even though the plaintiff's debt or demand
37 is not due. The proceedings relating to the writ shall be as in
38 other cases, except that final judgment may not be rendered against
39 the defendant until the debt or demand becomes due. (V.A.C.S. Art.
40 278.)

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Art. 278. The writ of attachment above provided for may issue, although the plaintiff's debt or demand be not due, and the same proceedings shall be had thereon as in other cases, except that no final judgment shall be rendered against the defendant until such debt or demand shall become due.

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Sec. 61.005. CERTAIN TORTS AND UNLIQUIDATED DEMANDS.

Nothing in this chapter prevents issuance of a writ of attachment in a suit founded in tort or on an unliquidated demand against an individual, partnership, association, or corporation on whom personal service cannot be obtained in this state. (V.A.C.S. Art. 281 (part).)

5

Art. 281. Nothing in this title shall prevent the issuance of attachments in suits founded in tort or upon unliquidated demands against persons, co-partnerships, associations or corporations upon whom personal service cannot be obtained within this State.

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As a general rule, attachment is not available for the satisfaction of tort claims or for an unliquidated debt. Although its terms simply negate the effect of this chapter on that rule as applied to nonresidents, V.A.C.S. Article 281 has been interpreted as authorizing attachment of the property of nonresidents in exception to the general rule. See Finn v. Alexander, 165 S.W.2d 500 (Tex. Civ. App.--El Paso 1941, no writ) and Whittington v. Oliver, 38 S.W.2d 896 (Tex. Civ. App.--Eastland 1931, writ diss'd).

[Sections 61.006-61.020 reserved for expansion]

1 SUBCHAPTER B. ISSUANCE

2 Revised Law

3 Sec. 61.021. WHO MAY ISSUE. The judge or clerk of a
4 district or county court or a justice of the peace may issue a writ
5 of original attachment returnable to his court. (V.A.C.S. Art. 275
6 (part).)

7 Source Law

8 Art. 275. The judges and clerks of the district
9 and county courts and justices of the peace may issue
10 writs of original attachment, returnable to their
11 respective courts

12 Revisor's Note

13 The source law for this provision and the
14 parallel provisions for sequestration (V.A.C.S. Article
15 6840, Section 1(a)) and garnishment (V.A.C.S. Article
16 4076) present a perplexing problem as to the meaning of
17 "issue." Unfortunately, "issue" has two
18 connotations--the jurisdiction to grant the plaintiff's
19 relief and the ministerial duty to actually issue the
20 writ.

21 At first look, the articles appear to carry the
22 first connotation and constitute a grant of
23 jurisdiction of the proceedings. That is particularly
24 true of the sequestration article, which by amendment
25 now provides for only judges to "issue" the writ.
26 However, the attachment statute provides for the judge,
27 clerk, or justice to issue the writ, and the
28 garnishment statute mentions only the clerk.

29 As originally enacted, the statutes in question
30 were probably intended both to confer jurisdiction and
31 to authorize performance of the ministerial duty.
32 Before the 1977 amendments to the Texas Rules of Civil

1 Procedure governing prejudgment attachment,
2 sequestration, and garnishment, the clerks in fact did
3 have jurisdiction of the proceedings and issued the
4 writs without judicial intervention. The rules (Rules
5 592, 696, and 658) now require the prejudgment writs to
6 be issued only on court order, an attempt to conform
7 the procedures to the constitutional requirements of
8 cases such as Fuentes v. Shevin, 407 U.S. 67 (1972),
9 Sniadach v. Family Finance Corp., 395 U.S. 337 (1969),
10 and Mitchell v. W. T. Grant Co., 416 U.S. 600 (1974).

11 In considering the new rules and statutes, at
12 least one court has indicated that the garnishment
13 statute reference to "issue" relates only to the
14 ministerial duty of the clerk. Southwest Metal
15 Fabricators Inc. v. Internacional De Aceros, S.A., 503
16 F.Supp. 76 (1980). That reading, if applied to the
17 sequestration statute, might prevent the clerk from
18 performing this typical ministerial duty.

19 The statutes in question are unnecessary as
20 grants of jurisdiction to the judges because the
21 jurisdiction is provided by other statutes. See
22 V.A.C.S. Article 1914 for district courts, Article
23 1957 for county courts, and Article 2386 for justice
24 courts. Since a clerk may no longer issue a writ of
25 attachment without judicial order, Article 275 may no
26 longer be read as a grant of jurisdiction to the clerk.
27 V.A.C.S. Article 4076 (garnishment) may, however, still
28 be read as a jurisdictional grant to the clerk to issue
29 writs of garnishment in postjudgment proceedings, since
30 those proceedings have been held constitutional and the
31 rules do not require a court order for issuance in
32 those cases. See Ranches and Farm Livestock Auction
33 Co. v. First State Bank, 531 S.W.2d 167 (Tex. Civ.

1 App.--Amarillo 1975, writ ref'd, n.r.e.) and Mullins v.
2 Main Bank and Trust, 592 S.W.2d 26 (Tex. Civ.
3 App.--Beaumont 1979, no writ).

4 Given these confused circumstances, it is
5 impossible for the revisor, within the scope of this
6 revision, to make the provisions of the three statutes
7 parallel. The revised law closely tracks the source
8 law and does not attempt to solve the problem presented
9 by "issue." The reader should be alert to the fact
10 that it may not mean exactly the same thing in all
11 three statutes.

12 Revised Law

13 Sec. 61.022. AFFIDAVIT. (a) To apply for a writ of
14 attachment, a plaintiff or his agent or attorney must file with the
15 court an affidavit that states:

16 (1) general grounds for issuance under Sections
17 61.001(1), (2), and (3);

18 (2) the amount of the demand; and

19 (3) specific grounds for issuance under Section
20 61.002.

21 (b) The affidavit shall be filed with the papers of the
22 case. (V.A.C.S. Arts. 275 (part), 279 (part).)

23 Source Law

24 [Art. 275]
25 [The judges . . . may issue writs . . .] upon the
26 plaintiff, his agent or attorney, making an affidavit
27 stating:

28 [(1) that the defendant is justly indebted to
29 the plaintiff,] and the amount of the demand;
30 and

31 [Art. 279]
32 [Such bond shall . . .], together with the affidavit,
33 [be filed with the papers of the cause.]

1 Revised Law

2 Sec. 61.023. BOND. (a) Before a writ of attachment may be
3 issued, the plaintiff must execute a bond that:

4 (1) has two or more good and sufficient sureties;

5 (2) is payable to the defendant;

6 (3) is in an amount fixed by the judge or justice
7 issuing the writ; and

8 (4) is conditioned on the plaintiff prosecuting his
9 suit to effect and paying all damages and costs adjudged against
10 him for wrongful attachment.

11 (b) The plaintiff shall deliver the bond to the officer
12 issuing the writ for that officer's approval. The bond shall be
13 filed with the papers of the case. (V.A.C.S. Arts. 279 (part), 281
14 (part).)

15 Source Law

16 Art. 279. Before the issuance of any writ of
17 attachment, the plaintiff must execute a bond, with two
18 or more good and sufficient sureties, payable to the
19 defendant in an amount to be fixed by the judge or by
20 the justice of the peace issuing the attachment,
21 conditioned that the plaintiff will prosecute his suit
22 to effect, and will pay all such damages and costs as
23 shall be adjudged against him for wrongfully suing out
24 such attachment. Such bond shall be delivered to and
25 approved by the officer issuing the writ, and
26 shall . . . be filed with the papers of the cause.

27 [Art. 281]

28 Where the demand is unliquidated, the amount of the
29 bond to be made by the plaintiff shall be fixed by the
30 judge or clerk of the court or by the justice of the
31 peace issuing the attachment. The bond shall be made
32 in the sum so fixed and upon the approval and filing of
33 same the attachment shall issue as in other cases.

34 Revisor's Note

35 The revised law omits the reference to the clerk
36 fixing the amount of bond under V.A.C.S. Article 281
37 because Rule 592 of the Texas Rules of Civil Procedure
38 requires the judge to fix the amount.

1 Revisor's Note
2 (End of Subchapter)

3 The revised law omits V.A.C.S. Article 282 as
4 repealed by the Texas Rules of Civil Procedure. The
5 writ may not be issued immediately following execution
6 of the bond and affidavit because Rule 592 now requires
7 a judicial hearing prior to issuance. Rule 593
8 specifically repealed the part of Article 282 relating
9 to the executing officer. The omitted article reads:

10 Art. 282. Upon the execution of such
11 affidavit and bond, it shall be the duty of
12 the judge or clerk, or justice of the
13 peace, as the case may be, immediately to
14 issue a writ of attachment, directed to the
15 sheriff or any constable of any county
16 where property of the defendant is supposed
17 to be, commanding him to attach so much of
18 the property of the defendant as shall be
19 sufficient to satisfy the demand of the
20 plaintiff and the probable costs of the
21 suit.

22 [Sections 61.024-61.040 reserved for expansion]

23 SUBCHAPTER C. LEVY

24 Revised Law

25 Sec. 61.041. SUBJECT PROPERTY. A writ of attachment may be
26 levied only on property that by law is subject to levy under a writ
27 of execution. (V.A.C.S. Art. 288.)

28 Source Law

29 Art. 288. The writ of attachment may be levied
30 upon such property, and none other, as is, or may be,
31 by law subject to levy under the writ of execution.

32 Revised Law

33 Sec. 61.042. ATTACHMENT OF PERSONALTY. The officer
34 attaching personal property shall retain possession until final
35 judgment unless the property is:

36 (1) replevied;

1 (2) sold as provided by law; or
2 (3) claimed by a third party who posts bond and tries
3 his right to the property. (V.A.C.S. Art. 290.)

4 Source Law

5 Art. 290. When personal property is attached,
6 the same shall remain in the hands of the officer
7 attaching until final judgment, unless a claim be made
8 thereto and bond be given to try the right to the same,
9 or unless the same be replevied or be sold as provided
10 by law.

11 Revised Law

12 Sec. 61.043. ATTACHMENT OF REALTY. (a) To attach real
13 property, the officer levying the writ shall immediately file a
14 copy of the writ and the applicable part of the return with the
15 county clerk of each county in which the property is located.

16 (b) If the writ of attachment is quashed or vacated, the
17 court that issued the writ shall send a certified copy of the order
18 to the county clerk of each county in which the property is
19 located. (V.A.C.S. Art. 6662.)

20 Source Law

21 Art. 6662. (a) To attach real property the
22 officer levying the writ shall immediately file a copy
23 of the writ and the applicable part of the return with
24 the county clerk of each county in which the property
25 is located.

26 (b) If the writ of attachment is quashed or
27 vacated, the court that issued the writ shall send a
28 certified copy of the order to the county clerk of each
29 county in which the property is located.

30 Revised Law

31 Sec. 61.044. CLAIM ON ATTACHED PERSONALTY BY THIRD PARTY. A
32 person other than the defendant may claim attached personal
33 property by making an affidavit and giving bond in the manner
34 provided by law for trial of right of property. (V.A.C.S. Art.
35 291.)

Source Law

Art. 291. Any person other than the defendant may claim the personal property so levied on, or any part thereof, upon making the affidavit and giving bond required by the provisions of the title relating to the trial of the right of property.

Revisor's Note
(End of Subchapter)

The revised law omits V.A.C.S. Article 287, relating to the liability of the officer levying the writ and to the plaintiff's indemnity bond to protect the officer. That article was impliedly repealed by V.A.C.S. Article 3799a, enacted by the 67th Legislature in 1981 and codified in this code as Sections 7.003, 34.021, and 34.022. The repealing law provides that an officer executing a court's writ is not generally liable and may not require an indemnity bond. The omitted article reads:

Art. 287. Whenever an officer shall levy an attachment, it shall be at his own risk. Such officer may, for his own indemnification, require the plaintiff in attachment to execute and deliver to him a bond of indemnity to secure him if it should afterward appear that the property levied upon by him does not belong to the defendant.

[Sections 61.045-61.060 reserved for expansion]

SUBCHAPTER D. LIEN

Revised Law

Sec. 61.061. ATTACHMENT LIEN. Unless quashed or vacated, an executed writ of attachment creates a lien from the date of levy on the real property attached, on the personal property held by the attaching officer, and on the proceeds of any attached personal property that may have been sold. (V.A.C.S. Art. 300.)

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Revised Law

Sec. 61.063. JUDGMENT ON REPLEVIED PROPERTY. A judgment against a defendant who has replevied attached personal property shall be against the defendant and his sureties on the replevy bond for the amount of the judgment plus interest and costs or for an amount equal to the value of the replevied property plus interest, according to the terms of the replevy bond. (V.A.C.S. Art. 302.)

Source Law

Art. 302. When personal property has been levied on, as hereinbefore provided, the judgment shall also be against the defendant and his sureties on his replevy bond for the amount of the judgment, interest and costs, or for the value of the property replevied and interest, according to the terms of such replevy bond.

1 CHAPTER 62. SEQUESTRATION

2 SUBCHAPTER A. AVAILABILITY OF REMEDY

3 Sec. 62.001. GROUNDS

4 Sec. 62.002. PENDING SUIT REQUIRED

5 Sec. 62.003. AVAILABLE FOR CLAIM NOT DUE

6 [Sections 62.004-62.020 reserved for expansion]

7 SUBCHAPTER B. ISSUANCE

8 Sec. 62.021. WHO MAY ISSUE

9 Sec. 62.022. APPLICATION

10 Sec. 62.023. REQUIRED STATEMENT OF RIGHTS

11 [Sections 62.024-62.040 reserved for expansion]

12 SUBCHAPTER C. DISSOLUTION AND REPLEVY

13 Sec. 62.041. MOTION FOR DISSOLUTION; STAY

14 Sec. 62.042. HEARING ON MOTION

15 Sec. 62.043. DISSOLUTION

16 Sec. 62.044. COMPULSORY COUNTERCLAIM FOR WRONGFUL

17 SEQUESTRATION

18 Sec. 62.045. WRONGFUL SEQUESTRATION OF CONSUMER GOODS

19 Sec. 62.046. LIABILITY FOR FRUIT OF REPLEVIED PROPERTY

20 [Sections 62.047-62.060 reserved for expansion]

21 SUBCHAPTER D. CARE AND MANAGEMENT OF SEQUESTERED PROPERTY

22 Sec. 62.061. OFFICER'S LIABILITY AND DUTY OF CARE

23 Sec. 62.062. COMPENSATION OF OFFICER

24 Sec. 62.063. INDEMNIFICATION OF OFFICER FOR MONEY SPENT

25 CHAPTER 62. SEQUESTRATION

26 SUBCHAPTER A. AVAILABILITY OF REMEDY

27 Revised Law

28 Sec. 62.001. GROUNDS. A writ of sequestration is available
29 to a plaintiff in a suit if:

30 (1) the suit is for title or possession of personal
31 property or fixtures or for foreclosure or enforcement of a

1 mortgage, lien, or security interest on personal property or
2 fixtures, and a reasonable conclusion may be drawn that there is
3 immediate danger that the defendant or the party in possession of
4 the property will conceal, dispose of, ill-treat, waste, or destroy
5 the property or remove it from the county during the suit;

6 (2) the suit is for title or possession of real
7 property or for foreclosure or enforcement of a mortgage or lien on
8 real property, and a reasonable conclusion may be drawn that there
9 is immediate danger that the defendant or the party in possession
10 of the property will use his possession to injure or ill-treat the
11 property or waste or convert to his own use the timber, rents,
12 fruits, or revenue of the property;

13 (3) the suit is for the title or possession of
14 property from which the plaintiff has been ejected by force or
15 violence; or

16 (4) the suit is to try the title to real property, to
17 remove a cloud from the title of real property, to foreclose a lien
18 on real property, or to partition real property, and the plaintiff
19 makes an oath that one or more of the defendants is a nonresident
20 of this state. (V.A.C.S. Art. 6840, Secs. 1(a) (part), (b), (c),
21 (d), (e).)

22 Source Law

23 [(a)]
24 [Judges . . . have power to issue writs of
25 sequestration . . .] in the cases and upon the grounds
26 provided for in Subsections (b) through (e) of this
27 section.

28 (b) When a person sues for the title or
29 possession of any personal property or fixtures of any
30 type or kind or sues for the foreclosure or enforcement
31 of a mortgage or lien or security interest upon
32 personal property or fixtures of any type or kind, a
33 writ of sequestration may be issued if a reasonable
34 conclusion may be drawn that there is immediate danger
35 that the defendant or party in possession thereof will
36 conceal, dispose of, ill-treat, waste, or destroy such
37 property, or remove the same out of the limits of the
38 county during the pendency of the suit.

39 (c) When a person sues for the title or
40 possession of real property or sues for the foreclosure
41 or enforcement of a mortgage or of a lien on real
42 property, a writ of sequestration may be issued if a

1 reasonable conclusion may be drawn that there is
2 immediate danger that the defendant or party in
3 possession thereof will make use of his possession to
4 injure or ill-treat such property or waste or convert
5 to his own use the timber, rents, fruits, or revenue
6 thereof.

7 (d) A writ of sequestration may be issued when
8 any person sues for the title or possession of any
9 property from which he has been ejected by force or
10 violence.

11 (e) A writ of sequestration may be issued when
12 any person sues to try the title to any real property,
13 or to remove cloud upon the title to such real
14 property, or to foreclose a lien upon any such real
15 property, or for a partition of real property, and
16 makes oath that the defendant or either of them, in the
17 event there be more than one defendant, is a
18 nonresident of this state.

19 Revised Law

20 Sec. 62.002. PENDING SUIT REQUIRED. A writ of sequestration
21 may be issued at the initiation of a suit or at any time before
22 final judgment. (V.A.C.S. Art. 6840, Sec. 1(a) (part).)

23 Source Law

24 . . . at the commencement or during the progress of any
25 civil suit, before final judgment

26 Revised Law

27 Sec. 62.003. AVAILABLE FOR CLAIM NOT DUE. A writ of
28 sequestration may be issued for personal property under a mortgage
29 or a lien even though the right of action on the mortgage or lien
30 has not accrued. The proceedings relating to the writ shall be as
31 in other cases, except that final judgment may not be rendered
32 against the defendant until the right of action has accrued.
33 (V.A.C.S. Art. 6844.)

34 Source Law

35 Art. 6844. When any person has a mortgage or
36 lien upon personal property of any description, and
37 makes affidavit and gives bond as required by law, the
38 writ of sequestration may issue, although the right of
39 action upon such mortgage or lien has not accrued. The
40 same proceeding shall be had thereon as in other cases
41 of sequestration, except that no final judgment shall
42 be rendered against the defendant until such right

1 shall have accrued.

2 [Sections 62.004-62.020 reserved for expansion]

3 SUBCHAPTER B. ISSUANCE

4 Revised Law

5 Sec. 62.021. WHO MAY ISSUE. A district or county court
6 judge or a justice of the peace may issue writs of sequestration
7 returnable to his court. (V.A.C.S. Art. 6840, Sec. 1(a) (part).)

8 Source Law

9 Art. 6840

10 Sec. 1(a) Judges of the district and county
11 courts and justices of the peace shall . . . have power
12 to issue writs of sequestration, returnable to their
13 respective courts

14 Revisor's Note

15 For a discussion of whether this section
16 addresses jurisdiction or the ministerial act of
17 issuance, see the revisor's note under Section 61.021.

18 Revised Law

19 Sec. 62.022. APPLICATION. The application for a writ of
20 sequestration must be made under oath and must set forth:

21 (1) the specific facts stating the nature of the
22 plaintiff's claim;

23 (2) the amount in controversy, if any; and

24 (3) the facts justifying issuance of the writ.

25 (V.A.C.S. Art. 6840, Sec. 2.)

26 Source Law

27 Sec. 2. The application for the issuance of the
28 writ shall be made under oath and shall set forth
29 specific facts stating the nature of the plaintiff's
30 claim, the amount in controversy, if any, and the facts
31 justifying the issuance.

Revised Law

Sec. 62.023. REQUIRED STATEMENT OF RIGHTS. (a) A writ of sequestration must prominently display the following statement on the face of the writ:

YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY
BY FILING A REPLEVY BOND. YOU HAVE A RIGHT TO SEEK TO
REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE
COURT A MOTION TO DISSOLVE THIS WRIT.

(b) The statement must be printed in 10-point type and in a manner intended to advise a reasonably attentive person of its contents. (V.A.C.S. Art. 6840, Sec. 4.)

Source Law

Sec. 4. There shall be prominently displayed on the face of the writ, in 10-point type and in a manner calculated to advise a reasonably attentive person of its contents, the following:
YOU HAVE A RIGHT TO REGAIN POSSESSION OF THE PROPERTY BY FILING A "REPLEVY" BOND. YOU HAVE A RIGHT TO SEEK TO REGAIN POSSESSION OF THE PROPERTY BY FILING WITH THE COURT A MOTION TO DISSOLVE THIS WRIT.

[Sections 62.024-62.040 reserved for expansion]

SUBCHAPTER C. DISSOLUTION AND REPLEVY

Revised Law

Sec. 62.041. MOTION FOR DISSOLUTION; STAY. (a) The defendant may seek dissolution of an issued writ of sequestration by filing a written motion with the court.

(b) The right to seek dissolution is cumulative of the right of replevy.

(c) The filing of a motion to dissolve stays proceedings under the writ until the issue is determined. (V.A.C.S. Art. 6840, Secs. 3(a), (e).)

Revised Law

Sec. 62.044. COMPULSORY COUNTERCLAIM FOR WRONGFUL SEQUESTRATION. (a) If a writ is dissolved, any action for damages for wrongful sequestration must be brought as a compulsory counterclaim.

(b) In addition to damages, the party who sought dissolution of the writ may recover reasonable attorney's fees incurred in dissolution of the writ. (V.A.C.S. Art. 6840, Sec. 3(c) (part).)

Source Law

. . . except that an action for damages for wrongfully securing the issuance of the writ must be brought as a compulsory counterclaim. In addition to all other elements of damages, the party moving to dissolve the writ may recover his reasonable attorney's fees incurred in the dissolution of the writ.

Revisor's Note

The revised law omits the source law reference to "other elements of damages" because attorney's fees are not generally considered an element of damages.

Revised Law

Sec. 62.045. WRONGFUL SEQUESTRATION OF CONSUMER GOODS. (a)
If a writ that sought to sequester consumer goods is dissolved, the
defendant or party in possession of the goods is entitled to
reasonable attorney's fees and damages equal to the greater of:

- (1) \$100;
- (2) the finance charge contracted for; or
- (3) actual damages.

(b) Damages may not be awarded for the failure of the plaintiff to prove by a preponderance of the evidence the specific facts alleged if the failure is the result of a bona fide error. For a bona fide error to be available as a defense, the plaintiff must prove the use of reasonable procedures to avoid the error.

(c) In this section, "consumer goods" has the meaning

1 assigned by the Business & Commerce Code. (V.A.C.S. Art. 6840,
2 Sec. 3(d).)

3 Source Law

4 (d) If the writ is dissolved and the personal
5 property sought to be subjected to the writ is consumer
6 goods, as that term is defined in the Texas Business
7 and Commerce Code, the defendant or the party in
8 possession shall be entitled to damages which shall be
9 reasonable attorney's fees and the greatest of One
10 Hundred Dollars (\$100.00), the finance charge
11 contracted for, or actual damages. No damages may be
12 awarded for the failure of the plaintiff to prove by a
13 preponderance of the evidence the specific facts
14 alleged and such failure is a result of a bona fide
15 error. For a bona fide error to be available as a
16 defense, the plaintiff must prove the use of reasonable
17 procedures to avoid such error.

18 Revisor's Note

19 The revised law omits the source law reference to
20 attorney's fees as damages because attorney's fees are
21 not generally considered an element of damages.

22 Revised Law

23 Sec. 62.046. LIABILITY FOR FRUIT OF REPLEVIED PROPERTY. (a)
24 In a suit for enforcement of a mortgage or lien on property, a
25 defendant who replevies the property is not required to account for
26 the fruits, hire, revenue, or rent of the property.

27 (b) This section does not apply to a plaintiff who replevies
28 the property. (V.A.C.S. Art. 6858.)

29 Source Law

30 Art. 6858. In suits for the enforcement of a
31 mortgage or lien upon property, the defendant, should
32 he replevy the property, shall not be required to
33 account for the fruits, hire, revenue or rent of the
34 same, but this exemption shall not apply to the
35 plaintiff in case he shall replevy the property.

36 [Sections 62.047-62.060 reserved for expansion]

1 SUBCHAPTER D. CARE AND MANAGEMENT OF SEQUESTERED PROPERTY

2 Revised Law

3 Sec. 62.061. OFFICER'S LIABILITY AND DUTY OF CARE. (a) An
4 officer who executes a writ of sequestration shall care for and
5 manage in a prudent manner the sequestered property he retains in
6 custody.

7 (b) If the officer entrusts sequestered property to another
8 person, the officer is responsible for the acts of that person
9 relating to the property.

10 (c) The officer is liable for injuries to the sequestered
11 property resulting from his neglect or mismanagement or from the
12 neglect or mismanagement of a person to whom he entrusts the
13 property. (V.A.C.S. Art. 6846.)

14 Source Law

15 Art. 6846. The officer executing a writ of
16 sequestration, while he retains custody of the property
17 sequestered, shall take care of and manage the same in
18 a prudent manner, and if he confides the same to the
19 custody of other persons he shall be responsible for
20 their acts in regard thereto, and shall be responsible
21 to the party injured for any neglect or mismanagement
22 by himself, or by those to whom he has confided the
23 custody or management of the property.

24 Revised Law

25 Sec. 62.062. COMPENSATION OF OFFICER. (a) An officer who
26 retains custody of sequestered property is entitled to just
27 compensation and reasonable charges, to be determined by the court
28 that issued the writ.

29 (b) The officer's compensation and charges shall be taxed
30 and collected as a cost of suit. (V.A.C.S. Art. 6847.)

31 Source Law

32 Art. 6847. The officer retaining custody of
33 property by virtue of a writ of sequestration shall be
34 entitled to receive a just compensation and all
35 reasonable charges therefor, to be determined by the

1 judge or justice from whose court the writ issued, to
2 be taxed in the bill of costs against the party cast in
3 the suit, and collected in the same manner as the other
4 costs in the case.

5 Revised Law

6 Sec. 62.063. INDEMNIFICATION OF OFFICER FOR MONEY SPENT. If
7 an officer is required to expend money in the security, management,
8 or care of sequestered property, he may retain possession of the
9 property until the money is repaid by the party seeking to replevy
10 the property or by that party's agent or attorney. (V.A.C.S. Art.
11 6848.)

12 Source Law

13 Art. 6848. If the officer be compelled to expend
14 any sum in the security, management or care of the
15 property, he may retain possession of said property
16 until said money be refunded by the party offering to
17 replevy said property, his agent or attorney.
18

1 CHAPTER 63. GARNISHMENT

2 Sec. 63.001. GROUNDS

3 Sec. 63.002. WHO MAY ISSUE

4 Sec. 63.003. EFFECT OF SERVICE

5 Sec. 63.004. CURRENT WAGES EXEMPT

6 Sec. 63.005. PLACE FOR TRIAL

7 CHAPTER 63. GARNISHMENT

8 Revised Law

9 Sec. 63.001. GROUNDS. A writ of garnishment is available
10 if:

11 (1) an original attachment has been issued;

12 (2) a plaintiff sues for a debt and makes an affidavit
13 stating that:

14 (A) the debt is just, due, and unpaid;

15 (B) within the plaintiff's knowledge, the
16 defendant does not possess property in Texas subject to execution
17 sufficient to satisfy the debt; and

18 (C) the garnishment is not sought to injure the
19 defendant or the garnishee; or

20 (3) a plaintiff has a valid, subsisting judgment and
21 makes an affidavit stating that, within the plaintiff's knowledge,
22 the defendant does not possess property in Texas subject to
23 execution sufficient to satisfy the judgment. (V.A.C.S. Art. 4076
24 (part).)

25 Source Law

26 [The clerks . . . may issue writs of
27 garnishment . . .] in the following cases:

28 1. Where an original attachment has been issued.

29 2. Where the plaintiff sues for a debt and makes
30 affidavit that such debt is just, due and unpaid, and
31 that the defendant has not within his knowledge
32 property in his possession within this State, subject
33 to execution, sufficient to satisfy such debt; and that
34 the garnishment applied for is not sued out to injure
35 either the defendant or the garnishee.

1 3. Where the plaintiff has a valid, subsisting
2 judgment and makes affidavit that the defendant has
3 not, within his knowledge, property in his possession
4 within this State, subject to execution, sufficient to
5 satisfy such judgment.

6 Revisor's Note

7 The procedure governing prejudgment garnishment
8 (Subdivs. (1) and (2) of this section) was held
9 unconstitutional in Southwestern Warehouse Corp. v. Wee
10 Tote, Inc., 504 S.W.2d 592 (Tex. Civ. App.--Houston
11 [14th Dist.] 1974, no writ), and prejudgment
12 garnishment under the unconstitutional statute has been
13 held wrongful. Newsom v. Starkey, 572 S.W.2d 29 (Tex.
14 Civ. App.--Dallas 1978, no writ).

15 This revision retains the existing statutes
16 notwithstanding those holdings. The Southwestern
17 Warehouse case was decided before the United States
18 Supreme Court decided Mitchell v. W. T. Grant Co., 416
19 U.S. 600 (1974) and North Georgia Finishing, Inc. v.
20 Di-Chem, Inc., 419 U.S. 601 (1975), and those cases may
21 have modified the court's holding had the court had
22 their benefit. See Soules, Attachment, Sequestration,
23 and Garnishment: The 1977 Rules, 32 Sw. L.J. 753
24 (1978). In addition, Southwestern Warehouse was
25 decided before the 1977 amendments to the garnishment
26 rules of civil procedure (Rules 657-679, Texas Rules of
27 Civil Procedure). A federal court has found that those
28 rules, together with the statute, provide a
29 constitutional prejudgment garnishment procedure.
30 Southwest Metal Fabricators, Inc. v. Internacional De
31 Aceros, S.A., 503 F.Supp. 76 (1980). That court
32 specifically rejected an argument that the Southwestern
33 Warehouse case rendered the statutory provisions a
34 nullity that could not be made constitutional by

1 amendment to the rules of civil procedure. 503 F.Supp.
2 at 78.

3 Revised Law

4 Sec. 63.002. WHO MAY ISSUE. The clerk of a district or
5 county court or a justice of the peace may issue a writ of
6 garnishment returnable to his court. (V.A.C.S. Art. 4076 (part).)

7 Source Law

8 Art. 4076. The clerks of the district and county
9 courts and justices of the peace may issue writs of
10 garnishment, returnable to their respective
11 courts

12 Revisor's Note

13 For a discussion of whether this statute
14 addresses jurisdiction or the ministerial act of
15 issuance, see the revisor's note under Section 61.021.
16 Postjudgment garnishment under the source law for this
17 chapter was held constitutional in Ranchers and Farmers
18 Livestock Auction Co. v. First State Bank, 531 S.W.2d
19 167 (Tex. Civ. App.--Amarillo 1975, writ ref'd n.r.e.),
20 and Rules 658 and 658a, Texas Rules of Civil Procedure,
21 require a court order for issuance of the writ only if
22 it is to be issued "before final judgment." The clerk
23 can therefore continue to issue postjudgment writs
24 without a court order in accordance with the practice
25 before the 1977 amendments. See Soules, Attachment,
26 Sequestration, and Garnishment: The 1977 Rules, 32 Sw.
27 L.J. 753, 770 (1978).

28 Revised Law

29 Sec. 63.003. EFFECT OF SERVICE. (a) After service of a
30 writ of garnishment, the garnishee may not deliver any effects or
31 pay any debt to the defendant. If the garnishee is a corporation

1 or joint-stock company, the garnishee may not permit or recognize a
2 sale or transfer of shares or an interest alleged to be owned by
3 the defendant.

4 (b) A payment, delivery, sale, or transfer made in violation
5 of Subsection (a) is void as to the amount of the debt, effects,
6 shares, or interest necessary to satisfy the plaintiff's demand.
7 (V.A.C.S. Art. 4084 (part).)

8 Source Law

9 Art. 4084. From and after the service of such
10 writ of garnishment, it shall not be lawful for the
11 garnishee to pay to the defendant any debt or to
12 deliver to him any effects; nor shall the garnishee, if
13 an incorporated or joint stock company in which the
14 defendant is alleged to be the owner of shares or to
15 have an interest, permit or recognize any sale or
16 transfer of such shares or interest; and any such
17 payment or delivery, sale or transfer, shall be void
18 and of no effect as to so much of said debt, effect,
19 shares, or interest as may be necessary to satisfy the
20 plaintiff's demand.

21 Revised Law

22 Sec. 63.004. CURRENT WAGES EXEMPT. Current wages for
23 personal service are not subject to garnishment. The garnishee
24 shall be discharged from the garnishment as to any debt to the
25 defendant for current wages. (V.A.C.S. Art. 4099.)

26 Source Law

27 Art. 4099. No current wages for personal service
28 shall be subject to garnishment; and where it appears
29 upon the trial that the garnishee is indebted to the
30 defendant for such current wages, the garnishee shall
31 nevertheless be discharged as to such indebtedness.

32 Revised Law

33 Sec. 63.005. PLACE FOR TRIAL. (a) If a garnishee other
34 than a foreign corporation is not a resident of the county in which
35 the original suit is pending or was tried and a party to the suit
36 files an affidavit controverting the garnishee's answer, the issues
37 raised by the answer and controverting affidavit shall be tried in

1 the county in which the garnishee resides. The issues may be tried
2 in a court of that county that has jurisdiction of the amount of
3 the original judgment if the plaintiff files with the court a
4 certified copy of the judgment in the original suit and a certified
5 copy of the proceedings in garnishment, including the plaintiff's
6 application for the writ, the garnishee's answer, and the
7 controverting affidavit.

8 (b) If a garnishee whose answer is controverted is a foreign
9 corporation, the issues raised by the answer and controverting
10 affidavit shall be tried in the court in which the original suit is
11 pending or was tried. (V.A.C.S. Art. 4096.)

12 Source Law

13 Art. 4096. Should the garnishee be a foreign
14 corporation, not incorporated under the laws of this
15 State, and should its answer be controverted, the
16 issues thus formed shall be tried in the court where
17 the main suit is pending, or was tried; but if the
18 garnishee whose answer is controverted, resided in some
19 county other than the one in which the main case is
20 pending or was tried, and is not a foreign corporation,
21 then upon the filing of a controverting affidavit by
22 any party to the suit, the plaintiff may file in any
23 court in the county of residence of the garnishee
24 having jurisdiction of the amount of the judgment in
25 the original suit, a duly certified copy of the
26 judgment in such original suit and of the proceedings
27 in garnishment, including a certified copy of the
28 plaintiff's application for the writ, the answer of the
29 garnishee, and the affidavit controverting such answer.
30 The court wherein such certified copies are filed shall
31 try the issues made as provided by law.

32 Revisor's Note 33 (End of Chapter)

34 (1) The revised law omits V.A.C.S. Article 4093,
35 which relates to the effect of sale of garnished stock
36 shares when the garnishee is a corporation or
37 joint-stock company. That article must be read in
38 conjunction with Rules 671 and 672, Texas Rules of
39 Civil Procedure. Rule 671 (formerly V.A.C.S. Article
40 4091) authorized the sale to which Article 4093 refers,
41 but that rule was repealed in 1947. As a result,

1 V.A.C.S. Article 4093 is obsolete; it refers to a
2 specific sale no longer authorized by law. The omitted
3 article reads:

4 Art. 4093. Such sale shall be valid
5 and effectual to pass to the purchaser all
6 right, title and interest which the
7 defendant had in such shares of stock, or
8 in such company; and the proper officers of
9 such company shall enter such sale and
10 transfer on the books of the company in the
11 same manner as if the same had been made by
12 the defendant himself.

13 (2) The revised law omits the second and third
14 sentences of V.A.C.S. Article 4084, relating to the
15 replevy of garnished property, as repealed by the Texas
16 Rules of Civil Procedure. (The article is listed as
17 repealed "in part" in the supreme court's repealing
18 order.) Rule 664 of the Texas Rules of Civil Procedure
19 originally contained the two sentences unchanged from
20 their statutory enactment, but the rule has since been
21 amended so that the statute and rule now conflict.

22 Although the right to replevy garnished property
23 may appear to be a substantive right beyond the scope
24 of the supreme court's rulemaking authority, the court
25 has not treated it as such and has specifically
26 repealed similar statutes relating to replevy of
27 attached property (V.A.C.S. Article 292; Rule 599) and
28 sequestered property (V.A.C.S. Article 6849; Rule 701).

29 The omitted provisions read:

30 The defendant may, at any time before
31 judgment, replevy any effects, debts,
32 shares, or claims of any kind seized or
33 garnisheed, by giving bond, with two or
34 more good and sufficient sureties to be
35 approved by the officer who issued the writ
36 of garnishment, payable to the plaintiff,
37 in double the amount of the plaintiff's
38 debt, and conditioned for the payment of
39 any judgment that may be rendered against
40 the said garnishee in such suit, which when
41 properly approved shall be filed among the
42 papers in the cause in the court in which
43 the suit is pending. In all proceedings in
44 garnishment where the defendant gives bond
45 as herein provided for, such defendant may

1 make any defense which the defendant in
2 garnishment could make in such suit.
3

CHAPTER 64. RECEIVERSHIP

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 64.001. AVAILABILITY OF REMEDY

Sec. 64.002. PERSONS NOT ENTITLED TO APPOINTMENT

Sec. 64.003. FOREIGN APPOINTMENT

Sec. 64.004. APPLICATION OF EQUITY RULES

[Sections 64.005-64.020 reserved for expansion]

SUBCHAPTER B. QUALIFICATIONS, OATH, AND BOND

Sec. 64.021. QUALIFICATIONS; RESIDENCE REQUIREMENT

Sec. 64.022. OATH

Sec. 64.023. BOND

[Sections 64.024-64.030 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Sec. 64.031. GENERAL POWERS AND DUTIES

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Sec. 64.033. SUITS BY RECEIVER

Sec. 64.034. INVESTMENT OF FUNDS

Sec. 64.035. DEPOSIT OF CERTAIN RAILROAD FUNDS

[Sections 64.036-64.050 reserved for expansion]

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Sec. 64.053. PAYMENT OF JUDGMENT AGAINST RECEIVER

Sec. 64.054. JUDGMENT LIEN

Sec. 64.055. EXECUTION ON JUDGMENT

Sec. 64.056. LIABILITY OF PERSONS RECEIVING RECEIVERSHIP

PROPERTY

[Sections 64.057-64.070 reserved for expansion]

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OF CORPORATIONS

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Sec. 64.072. LIMITED DURATION

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2 DEBTS

3 Sec. 64.074. CLAIMS PREFERENCE AGAINST CURRENT
4 EARNINGS

5 Sec. 64.075. FORFEITURE OF CHARTER FOR UNQUALIFIED
6 RECEIVER

7 Sec. 64.076. SUITS AGAINST RAILROAD RECEIVER: VENUE
8 AND SERVICE

9 [Sections 64.077-64.090 reserved for expansion]

10 SUBCHAPTER F. RECEIVER FOR CERTAIN MINERAL INTERESTS

11 Sec. 64.091. RECEIVER FOR MINERAL INTERESTS OWNED BY
12 NONRESIDENT OR ABSENTEE

13 Sec. 64.092. RECEIVER FOR CONTINGENT INTERESTS IN
14 MINERALS

15 CHAPTER 64. RECEIVERSHIP

16 SUBCHAPTER A. GENERAL PROVISIONS

17 Revised Law

18 Sec. 64.001. AVAILABILITY OF REMEDY. (a) A court of
19 competent jurisdiction may appoint a receiver:

20 (1) in an action by a vendor to vacate a fraudulent
21 purchase of property;

22 (2) in an action by a creditor to subject any property
23 or fund to his claim;

24 (3) in an action between partners or others jointly
25 owning or interested in any property or fund;

26 (4) in an action by a mortgagee for the foreclosure of
27 the mortgage and sale of the mortgaged property;

28 (5) for a corporation that is insolvent, is in
29 imminent danger of insolvency, has been dissolved, or has forfeited
30 its corporate rights; or

31 (6) in any other case in which a receiver may be

1 appointed under the rules of equity.

2 (b) Under Subsection (a)(1), (2), or (3), the receiver may
3 be appointed on the application of the plaintiff in the action or
4 another party. The party must have a probable interest in or right
5 to the property or fund, and the property or fund must be in danger
6 of being lost, removed, or materially injured.

7 (c) Under Subsection (a)(4), the court may appoint a
8 receiver only if:

9 (1) it appears that the mortgaged property is in
10 danger of being lost, removed, or materially injured; or

11 (2) the condition of the mortgage has not been
12 performed and the property is probably insufficient to discharge
13 the mortgage debt. (V.A.C.S. Art. 2293.)

14 Source Law

15 Art. 2293. Receivers may be appointed by any
16 judge of a court of competent jurisdiction of this
17 State, in the following cases:

18 1. In an action by a vendor to vacate a
19 fraudulent purchase of property; or by a creditor to
20 subject any property or fund to his claim; or between
21 partners or others jointly owning or interested in any
22 property or fund, on the application of the plaintiff
23 or any party whose right to or interest in the property
24 or fund or the proceeds thereof is probable, and where
25 it is shown that the property or fund is in danger of
26 being lost, removed or materially injured.

27 2. In an action by a mortgagee for the
28 foreclosure of his mortgage and sale of the mortgaged
29 property, when it appears that the mortgaged property
30 is in danger of being lost, removed or materially
31 injured; or that the condition of the mortgage has not
32 been performed and the property is probably
33 insufficient to discharge the mortgage debt.

34 3. In cases where a corporation is insolvent or
35 in imminent danger of insolvency; or has been dissolved
36 or has forfeited its corporate rights.

37 4. In all other cases where receivers have
38 heretofore been appointed by the usages of the court of
39 equity.

40 Revised Law

41 Sec. 64.002. PERSONS NOT ENTITLED TO APPOINTMENT. (a) A
42 court may not appoint a receiver for a corporation, partnership, or
43 individual on the petition of the same corporation, partnership, or

1 individual.

2 (b) A court may appoint a receiver for a corporation on the
3 petition of one or more stockholders of the corporation.

4 (c) This section does not prohibit appointment of a receiver
5 for a partnership in an action arising between partners. (V.A.C.S.
6 Art. 2318.)

7 Source Law

8 Art. 2318. No receiver of a joint stock or
9 incorporated company, co-partnership or private person
10 shall ever be appointed on the petition of such joint
11 stock or incorporated company, partnership or person.
12 A stockholder or stockholders of such joint stock or
13 incorporated company may have his or their action
14 against such company, and may have a receiver appointed
15 as in ordinary cases. Nothing herein shall prevent a
16 member of any co-partnership from having a receiver
17 appointed whenever a cause of action arises between the
18 co-partners.

19 Revisor's Note

20 The revised law substitutes "partnership" and
21 "partner" for "co-partnership" and "co-partner" because
22 the terms are synonymous and the former are more
23 commonly used. "Partner" and "partnership" are the
24 terms used in the Texas Uniform Partnership Act
25 (V.A.C.S. Article 6132b).

26 Revised Law

27 Sec. 64.003. FOREIGN APPOINTMENT. A court outside this
28 state may not appoint a receiver for:

29 (1) a person who resides in this state and for whom
30 appointment of a receiver has been applied for in this state; or

31 (2) property located in this state. (V.A.C.S. Art.
32 2313.)

33 Source Law

34 Art. 2313. When a person resides in this State
35 and a receiver is applied for, or if the property

sought to be placed in the hands of a receiver is situated within the limits of this State, no court other than one within the limits of this State, shall have power to appoint any receiver of said property.

Revised Law

Sec. 64.004. APPLICATION OF EQUITY RULES. Unless inconsistent with this chapter or other general law, the rules of equity govern all matters relating to the appointment, powers, duties, and liabilities of a receiver and to the powers of a court regarding a receiver. (V.A.C.S. Art. 2319.)

Source Law

Art. 2319. In all matters relating to the appointment of receivers, and to their powers, duties and liabilities, and to the powers of the court in relation thereto, the rules of equity shall govern whenever the same are not inconsistent with any provision of this chapter and the general laws of the State.

[Sections 64.005-64.020 reserved for expansion]

SUBCHAPTER B. QUALIFICATIONS, OATH, AND BOND

Revised Law

Sec. 64.021. QUALIFICATIONS; RESIDENCE REQUIREMENT. (a) To be appointed as a receiver for property that is located entirely or partly in this state, a person must:

(1) be a citizen and qualified voter of this state at the time of appointment; and

(2) not be a party, attorney, or other person interested in the action for appointment of a receiver.

(b) The appointment of a receiver who is disqualified under Subsection (a)(1) is void as to property in this state.

(c) A receiver must maintain actual residence in this state during the receivership. (V.A.C.S. Art. 2294.)

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Source Law

[When a receiver is appointed, he] . . . shall execute a good and sufficient bond, to be approved by the court appointing him, in the sum fixed by the court, conditioned that he will faithfully discharge his duty as receiver in the action (naming it) and obey the orders of the court therein.

[Sections 64.024-64.030 reserved for expansion]

SUBCHAPTER C. POWERS AND DUTIES

Revised Law

Sec. 64.031. GENERAL POWERS AND DUTIES. Subject to the control of the court, a receiver may:

- (1) take charge and keep possession of the property;
- (2) receive rents;
- (3) collect and compromise demands;
- (4) make transfers; and
- (5) perform other acts in regard to the property as authorized by the court. (V.A.C.S. Art. 2297.)

Source Law

Art. 2297. The receiver shall have power, under the control of the court, to bring and defend actions in his own name as receiver, to take charge and keep possession of the property, to receive rents, collect, compound for, compromise demands, make transfers, and generally to do such acts respecting the property as the court may authorize.

Revisor's Note

- (1) The revised law omits the authority of the receiver to bring and defend actions subject to the control of the court because it conflicts with V.A.C.S. Article 2310 (revised in this code as Sections 64.033, 64.052, and 64.053), which authorizes the receiver to sue and be sued without permission of the appointing court. The omitted provision of V.A.C.S. Article 2297 is a restatement of the common-law rule, which courts

1 have repeatedly held to have been abrogated by V.A.C.S.
2 Article 2310. See Kirby v. Dilworth and Marshall, 260
3 S.W. 152 (Tex. Comm'n App. 1924, judgment adopted) and
4 Carpenter v. Pink, 124 S.W.2d 981 (Tex. 1939).

5 (2) The source law authorizes the receiver to
6 "compound for, [and] compromise demands." "Compound
7 for" is included in the meaning of "compromise" and is
8 therefore deleted from the revised law.

9 Revised Law

10 Sec. 64.032. INVENTORY. As soon as possible after
11 appointment, a receiver shall return to the appointing court an
12 inventory of all property received. (V.A.C.S. Art. 2314.)

13 Source Law

14 Art. 2314. The receiver as soon after his
15 appointment as possible, shall return to the court
16 appointing him a true and correct inventory of all
17 property received by him as such receiver.

18 Revisor's Note

19 The revised law omits as unnecessary the
20 requirement that the receiver's inventory be "true and
21 correct." The requirement that the receiver prepare
22 and submit the inventory presumes the requirement that
23 the inventory be true and correct. A receiver who
24 presents a false inventory is guilty of the offense of
25 tampering with a governmental record under Section
26 37.10, Penal Code.

27 Revised Law

28 Sec. 64.033. SUITS BY RECEIVER. A receiver may bring suits
29 in his official capacity without permission of the appointing
30 court. (V.A.C.S. Art. 2310 (part).)

1 Source Law

2 Art. 2310. When property within the limits of
3 this State has been placed in the hands of a receiver
4 who has taken charge of such property, such receiver
5 may, in his official capacity, sue . . . in any court
6 of this State having jurisdiction of the cause of
7 action, without leave of the court appointing him.

8 Revised Law

9 Sec. 64.034. INVESTMENT OF FUNDS. On an order of the court
10 to which all parties consent, a receiver may invest for interest
11 any funds that he holds. (V.A.C.S. Art. 2298.)

12 Source Law

13 Art. 2298. The funds in the hands of a receiver
14 may be invested upon interest by order of the court,
15 but no such order shall be made except upon consent of
16 all the parties to the action.

17 Revised Law

18 Sec. 64.035. DEPOSIT OF CERTAIN RAILROAD FUNDS. If a
19 receiver operates a railroad that lies wholly within this state,
20 the receiver shall deposit all money that comes into his hands,
21 from operation of the railroad or otherwise, in a place in this
22 state directed by the court. The money shall remain on deposit
23 until properly disbursed. If any portion of the railroad lies in
24 another state, the court shall require the receiver to deposit in
25 this state a share of the funds that is at least proportionate to
26 the value of the property of the company in this state. (V.A.C.S.
27 Art. 2309.)

28 Source Law

29 Art. 2309. When a line of railroad operated by a
30 receiver lies wholly within this State, all money which
31 comes into the hands of the receiver, whether from
32 operating the road or otherwise, shall be kept and
33 deposited in such place within this State as the court
34 may direct, until properly disbursed; but, if any
35 portion of the road lies in another State, the receiver
36 shall be required to deposit in this State at least
37 such share of the funds in his hands as is proportioned
38 to the value of the property of the company within this

1 State.

2 [Sections 64.036-64.050 reserved for expansion]

3 SUBCHAPTER D. CLAIMS AND LIABILITIES

4 Revised Law

5 Sec. 64.051. APPLICATION OF FUNDS; PREFERENCES. (a) A
6 receiver shall apply the earnings of property held in receivership
7 to the payment of the following claims in the order listed:

8 (1) court costs of suit;

9 (2) wages of employees due by the receiver;

10 (3) debts owed for materials and supplies purchased by
11 the receiver for the improvement of the property held as receiver;

12 (4) debts due for improvements made during the
13 receivership to the property held as receiver;

14 (5) claims and accounts against the receiver on
15 contracts made by the receiver, personal injury claims and claims
16 for stock against the receiver accruing during the receivership,
17 and judgments rendered against the receiver for personal injuries
18 and for stock killed; and

19 (6) judgments recovered in suits brought before the
20 receiver was appointed.

21 (b) Claims listed in this section have a preference lien on
22 the earnings of the property held by the receiver.

23 (c) The court shall ensure that the earnings are paid in the
24 order of preference listed in this section. (V.A.C.S. Art. 2299.)

25 Source Law

26 Art. 2299. All moneys that come into the hands
27 of a receiver as such receiver shall be applied as
28 follows, to the payment:

29 1. Of all court costs of the suit.

30 2. Of all wages of employes due by the receiver.

31 3. Of all debts due by the receiver for
32 materials and supplies purchased during receivership by
33 the receiver for the improvement of the property in his
34 hands as receiver.

35 4. Of all debts due for betterments and

1 improvements done during receivership to the property
2 in his hands as such receiver.

3 5. Of all claims and accounts against the
4 receiver on contracts made by the receiver during the
5 receivership, and of personal injury claims and claims
6 for stock against said receiver accruing during said
7 receivership, and all judgments rendered against said
8 receiver for personal injuries and for stock killed.

9 6. Of all judgments recovered against persons or
10 corporations in suits brought before the receiver in
11 the action.

12 As to all money coming into the hands of a
13 receiver which are the earnings of the property in his
14 hands, said claims shall have a preference lien on the
15 same, and the receiver shall pay the same on the claims
16 against him in the order of preference named above, and
17 the court shall see that he does so.

18 Revised Law

19 Sec. 64.052. SUITS AGAINST RECEIVER. (a) A receiver who
20 holds property in this state may be sued in his official capacity
21 in a court of competent jurisdiction without permission of the
22 appointing court.

23 (b) A suit against a receiver may be brought where the
24 person whose property is in receivership resides.

25 (c) In a suit against a receiver, citation may be served on
26 the receiver or on any agent of the receiver who resides in the
27 county in which the suit is brought.

28 (d) The discharge of a receiver does not abate a suit
29 against the receiver or affect the right of a party to sue the
30 receiver. (V.A.C.S. Arts. 2300 (part), 2304, 2310 (part), 2311
31 (part).)

32 Source Law

33 Art. 2300. If a receiver is discharged pending
34 suits against him for causes of action growing out of
35 and arising during the receivership, the cause of
36 action shall not abate, but may be prosecuted to final
37 judgment against the receiver

38 Art. 2304. The discharge of a receiver shall not
39 work an abatement of the suit against a receiver nor in
40 any way affect the right of the party to sue the
41 receiver if he sees proper.

42 [Art. 2310]

43 [When property . . . has been placed in the hands of a
44 receiver . . . such receiver may, in his official

1 capacity, sue] or be sued . . . [without leave of the
2 court appointing him.]

3 Art. 2311. Actions may be brought against the
4 receiver of the property of any person where said
5 person resides; and Service of summons may be
6 had upon the receiver . . . or upon any agent of said
7 receiver who resides in the county where the suit is
8 brought.

9 Revised Law

10 Sec. 64.053. PAYMENT OF JUDGMENT AGAINST RECEIVER. The
11 court that appointed a receiver shall order any judgment against
12 the receiver to be paid from funds held by the receiver. (V.A.C.S.
13 Art. 2310 (part).)

14 Source Law

15 If judgment is recovered against said receiver, the
16 court shall order said judgment paid out of any funds
17 in the hands of said receiver as such receiver.

18 Revised Law

19 Sec. 64.054. JUDGMENT LIEN. A judgment rendered against a
20 receiver in a cause of action arising during the receivership is a
21 lien on all property held by the receiver. The lien is superior to
22 the mortgage lien of a mortgagee who instituted the receivership.
23 (V.A.C.S. Art. 2302 (part).)

24 Source Law

25 Art. 2302. All judgments rendered against a
26 receiver for causes of action arising during the
27 receivership shall be a lien upon all property in the
28 hands of the receiver superior to the mortgage lien.

29 Revisor's Note

30 The revised law restricts the priority of the
31 judgment lien to priority over the mortgage lien of a
32 mortgagee who instituted the receivership. The
33 revision is in accordance with the interpretation of
34 V.A.C.S. Article 2302 in Houston Ice & Brewing Co. v.

1 Clint, 159 S.W. 409 (Tex. Civ. App.--San Antonio 1913),
2 writ ref'd, 169 S.W. 411 (Tex. 1913), and in Gulf Pipe
3 Line Co. v. Lasater, 193 S.W. 773 (Tex. Civ. App.--San
4 Antonio 1917, writ ref'd), cert. denied, 249 U.S. 599,
5 39 S.Ct. 257 (1918).

6 Revised Law

7 Sec. 64.055. EXECUTION ON JUDGMENT. (a) To obtain payment
8 on a judgment against a receiver, the owner of the judgment may
9 apply to the court that appointed the receiver for an order that
10 the receiver pay the judgment. If the receiver possesses money
11 that is subject to payment of the judgment, but the court refuses
12 to order payment, the owner of the judgment may apply to the court
13 that issued the judgment for execution on the judgment.

14 (b) The owner of the judgment must file with the court that
15 issued the judgment an affidavit reciting that:

16 (1) he applied to the court that appointed the
17 receiver for an order of payment;

18 (2) it was shown to the appointing court that the
19 receiver had money subject to payment of the judgment at that time;
20 and

21 (3) the appointing court refused to order the receiver
22 to pay the judgment.

23 (c) The court that issued the judgment shall issue execution
24 that may be levied on any property held by the receiver. The
25 property shall be sold as under ordinary execution, and the sale of
26 the property conveys title to the purchaser. (V.A.C.S. Art. 2301.)

27 Source Law

28 Art. 2301. Where there is a judgment against a
29 receiver and he shall have in possession moneys subject
30 to the payment of such judgment, and the plaintiff
31 owning the judgment shall apply to the court appointing
32 the receiver for an order to pay said judgment, and if
33 said court should refuse to order said judgment paid,
34 when there is money in the hands of said receiver
35 subject to the payment of the judgment, then the court

1 rendering the judgment shall order an execution to
2 issue on said judgment against said receiver upon the
3 filing by the plaintiff in the court where the judgment
4 was rendered an affidavit reciting that the plaintiff
5 had applied to the court appointing the receiver for an
6 order for said receiver to pay said judgment, and that
7 it was shown to the court that there was money in the
8 hands of the receiver at that time which was subject to
9 the payment of the judgment, and that said court
10 refused to order him to pay the judgment. Said
11 execution when so issued shall be levied upon any
12 property in the hands of the receiver and the same
13 shall be sold as under ordinary execution; and a sale
14 of the property will convey the title of the same to
15 the purchaser.

16 Revised Law

17 Sec. 64.056. LIABILITY OF PERSONS RECEIVING RECEIVERSHIP
18 PROPERTY. (a) A person to whom a receiver delivers property held
19 in receivership, including the owner of the property, a person who
20 receives it for the owner, or an assignee of the owner is liable to
21 the extent of the value of the property for the liabilities of the
22 receiver arising during the receivership that are unpaid at the
23 time of the receiver's discharge. The person receiving the
24 property may be made a defendant to a suit against the receiver,
25 and if judgment is rendered against the receiver, the court shall
26 also render judgment against that defendant.

27 (b) A judgment against a receiver or an unpaid claim that
28 arose during the receivership and has not been sued on at the date
29 the receiver is discharged constitutes a preference lien on the
30 property held by the receiver on the date of discharge. The lien
31 is superior to the mortgage lien of a mortgagee who instituted the
32 receivership. The person who received the property is liable on
33 the judgment or claim to the extent of the value of the property.
34 (V.A.C.S. Arts. 2300 (part), 2302 (part), 2303, 2305, 2306, 2307.)

35 Source Law

36 [Art. 2300]
37 [If a receiver is discharged . . . the cause of action
38 shall not abate . . .] and the plaintiff may make the
39 party or corporation to whom the receiver has delivered
40 the property a party to the suit. If judgment is
41 finally rendered in favor of the plaintiff against the

1 receiver, the court shall also enter judgment in favor
2 of the plaintiff against the party to whom the property
3 was delivered by the receiver.

4 [Art. 2302]

5 If the property should be turned back into the
6 possession of the party or corporation owning same at
7 the time of the appointment of a receiver, or any one
8 for them, or to their assigns or purchasers, the party
9 or corporation so receiving said property from said
10 receiver shall take said property charged with all of
11 the unpaid liabilities of the receiver occurring during
12 the receivership, to the value of the property
13 delivered by the receiver.

14 Art. 2303. If a receiver is discharged by the
15 court before all of the liabilities of the receiver
16 arising during the receivership are settled in full,
17 then the person, persons, or corporation to whom the
18 receiver delivers the property that was in his hands as
19 receiver shall be liable to the persons having claims
20 against said receiver for the full amount of the
21 liabilities.

22 Art. 2305. When property has been returned to
23 the original owner without any sale of said property,
24 such owner shall be liable for all of the unpaid
25 liabilities of the receiver in causes of action arising
26 out of and during the receivership, and the plaintiff
27 may make such owner to whom the property was delivered
28 a party defendant along with the receiver; and, if
29 judgment is rendered against the receiver upon a cause
30 of action arising out of and during the receivership,
31 then the court shall also, at the same time, render
32 judgment against such defendants for the amount so
33 found for plaintiff; and plaintiff shall have the right
34 to foreclose his lien on the property so returned.

35 Art. 2306. If at the date of the discharge of a
36 receiver there exists against him any judgments or
37 unpaid claims not sued on which arose during the
38 receivership, then such claims and judgments shall be a
39 preference lien on all of the property that was in the
40 receiver's hands as such at said date superior to the
41 mortgage lien; and the person or corporation to whom
42 the receiver has delivered such property shall be
43 liable for such claims and judgments to the value of
44 such property.

45 Art. 2307. Any person having a claim against a
46 receiver not sued on at the date of the discharge of
47 the receiver, shall have the right to sue said
48 receiver, either alone or jointly, with the person or
49 corporation to whom the receiver delivered said
50 property that was in his hands as such receiver; and,
51 if any judgment is rendered against said receiver, a
52 judgment shall also be rendered against the person or
53 corporation for the same amount that is rendered
54 against the receiver, not to exceed the value of the
55 property so received by said person or corporation.

56 Revisor's Note

57 The revised law restricts the priority of the
58 lien granted under V.A.C.S. Article 2306 to a priority

1 over the mortgage lien of a mortgagee who instituted
2 the receivership. The revision is in accordance with
3 the interpretation of that article in Gulf Pipe Line
4 Co. v. Lasater, 193 S.W. 773 (Tex. Civ. App.--San
5 Antonio 1917, writ ref'd), cert. denied, 249 U.S. 599,
6 39 S.Ct. 257 (1918).

7 [Sections 64.057-64.070 reserved for expansion]

8 SUBCHAPTER E. PROVISIONS RELATING TO RECEIVERSHIP
9 OF CORPORATIONS

10 Revised Law

11 Sec. 64.071. VENUE FOR APPOINTMENT. An action to have a
12 receiver appointed for a corporation with property in this state
13 shall be brought in the county in which the principal office of the
14 corporation is located. (V.A.C.S. Art. 2312.)

15 Source Law

16 Art. 2312. If the property sought to be placed
17 in the hands of a receiver is a corporation whose
18 property lies within this State, or partly within this
19 State, then the action to have a receiver appointed
20 shall be brought in this State in the county where the
21 principal office of said corporation is located.

22 Revised Law

23 Sec. 64.072. LIMITED DURATION. (a) Except as provided by
24 this section, a court may not administer a corporation in
25 receivership for more than three years after the date the receiver
26 is appointed, and the court shall wind up the affairs of the
27 corporation within that period.

28 (b) A court may, from time to time, extend the duration of a
29 corporate receivership if:

30 (1) litigation prevents the court from winding up the
31 affairs of the corporation within three years; or

32 (2) the receiver is operating the corporation as a

1 going concern.

2 (c) To extend the duration of a corporate receivership, the
3 court must have received an application for the extension and,
4 following notice to all attorneys of record, must conduct a hearing
5 on the extension. As required by the best interests of all
6 concerned parties, the court may prescribe conditions for the
7 extension and extend it for a term within the limits provided by
8 Subsection (d). The court shall enter into its minutes the proper
9 order extending the receivership.

10 (d) A court may not extend a corporate receivership for more
11 than five years beyond the original three years, except that the
12 court may extend for any additional period the receivership of a
13 corporation organized and existing under Article 3.05(A)(2), Texas
14 Miscellaneous Corporation Laws Act (Article 1302-3.05, Vernon's
15 Texas Civil Statutes), or Title 112, Revised Statutes. (V.A.C.S.
16 Art. 2317.)

17 Source Law

18 Art. 2317. No corporation shall be administered
19 in any court more than three years from the date of
20 such appointment except as hereinafter provided; and
21 within three years such court shall wind up the affairs
22 of such corporation, unless prevented by litigation, or
23 unless, at said time, the Receiver shall be conducting
24 and operating the affairs of such corporation as a
25 going concern, in which event the court, upon
26 application, by proper order entered upon the minutes,
27 after hearing held after due notice to all attorneys of
28 record, may extend, from time to time, such
29 receivership for such term and upon such conditions as
30 in its judgment the best interests of all parties
31 concerned may require; provided, that no continuance of
32 a receivership shall be for more than five years
33 additional to the original three years; and provided
34 further, that corporations organized and existing under
35 Section 68 of Article 1302, Chapter 1 of Title 32, and
36 under Title 112, of Revised Civil Statutes of Texas,
37 shall not be subject to the above provision limiting
38 receiverships to five additional years, but as to such
39 exempted corporations, the time in which to close any
40 such receivership shall be determined by the court, and
41 it may extend the same, from time to time, for such
42 additional period or periods of time as it may
43 determine.

1 Revisor's Note

2 The revised law substitutes "Article 3.05(A)(2),
3 Texas Miscellaneous Corporation Laws Act" for the
4 source law reference to "Section 68 of Article 1302,
5 Chapter 1 of Title 32." The law referred to in the
6 source law was repealed by Chapter 229, Acts of the
7 57th Legislature, Regular Session, 1961, which repealed
8 several statutes incorporated into or conflicting with
9 the newly enacted Texas Miscellaneous Corporation Laws
10 Act (Chapter 205, Acts of the 57th Legislature, Regular
11 Session, 1961). Article 3.05(A)(2) of that Act, to
12 which the revised law refers, is identical to the
13 repealed statute. Although the reference in V.A.C.S.
14 Article 2317 was never amended, there is no good
15 indication of legislative intent to eliminate the
16 exception that article provides for the receivership of
17 railroads.

18 Revised Law

19 Sec. 64.073. EARNINGS ON IMPROVED PROPERTY LIABLE FOR DEBTS.

20 (a) A corporation in receivership shall contribute to the payment
21 of any floating debts against it an amount equal to the full value
22 of current earnings spent by the receiver for:

23 (1) improvements to the corporate property held by the
24 receiver, the purchase of rolling stock or machinery, and other
25 improvements that increase the value of the property; or

26 (2) the extension of a road or the acquisition of land
27 in connection with a road.

28 (b) If property of a corporation in receivership is sold
29 under court order in a lien foreclosure, the court shall order the
30 clerk to retain from the sale proceeds an amount equal to the value
31 of improvements made by the receiver to the property sold and shall
32 order that money to be paid to persons with a claim, debt, or

1 judgment against the corporation. The courts shall require an
2 amount of cash sufficient for that purpose to be paid in at the
3 date of sale. (V.A.C.S. Art. 2315.)

4 Source Law

5 Art. 2315. When a receiver of a corporation has,
6 under the order of the court appointing him, made
7 improvements upon the property and purchased rolling
8 stock, machinery, and made other improvements whereby
9 the value of the property of said corporation has been
10 increased, or has extended a road, or acquired any
11 property in connection with said road, and has paid for
12 same out of the current receipts of the corporation
13 that came into his hands as receiver, then, if there be
14 any floating debts against said corporation, said
15 corporation shall be made to contribute to the floating
16 indebtedness to the full value of the money so spent by
17 said receiver as aforesaid. When there are liens of
18 any kind upon the property of said corporation in the
19 hands of such receiver, and said property is sold under
20 the order of the court, and said liens foreclosed, then
21 the court appointing such receiver, if there be any
22 unpaid debts or judgments, or claims against the
23 corporation itself, shall detain in the hands of the
24 clerk of the court money to the full value of the
25 improvements made by the receiver of the property sold,
26 and pay the same over to whoever has or may have a
27 claim, debt, or judgment against said corporation; and
28 the court, in ordering the sale of the property, shall
29 require sufficient cash to be paid in at date of sale
30 to cover the full value of the improvements so made by
31 said receiver out of the current funds received by him
32 from the property while receiver.

33 Revised Law

34 Sec. 64.074. CLAIMS PREFERENCE AGAINST CURRENT EARNINGS. A
35 judgment or claim existing against a corporation at the time the
36 receiver is appointed, or a judgment in an action existing at that
37 time, shall be paid out of the earnings of the corporation earned
38 during the receivership in preference to the mortgage of a
39 mortgagee who instituted the receivership. The judgment or claim
40 is a lien on those earnings. (V.A.C.S. Art. 2316.)

41 Source Law

42 Art. 2316. All judgments, claims, or causes of
43 action when determined, existing against any
44 corporation at the time of the appointment of a
45 receiver, shall be paid out of the earnings of such
46 corporation while in the hands of the receiver, to the

1 exclusion of mortgage action; and the same shall be a
2 lien on such earnings.

3 Revisor's Note

4 The revised law provides a preference only over
5 the mortgage of a mortgagee who instituted the
6 receivership. The revision is in accordance with the
7 interpretation of V.A.C.S. Article 2316 in First Nat.
8 Bank of Houston v. Campbell, 140 S.W. 430 (Tex. 1911)
9 and Gulf Pipe Line Co. v. Lasater, 193 S.W. 773 (Tex.
10 Civ. App.--San Antonio 1917, writ ref'd), cert. denied,
11 249 U.S. 599, 39 S.Ct. 257 (1918).

12 Revised Law

13 Sec. 64.075. FORFEITURE OF CHARTER FOR UNQUALIFIED RECEIVER.
14 If a person who is not a citizen and qualified voter of this state
15 is appointed receiver for a domestic corporation that owns property
16 in this state, the corporation forfeits its charter. The attorney
17 general shall immediately bring suit in the nature of quo warranto
18 for forfeiture of the charter. (V.A.C.S. Art. 2295.)

19 Source Law

20 Art. 2295. Where a domestic corporation owning
21 property in this State shall have a receiver of such
22 property appointed who is not a bona fide citizen and
23 qualified voter of this State, said corporation shall
24 thereby forfeit its charter; and the Attorney General
25 shall at once prosecute a suit by quo warranto against
26 said corporation so offending to forfeit its charter.
27 The court trying the cause shall forfeit the charter of
28 said corporation upon proof that a person has been
29 appointed receiver of its property situated in this
30 State who is not so qualified.

31 Revised Law

32 Sec. 64.076. SUITS AGAINST RAILROAD RECEIVER: VENUE AND
33 SERVICE. An action against the receiver of a railroad company may
34 be brought in any county through or into which the railroad is
35 constructed, and citation may be served on the receiver, the

1 general or division superintendent, or an agent of the receiver who
2 resides in the county in which the suit is brought. If no agent of
3 the receiver resides in the county in which the suit is brought,
4 citation may be served on any agent of the receiver in this state.
5 (V.A.C.S. Arts. 2030, 2311 (part).)

6 Source Law

7 Art. 2030. In suits against receivers of
8 railroad companies, service may be had either upon the
9 receiver, the general or division superintendent, or
10 any agent of the receiver who resides in the county in
11 which suit is brought. If there be no agent of the
12 receiver in the county in which suit is brought, then
13 service may be had upon any agent of the receiver in
14 the State.

15 [Art. 2311]
16 [Actions may be brought . . .] against receivers of
17 railroad companies in any county through or into which
18 the road is constructed. [Service of summons may be
19 had . . .] upon the general or division superintendent
20 of the road . . .

21 [Sections 64.077-64.090 reserved for expansion]

22 SUBCHAPTER F. RECEIVER FOR CERTAIN MINERAL INTERESTS

23 Revised Law

24 Sec. 64.091. RECEIVER FOR MINERAL INTERESTS OWNED BY
25 NONRESIDENT OR ABSENTEE. (a) The purpose of this section is to
26 encourage the exploration and development of mineral resources.

27 (b) In the following actions, a district court may appoint a
28 receiver for the mineral interest or leasehold interest under a
29 mineral lease owned by a nonresident or absent defendant:

30 (1) an action that is brought by a person claiming or
31 owning an undivided mineral interest in land in this state or an
32 undivided leasehold interest under a mineral lease of land in this
33 state and that has one or more defendants who have, claim, or own
34 an undivided mineral interest in the same property; or

35 (2) an action that is brought by a person claiming or
36 owning an undivided leasehold interest under a mineral lease of

1 land in this state and that has one or more defendants who have,
2 claim, or own an undivided leasehold interest under a mineral lease
3 of the same property.

4 (b) The defendant for whom the receiver is sought must:

5 (1) be a person whose residence or identity is unknown
6 or a nonresident; and

7 (2) have not paid taxes on the interest or rendered it
8 for taxes during the five-year period immediately preceding the
9 filing of the action.

10 (c) The plaintiff in the action must allege by verified
11 petition and prove that he:

12 (1) has made a diligent but unsuccessful effort to
13 locate the defendant; and

14 (2) will suffer substantial damage or injury unless
15 the receiver is appointed.

16 (d) In an action under Subsection (b)(1):

17 (1) the plaintiff, in the verified petition, must name
18 the last known owner or the last record owner of the interest as
19 defendant;

20 (2) the court may appoint as receiver the county judge
21 and his successors, the county clerk and his successors, or any
22 other resident of the county in which the land is located; and

23 (3) the receiver is not required to post bond.

24 (e) A receivership created under this subchapter continues
25 as long as the defendant or his heirs, assigns, or personal
26 representatives fail to appear in court in person or by agent or
27 attorney to claim the defendant's interest.

28 (f) As ordered by the court, the receiver shall immediately:

29 (1) execute and deliver to a lessee or successive
30 lessees mineral leases on the outstanding undivided mineral
31 interests;

32 (2) execute and deliver to a lessee or successive
33 lessees an assignment of the outstanding undivided leasehold

1 interest; and

2 (3) enter into a unitization agreement authorized by
3 the Railroad Commission of Texas.

4 (g) A lease executed by a receiver under this section may
5 authorize the lessee to pool and unitize land subject to the lease
6 with adjacent land into a unit not to exceed 160 acres for an oil
7 well or 640 acres for a gas well plus 10 percent tolerance or into
8 a unit that substantially conforms to a larger unit prescribed or
9 permitted by governmental rule.

10 (h) Money consideration paid for the execution of a lease,
11 assignment, or unitization agreement by the receiver must be paid
12 to the clerk of the court in which the case is pending before the
13 receiver executes the instrument. The court shall apply the money
14 to the costs accruing in the case and retain any balance for the
15 use and benefit of the nonresident or person of unknown residence
16 who owns the mineral or leasehold interest. Payments made at a
17 later time under the lease, assignment, or unitization agreement
18 shall be paid into the registry of the court and impounded for the
19 use and benefit of the owner of the mineral or leasehold interest.

20 (i) This section is cumulative of other laws relating to
21 removal of a cloud from title or appointment of a receiver.

22 (j) In this section:

23 (1) "Mineral lease" includes any lease of oil, gas, or
24 other minerals that contains provisions necessary or incident to
25 the orderly exploration, development, and recovery of oil, gas, or
26 other minerals.

27 (2) "Leasehold interest" includes ownership created
28 under a mineral lease or carved out of a leasehold estate granted
29 under a mineral lease, including production payments, overriding
30 royalty interests, and working interests.

31 (3) "Lessee" includes an assignee under an assignment
32 of a mineral lease. (V.A.C.S. Art. 2320b.)

Source Law

Art. 2320b

Sec. 1. To encourage the exploration and development of mineral resources in an action filed in the District Court by any person, firm or corporation having, claiming or owning an undivided mineral interest in any tract of land in the State of Texas, or any person, firm or corporation having, claiming or owning an undivided leasehold interest granted under a mineral lease covering any tract of land in the State of Texas, in which it is made to appear that one or more of the defendants in such action are nonresidents of the State of Texas, or persons whose identity or place of residence is unknown and that such nonresidents of Texas or persons whose identity or place of residence is unknown have, claim or own an undivided mineral interest in said land and have not paid taxes on said mineral interests or rendered same for taxes within the five successive years immediately preceding the filing of the action, the District Court shall have power to appoint the county judge of the particular county in which the land is located, and his successors in office or the county clerk of the particular county in which the land is located and his successors in office or any resident of said county, as the receiver of said undivided mineral interest owned by any one or more of such defendants, such receiver to serve without the necessity of his posting bond, provided a duly verified petition, naming the last known owner or the last record owner of the interest as defendants, is filed and satisfactory proof is made to the Court that the plaintiff or plaintiffs have made diligent but unsuccessful effort to locate such defendants, and that the plaintiff or plaintiffs will suffer substantial damage or injury unless such receiver is appointed. Such receivership shall continue so long as any of such defendants, or his heirs, assigns or personal representatives, shall have failed to appear, either in person or by agent or attorney, in such court to claim his interest in the ownership of the minerals dealt with in the action.

Sec. 2. In an action filed in the District Court by any person, firm or corporation having, claiming or owning an undivided leasehold interest granted under a mineral lease covering any tract of land in the State of Texas in which it is made to appear that one or more of the defendants in such action are nonresidents of the State of Texas, or persons whose identity or place of residence is unknown, and who have, claim or own an undivided leasehold interest granted under a mineral lease covering said land and have not paid taxes on said leasehold interest or rendered same for taxes within the five successive years immediately preceding the filing of the action, the District Court shall have power to appoint a receiver of said undivided leasehold interest owned by any one or more of such defendants, provided a duly verified petition is filed and satisfactory proof is made that the plaintiff or plaintiffs have made diligent but unsuccessful effort to locate such defendants, and that the plaintiff or plaintiffs will suffer substantial damages or injury unless such receiver is appointed. The receivership continues as long as the defendant or his heir, assign, or personal representative fails to appear, either in person or by agent or attorney, in the court to claim

1 the interest in the ownership of the leasehold
2 interest.

3 Sec. 3. Such receiver, under the orders of the
4 court, shall have power, authority and duty, subsequent
5 to his appointment and from time to time thereafter, to
6 (1) execute and deliver to a lessee, or successive
7 lessees, mineral leases on such outstanding mineral
8 interests, (2) to execute and deliver to a lessee, or
9 successive lessees, an assignment of any such
10 outstanding undivided mineral leasehold interest, and
11 (3) to enter into any unitization agreement which has
12 been duly authorized by the Railroad Commission of
13 Texas. Such receiver shall execute such leases or
14 assignments, or enter into such unitization agreements
15 forthwith upon the entry of any such decree by the
16 District Court. The money consideration, if any, to be
17 paid for the execution of the aforementioned leases,
18 assignments and/or unitization agreements by such
19 receiver, shall be paid over to the clerk of the
20 District Court in which the cause is pending, prior to
21 the execution of the instrument by the receiver, and
22 thereafter, after applying such money consideration, if
23 any, to costs that may have accrued in such cause, the
24 district clerk shall retain the balance of such funds
25 for the use and benefit of such nonresident or unknown
26 owners of such mineral interests or leasehold
27 interests, as the case may be, and any future payments
28 paid under such mineral lease, assignment of leasehold
29 interest or unitization agreement, shall be paid
30 directly into the registry of the court and impounded
31 for the use and benefit of such nonresident and unknown
32 owners.

33 Sec. 4. When used in this Act

34 (1) the term "mineral lease" shall be deemed to
35 include oil and gas leases and oil, gas and mineral
36 leases of every kind and nature containing any and all
37 provisions necessary or incident to the orderly
38 exploration, development and recovery of oil, gas and
39 other minerals including provision authorizing lessee
40 to pool and unitize the lands subject thereto with
41 adjacent lands into a unit not to exceed 160 acres for
42 an oil well or 640 acres for a gas well plus 10%
43 tolerance provided that should any governmental
44 authority having jurisdiction prescribe or permit
45 larger units, then such units may conform substantially
46 in size with those prescribed by government
47 regulations;

48 (2) the term "leasehold interest" shall be
49 deemed to include any and all ownerships created under
50 a mineral lease or carved out of a leasehold estate
51 granted under a mineral lease and without limiting the
52 foregoing shall include production payments, overriding
53 royalty interests and working interests;

54 (3) the term "lessee" shall be deemed to include
55 an assignee under an assignment or a mineral lease as
56 that term is defined under Subsection 1 above.

57 Sec. 5. This Act shall not have the effect of
58 altering or changing any laws now in effect relating to
59 suits for the removal of cloud from title or the
60 appointment of receivers under any other law, but is
61 cumulative thereof.

1 Revisor's Note

2 (1) The source law for this section contains
3 ambiguities that the revisor is unable to resolve
4 within the scope of this revision. As originally
5 enacted, V.A.C.S. Article 2320b contained parallel
6 provisions that allowed either the owner of an
7 undivided mineral interest to have a receiver appointed
8 for nonresident or absent co-owners (Section 1) or the
9 owner of an undivided leasehold interest to have a
10 receiver appointed for nonresident or absent co-owners
11 of the leasehold interest (Section 2). By amendment to
12 Section 1, the provisions are no longer parallel. An
13 action under Section 1 may now be brought by the owner
14 of an undivided leasehold interest for the appointment
15 of a receiver for a nonresident or absent owner of an
16 undivided mineral interest, but the reverse is not
17 provided for. In addition, Section 1 now provides for
18 who may be appointed receiver and for lack of a bond.
19 No similar provisions were added to Section 2.

20 (2) In the definition of "lessee," the revised
21 law provides that the term includes "an assignee under
22 an assignment of a mineral lease" rather than the
23 phrase from V.A.C.S. Article 2320b, Section 4(3), "an
24 assignee under an assignment or a mineral lease."
25 [Emphasis added.] The source law use of "or" was
26 probably a typographical error; there is no reason to
27 include assignees generally and no distinction intended
28 between an assignee generally and an assignee under a
29 mineral lease.

30 Revised Law

31 Sec. 64.092. RECEIVER FOR CONTINGENT INTERESTS IN MINERALS.

32 (a) On the application of a person who has a vested, contingent,

1 or possible interest in land or an estate subject to a contingent
2 future interest, a district court of the county in which all or
3 part of the land is located may appoint a receiver for the land or
4 estate, pending the occurrence of the contingency and the vesting
5 of the future interest, if:

6 (1) the land or estate is susceptible to drainage of
7 oil, gas, or other minerals;

8 (2) lease of the land for oil, gas, or mineral
9 development and the safe and proper investment of the proceeds will
10 inure to the benefit and advantage of the persons entitled to the
11 proceeds; or

12 (3) lease of the land for the production of oil, gas,
13 or other minerals is necessary for the conservation, preservation,
14 or protection of the land or estate or of a present, contingent, or
15 future interest in the land or estate.

16 (b) As authorized or directed by the court, a receiver
17 appointed under Subsection (a) may:

18 (1) lease the land for the development of oil, gas, or
19 other minerals at public or private sale and on terms and
20 conditions directed by the court; and

21 (2) receive, hold, and invest the proceeds of the
22 lease for the benefit of persons who are entitled or may become
23 entitled to those proceeds according to their respective rights and
24 interests.

25 (c) On the application of a person who has a vested,
26 contingent, or possible interest in land or an estate that is under
27 an oil, gas, or mineral lease and is subject to a contingent future
28 interest, a district court of the county in which all or part of
29 the land is located may appoint a receiver for the contingent
30 future interests, pending the occurrence of the contingency and the
31 vesting of the future interest, if:

32 (1) the lease fails to provide for pooling or contains
33 pooling provisions that are ineffective as to the contingent future

1 interest covered by the lease; and

2 (2) the pooling of the contingent future interest:

3 (A) is necessary to protect correlative rights;

4 (B) is necessary to prevent the physical or
5 economic waste of oil, gas, or other minerals;

6 (C) will inure to the benefit and advantage of
7 the persons entitled to the future interest; or

8 (D) is necessary for the conservation,
9 preservation, or protection of the land or estate or of a present,
10 contingent, or future interest in the land or estate.

11 (d) The lessee or an assignee of the lessee may apply for
12 appointment of a receiver under Subsection (c). As authorized or
13 directed by the court, the receiver appointed under that subsection
14 may:

15 (1) amend the lease to authorize pooling for the
16 contingent future interest, on terms and conditions and for
17 additional consideration directed by the court; and

18 (2) receive, hold, and invest the additional
19 consideration for the benefit of the persons who are entitled or
20 may become entitled to that consideration, according to their
21 respective rights and interests.

22 (e) A court appointing a receiver under this section may
23 confer on the receiver all powers necessary to the exercise of the
24 receiver's authority.

25 (f) A lease executed or amended by a receiver under this
26 section may authorize the lessee and his assigns to pool all or
27 part of the land subject to the lease with adjacent land into a
28 unit not to exceed 160 acres for an oil well or 640 acres for a gas
29 well plus 10 percent tolerance, or into a unit that substantially
30 conforms to a larger unit prescribed or permitted by governmental
31 rule.

32 (g) In an action for appointment of a receiver under this
33 section, a person who has a vested, contingent, or possible

1 interest in the land must be cited in the manner and for the time
2 provided for in actions concerning title to land. A person not in
3 being must be cited in the manner and for the time provided in
4 actions against unknown owners or claimants of interest in land.
5 In an action brought under Subsection (c), a person is not a
6 necessary party if:

7 (1) the person's interest in the land subject to the
8 lease is effectively subject to pooling authority under the lease;
9 and

10 (2) enlargement of the pooling authority as to the
11 person's interest is not sought.

12 (h) The court appointing a receiver under this section may
13 order that, after payment of court costs, money paid to the
14 receiver be deposited in the registry of the court for the use and
15 benefit of the persons who are entitled or may become entitled to
16 the money, according to their respective rights and interests. If
17 the court then discharges the receiver, it may order that later
18 payments under the lease accruing to the contingent future interest
19 be deposited in the same manner and for the same purpose.

20 (i) This section does not apply to a mineral lease on land
21 on which drilling began before October 5, 1949. This section does
22 not authorize a lease of mineral interests on land subject to
23 existing homestead rights without the written consent of the owner
24 of the homestead rights given in the manner provided by law for the
25 conveyance of homesteads.

26 (j) In this section, "contingent future interest" means a
27 legal or equitable interest arising by way of remainder, reversion,
28 possibility of reverter, executory devise, on the occurrence of a
29 condition subsequent, or otherwise. (V.A.C.S. Art. 2320c.)

30 Source Law

31 Art. 2320c
32 Sec. 1. Where lands or any estate therein are
33 subject to contingent future interests, legal or
34 equitable, whether arising by way of remainder,

1 reversion, possibility of reverter, executory devise,
2 upon the happening of a condition subsequent, or
3 otherwise, and it is made to appear that such lands or
4 estate are liable to drainage of oil, gas and other
5 minerals, or either of them, or that lease thereof for
6 oil, gas and mineral development and the safe and
7 proper investment of the proceeds will inure to the
8 benefit and advantage of the persons entitled thereto,
9 or that it is otherwise necessary for the conservation,
10 preservation or protection of the property or estate or
11 of any present or contingent or future interest
12 therein, that such lands or estate be leased for the
13 production of oil, gas and other minerals, or either of
14 them, upon application of any person having a vested,
15 contingent, or possible interest in said lands or
16 estate, any District Court of the county in which the
17 lands or a part thereof lie shall have power, pending
18 the happening of the contingency and the vesting of
19 such future interests, to appoint a receiver for such
20 lands or estate and to authorize and direct the lease
21 of such property for development of oil, gas and other
22 minerals, or either of them, either at public sale or
23 at private sale, and upon such terms and conditions as
24 the Court may direct; and in such case to authorize a
25 receiver to make such lease and to receive, hold and
26 invest the proceeds thereof under the direction of the
27 Court for the benefit of the persons entitled or who
28 may become entitled thereto according to their
29 respective rights and interests, and to that end may
30 confer all necessary powers on the receiver.

31 Sec. 2. Where lands or any estate therein,
32 including any contingent future interests described in
33 Section 1 of this Act, are subject to an existing oil,
34 gas and mineral lease which fails to provide for
35 pooling or contains pooling provisions which are
36 ineffective as to the contingent future interests
37 covered by the lease, and it is made to appear that
38 pooling of the contingent future interests is necessary
39 to protect correlative rights, or to prevent the
40 physical or economic waste of oil, gas and other
41 minerals, or any of them, or that pooling of the
42 contingent future interests will inure to the benefit
43 and advantage of the persons entitled thereto, or that
44 pooling is otherwise necessary for the conservation,
45 preservation or protection of the property or estate or
46 of any present or contingent or future interest
47 therein, upon application of any person having a
48 vested, contingent or possible interest in the lands
49 subject to the lease, including the lessee therein and
50 any assignee of the lessee, any district court of the
51 county in which the lands or part thereof lie shall
52 have power, pending the happening of the contingency
53 and the vesting of the future interests, to appoint a
54 receiver for the contingent interests covered by the
55 lease and to authorize and direct the amendments of the
56 lease to authorize pooling of the contingent future
57 interests, upon the terms and conditions and for
58 additional consideration, if any, as the court may
59 direct; and in such case to authorize a receiver to
60 make such an amendment to the lease and to receive,
61 hold and invest the additional consideration therefor,
62 if any, under the direction of the court for the
63 benefit of the persons entitled or who may become
64 entitled thereto according to their respective rights
65 and interests, and to that end may confer all necessary
66 powers on the receiver.

1 Sec. 2A. Any lease given pursuant to Section 1
2 of this Act or any amendment of an existing lease made
3 pursuant to Section 2 of this Act may authorize the
4 lessee and his assigns to pool all or any part of the
5 lands subject to the lease with adjacent lands into a
6 unit not to exceed 160 acres for an oil well or 640
7 acres for a gas well plus 10% tolerance. Provided that
8 should any governmental authority having jurisdiction
9 prescribe or permit larger units, than [sic] the units
10 may conform substantially in size with those prescribed
11 or permitted by government regulations.

12 Sec. 2B. In any cause commenced pursuant to
13 Section 1 or Section 2 of this Act, all persons in
14 being having a vested, contingent or possible interest
15 in the lands shall be cited in the cause in the manner
16 and for the time provided for in actions concerning
17 title to lands. All persons not in being shall be
18 cited in the manner and for the time provided in
19 actions against unknown owners or claimants of interest
20 in land. Provided in any cause commenced pursuant to
21 Section 2 of this Act, a person shall not be a
22 necessary party in the cause if at the commencement
23 thereof the person's interest in the land is then
24 effectively subject to pooling authority expressed in
25 an existing oil, gas and mineral lease and if
26 enlargement of the pooling authority as to the interest
27 is not sought in the cause.

28 Sec. 2C. In any cause commenced pursuant to this
29 Act, the court may authorize and direct that the
30 moneys, if any, paid to the receiver, after payment of
31 the court costs, shall be by him deposited in the
32 registry of the court for the use and benefit of the
33 persons entitled or who may become entitled thereto
34 according to their respective rights and interests, and
35 thereupon the court may immediately discharge the
36 receiver, and any future payments accruing under the
37 lease to the contingent future interests leased or
38 subjected to pooling in the cause shall be paid
39 directly into the registry of the court and impounded
40 for the benefit of the persons entitled or who may
41 become entitled thereto according to their respective
42 rights and interests.

43 Sec. 3. No mineral lease on which there has
44 already been drilled any oil or gas well, or both, and
45 no mineral lease or leasing unit upon which drilling
46 operations for oil and gas, or both, have already begun
47 at the time of the effective date of this Act, shall
48 come within the application of the provisions of this
49 Act; it being the intention of the Legislature that the
50 provisions of this Act shall apply only to mineral
51 leases where there has been no development for oil and
52 gas, or other minerals, upon the effective date of this
53 Act. It is further provided, however, that no lease
54 shall be authorized covering any mineral interest in
55 lands, in which lands there are existing homestead
56 rights, without the written consent of the owner or
57 owners of such homestead rights given in the manner
58 provided by law for the conveyance of homesteads.

59 Revisor's Note

60 (1) The date in Subsection (i) of the revised
61 law is the effective date of the source law.

(2) The revised law omits Section 4 of V.A.C.S. Article 2320c, a severability clause made unnecessary by V.A.C.S. Article 11a and Section 3.12, Code Construction Act (V.A.C.S. Article 5429b-2), which provide for the severability of all statutes.

Revisor's Note
(End of Chapter)

(1) This chapter omits from the revised law V.A.C.S. Article 2308, which required a receiver to post bond in order to appeal a judgment against him. The original enactment was held unconstitutional in Dillingham v. Putnam, 14 S.W. 303 (Tex. 1890), but was nonetheless included in the 1911 Revised Civil Statutes. It was again held unconstitutional in National Equitable Soc. v. Alexander, 210 S.W. 602 (Tex. Civ. App.--Austin 1919, no writ). Although included in the 1925 Revised Statutes in spite of the court holdings, the provision has not been given effect. The omitted article read:

Art. 2308. In a suit against a receiver, if the receiver desires to appeal or apply for a writ of error from judgment rendered against him, before such appeal or writ of error shall be perfected or allowed, such receiver shall enter into bond with two or more good and sufficient sureties, to be approved by the clerk of the court or justice of the peace, payable to the appellee or the defendant in error, in a sum at least double the amount of the judgment, interest and costs, conditioned that such receiver shall prosecute his appeal or writ of error with effect; and, in case the judgment of the court to which such appeal or writ of error be taken shall be against him, that he will perform its judgment, sentence, or decree, and pay all such damages and costs as said court may award against him. If the judgment of the appellate court shall be against such receiver, judgment shall, at the same time, be entered against the sureties on his said bond, and execution thereon may issue against such sureties within twenty days after such judgment is rendered.

1 (2) This chapter omits from the revised law
2 V.A.C.S. Article 2320a, which was a state bankruptcy
3 law. That article was held unconstitutional in Cattle
4 Raisers Loan Co. v. Doan, 86 S.W.2d 252 (Tex. Civ.
5 App.--Eastland), writ ref'd per curiam, 86 S.W.2d 1082
6 (Tex. 1935). The omitted article is not reprinted here
7 because of its length, but may be found in the session
8 laws as Chapter 24, Acts of the 43rd Legislature, 3rd
9 Called Session, 1934.

1 CHAPTER 65. INJUNCTION

2 SUBCHAPTER A. GENERAL PROVISIONS

3 Sec. 65.001. APPLICATION OF EQUITY PRINCIPLES

4 [Sections 65.002-65.010 reserved for expansion]

5 SUBCHAPTER B. AVAILABILITY OF REMEDY

6 Sec. 65.011. GROUNDS GENERALLY

7 Sec. 65.012. OPERATION OF WELL OR MINE

8 Sec. 65.013. STAY OF JUDGMENT OR PROCEEDING

9 Sec. 65.014. LIMITATIONS ON STAY OF EXECUTION OF JUDGMENT

10 Sec. 65.015. CLOSING OF STREETS

11 [Sections 65.016-65.020 reserved for expansion]

12 SUBCHAPTER C. JURISDICTION OF PROCEEDINGS; VENUE

13 Sec. 65.021. JURISDICTION OF PROCEEDING

14 Sec. 65.022. RETURN OF WRIT; HEARING BY NONRESIDENT JUDGE

15 Sec. 65.023. PLACE FOR TRIAL

16 [Sections 65.024-65.030 reserved for expansion]

17 SUBCHAPTER D. INJUNCTION OBTAINED FOR PURPOSES

18 OF DELAYING COLLECTION OF MONEY

19 Sec. 65.031. DISSOLUTION; AWARD OF DAMAGES

20 CHAPTER 65. INJUNCTION

21 SUBCHAPTER A. GENERAL PROVISIONS

22 Revised Law

23 Sec. 65.001. APPLICATION OF EQUITY PRINCIPLES. The
24 principles governing courts of equity govern injunction proceedings
25 if not in conflict with this chapter or other law. (V.A.C.S. Art.
26 4663.)

27 Source Law

28 Art. 4663. The principles, practice and
29 procedure governing courts of equity shall govern
30 proceedings in injunctions when the same are not in
31 conflict with the provisions of this title or other
32 law.

1 Revisor's Note

2 The provisions of V.A.C.S. Article 4663 relating
3 to practice and procedure were repealed by the Texas
4 Rules of Civil Procedure.

5 [Sections 65.002-65.010 reserved for expansion]

6 SUBCHAPTER B. AVAILABILITY OF REMEDY

7 Revised Law

8 Sec. 65.011. GROUNDS GENERALLY. A writ of injunction may be
9 granted if:

10 (1) the applicant is entitled to the relief demanded
11 and all or part of the relief requires the restraint of some act
12 prejudicial to the applicant;

13 (2) a party performs or is about to perform, or is
14 procuring or allowing the performance of, an act relating to the
15 subject of pending litigation, in violation of the rights of the
16 applicant, and the act would tend to render the judgment in that
17 litigation ineffectual;

18 (3) the applicant is entitled to a writ of injunction
19 under the principles of equity and the statute of this state
20 relating to injunctions;

21 (4) a cloud would be placed on the title of real
22 property being sold under an execution against a party having no
23 interest in the real property subject to execution at the time of
24 sale, irrespective of any remedy at law; or

25 (5) irreparable injury to real or personal property is
26 threatened, irrespective of any remedy at law. (V.A.C.S. Art. 4642
27 (part).)

28 Source Law

29 [Judges . . . shall . . . grant writs of
30 injunction . . .] in the following cases:

31 1. Where the applicant is entitled to the relief
32 demanded and such relief or any part thereof requires

1 the restraint of some act prejudicial to him.

2 2. Where a party does some act respecting the
3 subject of pending litigation or threatens or is about
4 to do some act or is procuring or suffering the same to
5 be done in violation of the rights of the applicant
6 when said act would tend to render judgment
7 ineffectual.

8 3. Where the applicant shows himself entitled
9 thereto under the principles of equity, and the
10 provisions of the statutes of this State relating to
11 the granting of injunctions.

12 4. Where a cloud would be put on the title of
13 real estate being sold under an execution against a
14 party having no interest in such real estate subject to
15 the execution at the time of the sale, or irreparable
16 injury to real estate or personal property is
17 threatened, irrespective of any legal remedy at law.

18 Revised Law

19 Sec. 65.012. OPERATION OF WELL OR MINE. (a) A court may
20 issue an injunction or temporary restraining order prohibiting
21 subsurface drilling or mining operations only if an adjacent
22 landowner filing an application claims that a wrongful act caused
23 injury to his surface or improvements or loss of or injury to his
24 minerals and if the party against whom the injunction is sought is
25 unable to respond in damages for the resulting injuries.

26 (b) To secure the payment of any injuries that may be
27 sustained by the complainant as a result of subsurface drilling or
28 mining operations, the party against whom an injunction is sought
29 under this section shall enter into a good and sufficient bond in
30 an amount fixed by the court hearing the application.

31 (c) The court may appoint a trustee or receiver instead of
32 requiring a bond if the court considers it necessary to protect the
33 interests involved in litigation concerning an injunction under
34 this section. The trustee or receiver has the powers prescribed by
35 the court and shall take charge of and hold the minerals produced
36 from the drilling or mining operation or the proceeds from the
37 disposition of those minerals, subject to the final disposition of
38 the litigation. (V.A.C.S. Art. 4644.)

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1 delayed because of fraud or false promises of the plaintiff in the
2 judgment practiced or made at the time of or after rendition of the
3 judgment; or

4 (2) an equitable matter or defense arises after the
5 rendition of the judgment.

6 (b) If the applicant for an injunction to stay execution of
7 a judgment was absent from the state when the judgment was rendered
8 and was unable to apply for the writ within one year after the date
9 of rendition, the injunction may be granted at any time within two
10 years after that date. (V.A.C.S. Art. 4646.)

11 Source Law

12 Art. 4646. No injunction to stay an execution
13 upon any valid and subsisting judgment shall be granted
14 after the expiration of one year from the rendition of
15 such judgment, unless it be made to appear that an
16 application for such injunction has been delayed in
17 consequence of the fraud or false promises of the
18 plaintiff in the judgment, practiced or made at the
19 time, or after rendition, of such judgment, or unless
20 for some equitable matter or defense arising after the
21 rendition of such judgment. If it be made to appear
22 that the applicant was absent from the State at the
23 time such judgment was rendered and was unable to apply
24 for such writ within the time aforesaid, such
25 injunction may be granted at any time within two years
26 from the date of the rendition of the judgment.

27 Revised Law

28 Sec. 65.015. CLOSING OF STREETS. An injunction may not be
29 granted to stay or prevent the governing body of an incorporated
30 city from vacating, abandoning, or closing a street or alley except
31 on the suit of a person:

32 (1) who is the owner or lessee of real property
33 abutting the part of the street or alley vacated, abandoned, or
34 closed; and

35 (2) whose damages have neither been ascertained and
36 paid in a condemnation suit by the city nor released. (V.A.C.S.
37 Art. 4646a.)

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1 ordinary and available means of travel and communication in
2 sufficient time to put into effect the purpose of the writ sought.
3 In seeking a writ under this subsection, the applicant or attorney
4 for the applicant shall attach to the application an affidavit that
5 fully states the facts of the inaccessibility and the efforts made
6 to reach and communicate with the resident judge. The judge to
7 whom application is made shall refuse to hear the application
8 unless he determines that the applicant made fair and reasonable
9 efforts to reach and communicate with the resident judge. The
10 injunction may be dissolved on a showing that the applicant did not
11 first make reasonable efforts to procure a hearing on the
12 application before the resident judge. (V.A.C.S. Arts. 4642
13 (part), 4643.)

14 Source Law

15 [Art. 4642]

16 [Judges . . . shall . . . grant writs of injunction]
17 returnable to said courts

18 Art. 4643. No district judge shall grant a writ
19 of injunction returnable to any other court than his
20 own except in the following cases:

21 1. Where the resident judge cannot hear and act
22 upon the application by reason of his absence,
23 sickness, inability, inaccessibility, disqualification
24 or refusal to act, when such facts are fully set out in
25 the application or in an affidavit accompanying same,
26 and if such judge refuses to act, such refusal shall be
27 indorsed by said judge on such writ with his reasons
28 therefor. In such case no district judge shall grant
29 the writ when the application therefor has once been
30 acted upon by another district judge of this State.

31 2. To stay execution, or to restrain
32 foreclosure, sales under deeds of trust, trespasses,
33 the removal of property, or acts injurious to or
34 impairing riparian or easement rights, when
35 satisfactory proof is made to such non-resident judge
36 that it is impracticable for the applicant to reach the
37 resident judge and procure his action in time to
38 effectuate the purpose of the application.

39 3. When the resident judge cannot be reached by
40 the ordinary and available means of travel and
41 communication in sufficient time to effectuate the
42 purpose of the writ sought. In such case the applicant
43 or his attorney seeking a writ on the ground of such
44 inaccessibility shall attach to his application an
45 affidavit fully stating the facts of such
46 inaccessibility and his efforts made to reach and
47 communicate with said judge, and the result thereof,
48 and unless such efforts appear to have been fair and
49 reasonable the application shall not be heard. Such
50 injunction may be subsequently dissolved upon it being

1 shown that the petitioner did not first make reasonable
2 efforts to procure a hearing upon said application
3 before the resident judge.

4 Revised Law

5 Sec. 65.023. PLACE FOR TRIAL. (a) Except as provided by
6 Subsection (b), a writ of injunction against a party who is a
7 resident of this state shall be tried in a district or county court
8 in the county in which the party is domiciled. If the writ is
9 granted against more than one party, it may be tried in the proper
10 court of the county in which either party is domiciled.

11 (b) A writ of injunction granted to stay proceedings in a
12 suit or execution on a judgment must be tried in the court in which
13 the suit is pending or the judgment was rendered. (V.A.C.S. Art.
14 4656.)

15 Source Law

16 Art. 4656. Writs of injunction granted to stay
17 proceedings in a suit, or execution on a judgment,
18 shall be returnable to and tried in the court where
19 such suit is pending, or such judgment was rendered;
20 writs of injunction for other causes, if the party
21 against whom it is granted be an inhabitant of the
22 State, shall be returnable to and tried in the district
23 or county court of the county in which such party has
24 his domicile, according as the amount or matter in
25 controversy comes within the jurisdiction of either of
26 said courts. If there be more than one party against
27 whom a writ is granted, it may be returned and tried in
28 the proper court of the county where either may have
29 his domicile.

30 Revisor's Note

31 (1) The revised law omits references to return
32 of the writ as unnecessary. Section 65.022 provides
33 the rules for return of the writ.

34 (2) The revised law omits the reference to the
35 amount or matter in controversy because it is
36 unnecessary. The jurisdiction of the district and
37 county courts relating to the amount or matter in
38 controversy is set by Article V, Sections 8 and 16, of

1 the Texas Constitution.

2 [Sections 65.024-65.030 reserved for expansion]

3 SUBCHAPTER D. INJUNCTION OBTAINED FOR PURPOSES OF
4 DELAYING COLLECTION OF MONEY

5 Revised Law

6 Sec. 65.031. DISSOLUTION; AWARD OF DAMAGES. If on final
7 hearing a court dissolves, in whole or in part, an injunction
8 enjoining the collection of money, and the injunction was obtained
9 only for delay, the court may assess damages in an amount equal to
10 10 percent of the amount released by dissolution of the injunction,
11 exclusive of costs. (V.A.C.S. Art. 4660.)

12 Source Law

13 Art. 4660. Upon the dissolution of an
14 injunction, either in whole or in part, on final
15 hearing, where the collection of money has been
16 enjoined, if the court be satisfied that the injunction
17 was obtained only for delay, damages thereon may be
18 assessed by the court, at ten per cent on the amount
19 released by the dissolution of the injunction exclusive
20 of costs.

1 CHAPTER 66. QUO WARRANTO

2 Sec. 66.001. GROUNDS

3 Sec. 66.002. INITIATION OF SUIT

4 Sec. 66.003. JUDGMENT

5 CHAPTER 66. QUO WARRANTO

6 Revised Law

7 Sec. 66.001. GROUNDS. An action in the nature of quo
8 warranto is available if:

9 (1) a person usurps, intrudes into, or unlawfully
10 holds or executes a franchise or an office, including an office in
11 a corporation created by the authority of this state;

12 (2) a public officer does an act or allows an act that
13 by law causes a forfeiture of his office;

14 (3) an association of persons acts as a corporation
15 without being legally incorporated;

16 (4) a corporation does or omits an act that requires
17 a surrender or causes a forfeiture of its rights and privileges as
18 a corporation;

19 (5) a corporation exercises power not granted by law;

20 (6) a railroad company charges an extortionate rate
21 for transportation of freight or passengers; or

22 (7) a railroad company unlawfully refuses to move over
23 its lines the cars of another railroad company. (V.A.C.S. Art.
24 6253 (part).)

25 Source Law

26 Art. 6253. If any person shall usurp, intrude
27 into or unlawfully hold or execute, or is now intruded
28 into, or now unlawfully holds or executes, any office
29 or franchise, or any office in any corporation created
30 by the authority of this State, or any public officer
31 shall have done or suffered any act which by law works
32 a forfeiture of his office, or any association of
33 persons shall act within this State as a corporation
34 without being legally incorporated, or any corporation
35 does or omits any act which amounts to a surrender or a

1 forfeiture of its rights and privileges as such, or
2 exercises power not conferred by law; or if any
3 railroad company doing business in this State shall
4 charge an extortionate rate for the transportation of
5 any freight or passengers, or refuse to draw or carry
6 the cars of any other railroad company over its lines
7 as required by the laws of this State

8 Revised Law

9 Sec. 66.002. INITIATION OF SUIT. (a) If grounds for the
10 remedy exist, the attorney general or the county or district
11 attorney of the proper county may petition the district court of
12 the proper county for leave to file an information in the nature of
13 quo warranto.

14 (b) The petition must state that the information is sought
15 in the name of the State of Texas.

16 (c) The attorney general or county or district attorney may
17 file the petition on his own motion or at the request of an
18 individual relator.

19 (d) If there is probable ground for the proceeding, the
20 judge shall grant leave to file the information, order the
21 information to be filed, and order process to be issued. (V.A.C.S.
22 Art. 6253 (part).)

23 Source Law

24 . . . the Attorney General, or district or county
25 attorney of the proper county or district, either of
26 his own accord or at the instance of any individual
27 relator, may present a petition to the district court
28 of the proper county, or any judge thereof in vacation,
29 for leave to file an information in the nature of a quo
30 warranto in the name of the State of Texas. If such
31 court or judge is satisfied that there is probable
32 ground for the proceeding, he shall grant such leave
33 and order the information to be filed and process to
34 issue.

35 Revisor's Note

36 The revised law omits the reference to petitions
37 presented to the judge if the court is in vacation
38 because V.A.C.S. Article 1919 provides for continuous

1 terms for all district courts.

2 Revised Law

3 Sec. 66.003. JUDGMENT. If the person against whom the
4 information is filed is found guilty as charged, the court:

5 (1) shall enter judgment removing the person from the
6 office or franchise;

7 (2) shall enter judgment for the costs of prosecution
8 in favor of the relator; and

9 (3) may fine the person for usurping, intruding into,
10 or unlawfully holding and executing the office or franchise.
11 (V.A.C.S. Art. 6257.)

12 Source Law

13 Art. 6257. If any person or corporation against
14 whom any such proceeding is filed shall be adjudged
15 guilty as charged, the court shall give judgment of
16 ouster against such person or corporation from the
17 office or franchise, and may fine such person or
18 corporation for usurping, intruding into or unlawfully
19 holding and executing such office or franchise and
20 shall give judgment in favor of the relator for costs
21 of the prosecution.

22 Revisor's Note

23 The revised law substitutes "person" for "person
24 or corporation" because a corporation is a person as
25 defined by the Code Construction Act (V.A.C.S. Article
26 5429b-2).

27 [Chapters 67-70 reserved for expansion]

1 TITLE 4. LIABILITY IN TORT
2 CHAPTER 71. WRONGFUL DEATH; SURVIVAL; INJURIES
3 OCCURRING OUT OF STATE
4 SUBCHAPTER A. WRONGFUL DEATH

- 5 Sec. 71.001. DEFINITIONS
6 Sec. 71.002. CAUSE OF ACTION
7 Sec. 71.003. APPLICATION
8 Sec. 71.004. BENEFITTING FROM AND BRINGING ACTION
9 Sec. 71.005. EVIDENCE RELATING TO MARITAL STATUS
10 Sec. 71.006. EFFECT OF FELONIOUS ACT
11 Sec. 71.007. INEFFECTIVE AGREEMENT
12 Sec. 71.008. DEATH OF DEFENDANT
13 Sec. 71.009. EXEMPLARY DAMAGES
14 Sec. 71.010. AWARD AND APPORTIONMENT OF DAMAGES
15 Sec. 71.011. DAMAGES NOT SUBJECT TO DEBTS

16 [Sections 71.012-71.020 reserved for expansion]

17 SUBCHAPTER B. SURVIVAL

- 18 Sec. 71.021. SURVIVAL OF CAUSE OF ACTION

19 [Sections 71.022-71.030 reserved for expansion]

20 SUBCHAPTER C. DEATH OR INJURY CAUSED BY
21 ACT OR OMISSION OUT OF STATE

- 22 Sec. 71.031. ACT OR OMISSION OUT OF STATE

23 TITLE 4. LIABILITY IN TORT
24 CHAPTER 71. WRONGFUL DEATH; SURVIVAL; INJURIES
25 OCCURRING OUT OF STATE
26 SUBCHAPTER A. WRONGFUL DEATH

27 Revised Law

- 28 Sec. 71.001. DEFINITIONS. In this subchapter:

29 (1) "Corporation" means a municipal, private, public,
30 or quasi-public corporation other than a county or a common or
31 independent school district.

1 (2) "Person" means an individual, association of
2 individuals, joint-stock company, or corporation or a trustee or
3 receiver of an individual, association of individuals, joint-stock
4 company, or corporation. (V.A.C.S. Art. 4671 (part).)

5 Source Law

6 ["Person" includes] person, association of persons,
7 joint stock company, corporation or trustee or receiver
8 of any person, corporation, joint stock company, or
9 association of persons The term "corporation,"
10 as used in this article, shall include all municipal
11 corporations, as well as all private and public and
12 quasi public corporations, except counties and common
13 and independent school districts.

14 Revised Law

15 Sec. 71.002. CAUSE OF ACTION. (a) An action for actual
16 damages arising from an injury that causes an individual's death
17 may be brought if liability exists under this section.

18 (b) A person is liable for damages arising from an injury
19 that causes an individual's death if the injury was caused by the
20 person's or his agent's or servant's wrongful act, neglect,
21 carelessness, unskillfulness, or default.

22 (c) A person is liable for damages arising from an injury
23 that causes an individual's death if:

24 (1) the person is a proprietor, owner, charterer, or
25 hirer of an industrial or public utility plant or of a railroad,
26 street railway, steamboat, stagecoach, or other vehicle for the
27 transportation of goods or passengers; and

28 (2) the injury was caused by the person's or his
29 agent's or servant's wrongful act, neglect, carelessness,
30 unskillfulness, or default.

31 (d) A person is liable for damages arising from an injury
32 that causes an individual's death if:

33 (1) the person is a receiver, trustee, or other person
34 in charge of or in control of a railroad, street railway,
35 steamboat, stagecoach, or other vehicle for the transportation of

1 goods or passengers, of an industrial or public utility plant, or
2 of other machinery; and

3 (2) the injury was caused by:

4 (A) the person's wrongful act, neglect,
5 carelessness, unskillfulness, or default;

6 (B) the person's servant's or agent's wrongful
7 act, neglect, carelessness, unfitness, unskillfulness, or default;
8 or

9 (C) a bad or unsafe condition of the railroad,
10 street railway, or other machinery under the person's control or
11 operation.

12 (e) A person is liable for damages arising from an injury
13 that causes an individual's death if:

14 (1) the person is a receiver, trustee, or other person
15 in charge of or in control of a railroad, street railway,
16 steamboat, stagecoach, or other vehicle for the transportation of
17 goods or passengers, of an industrial or public utility plant, or
18 of other machinery; and

19 (2) the action could have been brought against the
20 owner of the railroad, street railway, or other machinery if he had
21 been acting as operator. (V.A.C.S. Art. 4671 (part).)

22 Source Law

23 An action for actual damages on account of the injuries
24 causing the death of any person may be brought in the
25 following cases:

26 1. When an injury causing the death of any
27 person, occurring either within or without this state,
28 is caused by the wrongful act, neglect, carelessness,
29 unskillfulness, or default of another person,
30 association of persons, joint stock company,
31 corporation or trustee or receiver of any person,
32 corporation, joint stock company, or association of
33 persons, his, its or their agents or servants, such
34 persons, association of persons, joint stock company,
35 corporation, trustee or receiver, shall be liable in
36 damages for the injuries causing such death. . . .

37 2. When an injury causing the death of any
38 person occurring either within or without this state,
39 is caused by the wrongful act, neglect, carelessness,
40 unskillfulness, or default of the proprietor, owner,
41 charterer or hirer of any industrial or public utility
42 plant, or any railroad, street railway, steamboat,

1 stage-coach, or other vehicle for the conveyance of
2 goods or passengers, or by the unfitness, wrongful act,
3 neglect, carelessness, unskillfulness or default of
4 his, their or its servants or agents, such proprietor,
5 owner, charterer or hirer shall be liable in damages
6 for the injuries causing such death.

7 3. When an injury causing the death of any
8 person, occurring either within or without this state,
9 is caused by the wrongful act, neglect, carelessness,
10 unskillfulness or default of the receiver, trustee or
11 other person in charge of or in control of any
12 railroad, street railway, steamboat, stage-coach, or
13 other vehicle for the conveyance of goods or
14 passengers, or any industrial plant, public utility
15 plant, or any other machinery, or by the wrongful act,
16 neglect, carelessness, unfitness, unskillfulness or
17 default of his or their servants or agents, such
18 receiver, trustee, or other person shall be liable in
19 damages for the injuries causing such death, and the
20 liability here fixed against such receiver, trustee, or
21 other person shall extend to all cases in which the
22 death is caused by reason of any bad or unsafe
23 condition of the railroad, street railway or other
24 machinery under the control or operation of such
25 receiver, trustee or other person, and to all other
26 cases in which the death results from any other reason
27 or cause for which an action may be brought for damages
28 on account of personal injuries, the same as if said
29 railroad, street railway or other machinery were being
30 operated by the owner thereof.

31 Revisor's Note

32 Because the definition of "person" in the Code
33 Construction Act (V.A.C.S. Article 5429b-2) is broader
34 than the meaning intended by the use of the word in the
35 source law, the revised law substitutes the word
36 "individual" where appropriate.

37 Revised Law

38 Sec. 71.003. APPLICATION. (a) This subchapter applies only
39 if the individual injured would have been entitled to bring an
40 action for the injury if he had lived.

41 (b) This subchapter applies whether the injury occurs inside
42 or outside this state. (V.A.C.S. Arts. 4671 (part), 4672.)

Source Law

[Art. 4671]

[Injuries causing the death] . . . occurring
either within or without this state, . . .

[Injuries causing the death] . . . occurring
either within or without this state, . . .

[Injuries causing the death] . . . occurring
either within or without this state, . . .

Art. 4672. The wrongful act, negligence, carelessness, unskilfulness or default mentioned in the preceding article must be of such character as would, if death had not ensued, have entitled the party injured to maintain an action for such injury.

Revised Law

Sec. 71.004. BENEFITTING FROM AND BRINGING ACTION. (a) An action to recover damages as provided by this subchapter is for the exclusive benefit of the surviving spouse, children, and parents of the deceased.

(b) The surviving spouse, children, and parents of the deceased may bring the action, or one or more of those individuals may bring the action for the benefit of all.

(c) If none of the individuals entitled to bring an action have begun the action within three calendar months after the death of the injured individual, his executor or administrator shall bring and prosecute the action unless requested not to by all those individuals. (V.A.C.S. Art. 4675 (part).)

Source Law

Art. 4675. Actions for damage arising from death shall be for the sole and exclusive benefit of and may be brought by the surviving husband, wife, children, and parents of the person whose death has been caused or by either of them for the benefit of all. If none of said parties commence such action within three calendar months after the death of the deceased, the executor or administrator of the deceased shall commence and prosecute the action unless requested by all of such parties not to prosecute the same.

Revised Law

Sec. 71.005. EVIDENCE RELATING TO MARITAL STATUS. In an action under this subchapter, evidence of the actual ceremonial remarriage of the surviving spouse is admissible, if it is true, but the defense is prohibited from directly or indirectly mentioning or alluding to a common-law marriage, an extramarital relationship, or the marital prospects of the surviving spouse. (V.A.C.S. Art. 4675a.)

Source Law

Art. 4675a. In an action under this title, evidence of the actual ceremonial remarriage of the surviving spouse is admissible, if such is true, but the defense is prohibited from directly or indirectly mentioning or alluding to any common-law marriage, extramarital relationship, or marital prospects of the surviving spouse.

Revised Law

Sec. 71.006. EFFECT OF FELONIOUS ACT. An action under this subchapter is not precluded because the death is caused by a felonious act or because there may be a criminal proceeding in relation to the felony. (V.A.C.S. Art. 4674.)

Source Law

Art. 4674. The action may be commenced and prosecuted, although the death has been caused under circumstances amounting in law to a felony, and without regard to any criminal proceedings that may or may not be had in relation to the homicide.

Revised Law

Sec. 71.007. INEFFECTIVE AGREEMENT. An agreement between the owner of a railroad, street railway, steamboat, stagecoach, or other vehicle for the transportation of goods or passengers, of an industrial or public utility plant, or of other machinery, and an individual, corporation, trustee, receiver, lessee, joint-stock association, or other entity in control of or operating the

1 vehicle, plant, or other machinery does not release the owner or
2 the entity controlling or operating the vehicle, plant, or other
3 machinery from liability provided by this subchapter. (V.A.C.S.
4 Art. 4671 (part).)

5 Source Law

6 Art. 4671. No agreement between any owner of any
7 railroad, street railway, steamboat, stage-coach or
8 other vehicle for transporting passengers or goods, or
9 any industrial or public utility plant, or other
10 machinery, and any person, corporation, trustee,
11 receiver, lessee, joint stock association or other
12 person in control of, or operating the same, shall
13 release such owner, person, trustee, lessee,
14 corporation or joint stock association from any
15 liability fixed by the provisions of this article.

16 Revised Law

17 Sec. 71.008. DEATH OF DEFENDANT. (a) If a defendant dies
18 while an action under this subchapter is pending, or if the
19 individual against whom the action may have been instituted dies
20 before the action is begun, the executor or administrator of the
21 estate may be made a defendant, and the action may be prosecuted as
22 though the defendant or individual were alive.

23 (b) A judgment in favor of the plaintiff shall be paid in
24 due course of administration. (V.A.C.S. Art. 4676.)

25 Source Law

26 Art. 4676. If the defendant die pending the
27 suit, or if the person or persons against whom such
28 suit might have been instituted, if alive, die before
29 the suit is instituted, his or their executors or
30 administrators may be made a party or parties
31 defendant, and the suit instituted and prosecuted to
32 judgment as though such defendant or person or persons
33 had continued to live. The judgment in such case, if
34 rendered in favor of the plaintiff, shall be, to be
35 paid in due course of administration.

36 Revised Law

37 Sec. 71.009. EXEMPLARY DAMAGES. When the death is caused by
38 the wilful act or omission or gross negligence of the defendant,

1 exemplary as well as actual damages may be recovered. (V.A.C.S.
2 Art. 4673.)

3 Source Law

4 Art. 4673. When the death is caused by the
5 wilful act or omission, or gross negligence of the
6 defendant, exemplary as well as actual damages may be
7 recovered.

8 Revised Law

9 Sec. 71.010. AWARD AND APPORTIONMENT OF DAMAGES. (a) The
10 jury may award damages in an amount proportionate to the injury
11 resulting from the death.

12 (b) The damages awarded shall be divided, in shares as found
13 by the jury in its verdict, among the individuals who are entitled
14 to recover and who are alive at that time. (V.A.C.S. Art. 4677.)

15 Source Law

16 Art. 4677. The jury may give such damages as
17 they think proportionate to the injury resulting from
18 such death. The amount so recovered shall be divided
19 among the persons entitled to the benefit of the
20 action, or such of them as shall then be alive, in such
21 shares as the jury shall find by their verdict.

22 Revised Law

23 Sec. 71.011. DAMAGES NOT SUBJECT TO DEBTS. Damages
24 recovered in an action under this subchapter are not subject to the
25 debts of the deceased. (V.A.C.S. Art. 4675 (part).)

26 Source Law

27 The amount recovered shall not be liable for the debts
28 of the deceased.

29 [Sections 71.012-71.020 reserved for expansion]

1 SUBCHAPTER B. SURVIVAL

2 Revised Law

3 Sec. 71.021. SURVIVAL OF CAUSE OF ACTION. (a) A cause of
4 action for personal injury to the health, reputation, or person of
5 an injured person does not abate because of the death of the
6 injured person or because of the death of a person liable for the
7 injury.

8 (b) A personal injury action survives to and in favor of the
9 heirs, legal representatives, and estate of the injured person.
10 The action survives against the liable person and the person's
11 legal representatives.

12 (c) The suit may be instituted and prosecuted as if the
13 liable person were alive. (V.A.C.S. Art. 5525.)

14 Source Law

15 Art. 5525. All causes of action upon which suit
16 has been or may hereafter be brought for personal
17 injuries, or for injuries resulting in death, whether
18 such injuries be to the health or to the reputation, or
19 to the person of the injured party, shall not abate by
20 reason of the death of the person against whom such
21 cause of action shall have accrued, nor by reason of
22 the death of such injured person, but, in the case of
23 the death of either or both, all such causes of action
24 shall survive to and in favor of the heirs and legal
25 representatives and estate of such injured party and
26 against the person, or persons liable for such injuries
27 and his or their legal representatives, and may be
28 instituted and prosecuted as if such person or persons
29 against whom same accrued were alive.

30 [Sections 71.022-71.030 reserved for expansion]

31 SUBCHAPTER C. DEATH OR INJURY CAUSED BY ACT OR OMISSION
32 OUT OF STATE

33 Revised Law

34 Sec. 71.031. ACT OR OMISSION OUT OF STATE. (a) An action
35 for damages for the death or personal injury of a citizen of this
36 state, of the United States, or of a foreign country may be

1 enforced in the courts of this state, although the wrongful act,
2 neglect, or default causing the death or injury takes place in a
3 foreign state or country, if:

4 (1) a law of the foreign state or country or of this
5 state gives a right to maintain an action for damages for the death
6 or injury;

7 (2) the action is begun in this state within the time
8 provided by the laws of this state for beginning the action; and

9 (3) in the case of a citizen of a foreign country, the
10 country has equal treaty rights with the United States on behalf of
11 its citizens.

12 (b) All matters pertaining to procedure in the prosecution
13 or maintenance of the action in the courts of this state are
14 governed by the law of this state.

15 (c) The court shall apply the rules of substantive law that
16 are appropriate under the facts of the case. (V.A.C.S. Art. 4678.)

17 Source Law

18 Art. 4678. Whenever the death or personal injury
19 of a citizen of this State or of the United States, or
20 of any foreign country having equal treaty rights with
21 the United States on behalf of its citizens, has been
22 or may be caused by the wrongful act, neglect or
23 default of another in any foreign State or country for
24 which a right to maintain an action and recover damages
25 thereof is given by the statute or law of such foreign
26 State or country or of this State, such right of action
27 may be enforced in the courts of this State within the
28 time prescribed for the commencement of such actions by
29 the statutes of this State. All matters pertaining to
30 procedure in the prosecution or maintenance of such
31 action in the courts of this State shall be governed by
32 the law of this State, and the court shall apply such
33 rules of substantive law as are appropriate under the
34 facts of the case.

1 CHAPTER 72. LIABILITY OF MOTOR VEHICLE OWNER OR OPERATOR TO GUEST
2 Sec. 72.001. LIMITED LIABILITY
3 Sec. 72.002. EXCEPTION FOR INTENTIONAL OR GROSSLY NEGLIGENT
4 CONDUCT
5 Sec. 72.003. EFFECT ON OTHER LIABILITY
6 Sec. 72.004. OFFSET FOR MEDICAL EXPENSES PAID

7 CHAPTER 72. LIABILITY OF MOTOR VEHICLE OWNER OR OPERATOR TO GUEST

8 Revised Law

9 Sec. 72.001. LIMITED LIABILITY. (a) A person who is
10 related to the owner or operator of a motor vehicle within the
11 second degree by consanguinity or affinity and who is being
12 transported in the motor vehicle over a public highway of this
13 state as a guest without payment for the transportation does not
14 have a cause of action against the owner or operator of the motor
15 vehicle for injury, death, or loss in an accident.

16 (b) There is no immunity under this section for an owner or
17 operator who is not related to the guest within the second degree
18 by consanguinity or affinity. (V.A.C.S. Art. 6701b, Sec. 1(a)
19 (part).)

20 Source Law

21 Art. 6701b
22 Sec. 1. (a) No person who is related within the
23 second degree of consanguinity or affinity to the owner
24 or operator of a motor vehicle and who is being
25 transported over the public highways of this State by
26 the owner or operator of the motor vehicle as his guest
27 without payment for such transportation, shall have a
28 cause of action for damages against such owner or
29 operator for injuries, death or loss, in case of
30 accident

31 Revised Law

32 Sec. 72.002. EXCEPTION FOR INTENTIONAL OR GROSSLY NEGLIGENT
33 CONDUCT. This chapter does not apply if the accident was
34 intentional on the part of the owner or operator or was caused by

1 his heedlessness or reckless disregard of the rights of others.
2 (V.A.C.S. Art. 6701b, Sec. 1(a) (part).)

3 Source Law

4 . . . unless such accident shall have been intentional
5 on the part of said owner or operator, or caused by his
6 heedlessness or his reckless disregard of the rights of
7 others.

8 Revised Law

9 Sec. 72.003. EFFECT ON OTHER LIABILITY. (a) This chapter
10 does not affect judicially developed or developing rules under
11 which a person is or is not totally or partially immune from tort
12 liability by virtue of family relationship.

13 (b) This chapter does not relieve the owner or operator of a
14 motor vehicle being demonstrated to a prospective purchaser, or
15 relieve a public carrier, of responsibility for injuries sustained
16 by a passenger being transported. (V.A.C.S. Art. 6701b, Secs.
17 1(b), 2.)

18 Source Law

19 [Sec. 1]

20 (b) Nothing in this Act affects any
21 judicially-developed and developing rules under which a
22 person is or is not totally or partially immune from
23 tort liability to another by virtue of a family
24 relationship.

25 Sec. 2. This Act shall not relieve a public
26 carrier or any owner or operator of a motor vehicle
27 while the same is being demonstrated to a prospective
28 purchaser, of responsibility for any injuries sustained
29 by a passenger being transported by such public
30 carrier, or by such owner or operator.

31 Revised Law

32 Sec. 72.004. OFFSET FOR MEDICAL EXPENSES PAID. (a) The
33 owner or operator, or his liability insurance carrier, is entitled
34 to an offset against any award made to the guest on a liability
35 claim in an amount equal to the amount paid by the owner, operator,
36 or insurance carrier for medical expenses of the guest.

1 (b) This section does not authorize a direct action against
2 a liability insurance carrier. (V.A.C.S. Art. 6701b, Sec. 1(c).)

3 Source Law

4 (c) When any liability claim is made by a guest
5 against the owner or operator or his liability
6 insurance carrier, the owner or operator or his
7 liability insurance carrier shall be entitled to an
8 offset, credit, or deduction against any award made to
9 such guest in an amount of money equal to the amounts
10 paid by the owner, operator or his automobile liability
11 insurance carrier for medical expenses of such guest;
12 provided, however, that nothing herein shall be
13 construed to authorize a direct action against a
14 liability insurance company if such right does not
15 presently exist at law.

16 Revisor's Note

17 The revised law omits "credit, or deduction"
18 because the terms are encompassed by "offset."

1 CHAPTER 73. LIBEL

2 Sec. 73.001. ELEMENTS OF LIBEL

3 Sec. 73.002. PRIVILEGED MATTERS

4 Sec. 73.003. MITIGATING FACTORS

5 Sec. 73.004. LIABILITY OF BROADCASTER

6 Sec. 73.005. TRUTH A DEFENSE

7 Sec. 73.006. OTHER DEFENSES

8 CHAPTER 73. LIBEL

9 Revised Law

10 Sec. 73.001. ELEMENTS OF LIBEL. A libel is a defamation of
11 a living person expressed in written or other graphic form:

12 (1) that tends to injure the person's reputation or
13 that publishes the person's natural defects, thereby exposing the
14 person to public hatred, public ridicule, or financial injury; or

15 (2) that tends to impeach the person's honesty,
16 integrity, virtue, or reputation. (V.A.C.S. Art. 5430.)

17 Source Law

18 Art. 5430. A libel is a defamation expressed in
19 printing or writing, or by signs and pictures, or
20 drawings tending to blacken the memory of the dead, or
21 tending to injure the reputation of one who is alive,
22 and thereby expose him to public hatred, contempt or
23 ridicule, or financial injury, or to impeach the
24 honesty, integrity, or virtue, or reputation of any
25 one, or to publish the natural defects of any one and
26 thereby expose such person to public hatred, ridicule,
27 or financial injury.

28 Revisor's Note

29 (1) For conciseness, the revised law condenses
30 "expressed in printing or writing, or by signs and
31 pictures, or drawings" to "expressed in written or
32 other graphic form."

33 (2) Although the source law appears to create a
34 cause of action for defamation of the dead, the courts

1 have uniformly held that it cannot be the basis of
2 recovery in a civil action. See Renfro Drug Co.
3 v. Lawson, 160 S.W.2d 246 (Tex. 1942), Keys
4 v. Interstate Circuit, Inc., 468 S.W.2d 485 (Tex. Civ.
5 App.--Tyler 1971, writ dismiss'd).

6 (3) "Public 'contempt" is deleted from the
7 revised law because it is synonymous with "public
8 hatred," which is retained.

9 Revised Law

10 Sec. 73.002. PRIVILEGED MATTERS. (a) The publication by a
11 newspaper or other periodical of a matter covered by this section
12 is privileged and is not a ground for a libel action. This
13 privilege does not extend to the republication of a matter if it is
14 proved that the matter was republished with actual malice after it
15 had ceased to be of public concern.

16 (b) This section applies to:

17 (1) a fair, true, and impartial account of:

18 (A) a judicial proceeding, unless the court has
19 prohibited publication of a matter because in its judgment the
20 interests of justice demand that the matter not be published;

21 (B) an official proceeding, other than a
22 judicial proceeding, to administer the law;

23 (C) an executive or legislative proceeding
24 (including a proceeding of a legislative committee), a proceeding
25 in or before a managing board of an educational or eleemosynary
26 institution supported from the public revenue, of the governing
27 body of a city or town, of a county commissioners court, and of a
28 public school board, or a report of, or debate and statements made
29 in, any of those proceedings; or

30 (D) the proceedings of a public meeting dealing
31 with a public purpose, including statements and discussion at the
32 meeting or other matters of public concern occurring at the

1 meeting; and

2 (2) reasonable and fair comment on or criticism of an
3 official act of a public official or other matter of public concern
4 published for general information. (V.A.C.S. Art. 5432.)

5 Source Law

6 Art. 5432. The publication of the following
7 matters by any newspaper or periodical shall be deemed
8 privileged and shall not be made the basis of any
9 action for libel.

10 1. A fair, true and impartial account of the
11 proceedings in a court of justice, unless the court
12 prohibits the publication of same when in the judgment
13 of the court the ends of justice demand that the same
14 should not be published and the court so orders, or any
15 other official proceedings authorized by law in the
16 administration of the law.

17 2. A fair, true and impartial account of all
18 executive and legislative proceedings, including all
19 reports of and proceedings in or before legislative
20 committees and before each and all such committees
21 heretofore appointed by the Legislature or either
22 branch of the Legislature or hereafter to be appointed
23 by such bodies or either of them and of any debate or
24 statement in or before the Legislature or either branch
25 thereof or any of its committees, and including also
26 all reports of and proceedings in or before the
27 managing boards of educational and eleemosynary
28 institutions supported from the public revenue, of city
29 councils or other governing bodies of cities or towns,
30 of the commissioners' court of any county, and of the
31 board of trustees of the public schools of any
32 district, city or county, and of any debate or
33 statement in or before any such body.

34 3. A fair, true and impartial account of the
35 proceedings of public meetings, dealing with public
36 purposes, including a fair, true and impartial account
37 of statements and discussion in such meetings, and of
38 other matters of public concern, transpiring and
39 uttered at such public meetings.

40 4. A reasonable and fair comment or criticism of
41 the official acts of public officials and of other
42 matters of public concern published for general
43 information.

44 5. The privilege provided under Sections 1, 2,
45 3, and 4, of this article shall extend to any first
46 publication of such privileged matter by any newspaper
47 or periodical, and to subsequent publications thereof
48 by it when published as a matter of public concern for
49 general information; but any re-publication of such
50 privileged matter, after the same has ceased to be a
51 matter of such public concern, shall not be deemed
52 privileged, and may be made the basis of an action for
53 libel upon proof that such matter had ceased to be of
54 such public concern and that same was published with
55 actual malice.

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1 or operator of a radio or television station or network of stations
2 and the agents and employees of the owner, licensee, or
3 operator. (V.A.C.S. Art. 5433a.)

4 Source Law

5 Art. 5433a. The owners, licensees or operators
6 of a radio or television broadcasting station or
7 network of stations, and the agents or employees of any
8 such owner, licensee or operator shall not be liable
9 for any damages for any defamatory statement published
10 or uttered in or as a part of a radio or television
11 broadcast, by one other than such owner, licensee or
12 operator, or agent or employee thereof, unless it shall
13 be alleged and proved by the complaining party, that
14 such owner, licensee, operator or such agent or
15 employee has failed to exercise due care to prevent the
16 publication or utterance of such statement in such
17 broadcast.

18 Revised Law

19 Sec. 73.005. TRUTH A DEFENSE. The truth of the statement in
20 the publication on which an action for libel is based is a defense
21 to the action. (V.A.C.S. Art. 5431 (part).)

22 Source Law

23 The truth of the statement, or statements, in such
24 publication shall be a defense to such action.

25 Revised Law

26 Sec. 73.006. OTHER DEFENSES. This chapter does not affect
27 the existence of common law or other defenses to libel. (V.A.C.S.
28 Art. 5433.)

29 Source Law

30 Art. 5433. Nothing in this title shall be
31 construed to amend or repeal any penal law on the
32 subject of libel, nor to take away any now or at any
33 time heretofore existing defense to a civil action for
34 libel, either at common law or otherwise, but all such
35 defenses are hereby expressly preserved.

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Revisor's Note

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The disclaimer of any effect on penal laws on

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libel is omitted as superfluous.

1 CHAPTER 74. GOOD SAMARITAN LAW: LIABILITY FOR EMERGENCY CARE
2 Sec. 74.001. LIABILITY FOR EMERGENCY CARE
3 Sec. 74.002. UNLICENSED MEDICAL PERSONNEL

4 CHAPTER 74. GOOD SAMARITAN LAW: LIABILITY FOR EMERGENCY CARE

5 Revised Law

6 Sec. 74.001. LIABILITY FOR EMERGENCY CARE. (a) A person
7 who in good faith administers emergency care at the scene of an
8 emergency or in a hospital is not liable in civil damages for an
9 act performed during the emergency unless the act is wilfully or
10 wantonly negligent.

11 (b) This section does not apply to care administered:

12 (1) for or in expectation of remuneration;

13 (2) by a person who was at the scene of the emergency
14 because he or a person he represents as an agent was soliciting
15 business or seeking to perform a service for remuneration;

16 (3) by a person who regularly administers care in a
17 hospital emergency room; or

18 (4) by an admitting physician, or a treating physician
19 associated by the admitting physician, of the patient bringing a
20 health-care liability claim. (V.A.C.S. Art. 1a (part).)

21 Source Law

22 Art. 1a. No person shall be liable in civil
23 damages who administers emergency care in good faith:

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

39

1 CHAPTER 75. LIMITATION OF LANDOWNERS' LIABILITY

2 Sec. 75.001. DEFINITIONS

3 Sec. 75.002. LIABILITY LIMITED

4 Sec. 75.003. APPLICATION AND EFFECT OF CHAPTER

5 CHAPTER 75. LIMITATION OF LANDOWNERS' LIABILITY

6 Revised Law

7 Sec. 75.001. DEFINITIONS. In this chapter:

8 (1) "Premises" includes land, roads, water,
9 watercourses, private ways, and buildings, structures, machinery,
10 and equipment attached to or located on the land, road, water,
11 watercourse, or private way.

12 (2) "Recreation" means an activity such as hunting,
13 fishing, swimming, boating, camping, picnicking, hiking, pleasure
14 driving, nature study, and waterskiing and other water sports.
15 (V.A.C.S. Art. 1b, Sec. 6.)

16 Source Law

17 Sec. 6. (a) The word "premises," as used in
18 this Act, shall include lands, roads, waters, water
19 courses, and private ways, together with all buildings,
20 structures, machinery or equipment attached thereto or
21 located thereon.

22 (b) The term "recreational purposes," as used in
23 this Act, means activities such as hunting, fishing,
24 swimming, boating, camping, picnicking, hiking,
25 pleasure driving, nature study, water skiing and water
26 sports.

27 Revised Law

28 Sec. 75.002. LIABILITY LIMITED. If an owner, lessee, or
29 occupant of real property gives permission to another to enter the
30 premises for recreation, the owner, lessee, or occupant, by giving
31 the permission, does not:

32 (1) assure that the premises are safe for that
33 purpose;

34 (2) owe to the person to whom permission is granted a

greater degree of care than is owed to a trespasser on the premises; or

(3) assume responsibility or incur liability for any injury to any individual or property caused by any act of the person to whom permission is granted. (V.A.C.S. Art. 1b, Sec. 1.)

Source Law

Art. 1b

Sec. 1. If any owner, lessee or occupant of real property gives permission to another to enter the premises for recreational purposes, he does not thereby

(1) extend any assurance that the premises are safe for such purposes, or

(2) constitute the person to whom permission is granted one to whom a greater degree of care is owed than that owed to a trespasser on the premises, or

(3) assume responsibility for or incur liability for any injury to persons or property caused by any act of persons to whom permission is granted.

Revised Law

Sec. 75.003. APPLICATION AND EFFECT OF CHAPTER. (a) This chapter does not relieve any owner, lessee, or occupant of real property of any liability that would otherwise exist for deliberate, wilful, or malicious injury to a person or to property.

(b) This chapter does not affect the doctrine of attractive nuisance.

(c) This chapter does not affect the liability of an owner, lessee, or occupant of real property who:

(1) uses or permits the use of all or any part of the premises as a commercial recreational enterprise for profit; or

(2) charges for entry to the premises, other than a charge against those who remove game from the premises in an amount reasonably necessary to replace the game.

(d) This chapter does not create any liability. (V.A.C.S. Art. 1b, Secs. 2, 3, 4, 5.)

Source Law

Sec. 2. The provisions of this Act shall not

1 relieve any owner, lessee or occupant of real property
2 of any liability which would otherwise exist for
3 deliberate, willful or malicious injury to persons or
4 property, nor does it create any liability where such
5 liability does not now exist.

6 Sec. 3. The provisions of this Act shall not
7 modify, extend or change in any way the doctrine of
8 attractive nuisance as interpreted and applied by the
9 courts of Texas.

10 Sec. 4. The provisions of this Act shall not be
11 interpreted to limit, restrict, modify or change in any
12 way the liability which would otherwise apply to any
13 owner, lessee or occupant of real property who

14 (1) uses the premises or any part thereof, or
15 permits the use of the premises or any part thereof, as
16 a commercial recreational enterprise for purposes of
17 profit, or

18 (2) makes a charge for permission to enter the
19 premises, other than that levied against those who
20 remove game from the premises in such sum as may
21 reasonably be required for the replacement of such
22 game.

23 Sec. 5. The provisions of this Act shall not be
24 interpreted to create any liability where such
25 liability does not now exist.

CHAPTER 76. FOOD DONORS

Sec. 76.001. DEFINITIONS

Sec. 76.002. SHORT TITLE

Sec. 76.003. APPARENTLY WHOLESOME FOOD

Sec. 76.004. LIABILITY FOR DAMAGES FROM DONATED FOOD

CHAPTER 76. FOOD DONORS

Revised Law

Sec. 76.001. DEFINITIONS. In this chapter:

(1) "Donate" means to give without requiring anything of monetary value from the recipient.

(2) "Intentional misconduct" means conduct that the actor knows is harmful to the health or well-being of another person.

(3) "Nonprofit organization" means an incorporated or unincorporated organization that is established and operated for religious, charitable, or educational purposes and that does not distribute any of its income to its members, directors, or officers.

(4) "Person" means an individual, corporation, partnership, organization, or association. (V.A.C.S. Art. 4476-5c, Sec. 2 (part).)

Source Law

(2) "Nonprofit organization" means an incorporated or unincorporated organization that has been established and is operating for religious, charitable, or educational purposes and that does not distribute any of its income to its members, directors, or officers.

(3) "Intentional misconduct" means conduct that the person acting knows is harmful to the health or well-being of another person.

(4) "Donate" means to give without requiring anything of monetary value from the donee.

(5) "Person" means an individual, corporation, partnership, organization, or association.

1 Revised Law

2 Sec. 76.002. SHORT TITLE. This chapter may be cited as the
3 Good Faith Donor Act. (V.A.C.S. Art. 4476-5c, Sec. 1.)

4 Source Law

5 Art. 4476-5c
6 Sec. 1. This Act may be cited as the Good Faith
7 Donor Act.

8 Revised Law

9 Sec. 76.003. APPARENTLY WHOLESOME FOOD. For the purposes of
10 this chapter, food is apparently wholesome if the food meets all
11 quality standards of local, county, state, and federal agricultural
12 and health laws and rules, even though the food is not readily
13 marketable due to appearance, age, freshness, grade, size, surplus,
14 or other condition. Canned goods that are leaking, swollen, dented
15 on a seam, or no longer airtight are not apparently wholesome food.
16 (V.A.C.S. Art. 4476-5c, Sec. 2 (part).)

17 Source Law

18 Sec. 2. In this Act:
19 (1) "Apparently wholesome food" means food that
20 meets all quality standards of local, county, state,
21 and federal agricultural and health laws and rules,
22 even though the food is not readily marketable due to
23 appearance, age, freshness, grade, size, surplus, or
24 other condition, but does not include canned goods that
25 are leaking, swollen, dented on a seam, or no longer
26 airtight.

27 Revisor's Note

28 This provision relating to the wholesomeness of
29 food is included in the revised law as a standard of
30 quality rather than as a definition.

31 Revised Law

32 Sec. 76.004. LIABILITY FOR DAMAGES FROM DONATED FOOD. (a)
33 A person is not subject to civil or criminal liability arising from

1 the condition of apparently wholesome food that the person donates
2 to a nonprofit organization for distribution to the needy. This
3 subsection does not apply to an injury or death that results from
4 an act or omission of the donor constituting gross negligence,
5 recklessness, or intentional misconduct.

6 (b) A nonprofit organization is not subject to civil or
7 criminal liability arising from the condition of apparently
8 wholesome food that it distributes to the needy at no charge in
9 substantial compliance with applicable local, county, state, and
10 federal laws and rules regarding the storage and handling of food
11 for distribution to the public. This subsection does not apply to
12 an injury or death that results from an act or omission of the
13 organization constituting gross negligence, recklessness, or
14 intentional misconduct.

15 (c) This chapter does not create any liability. (V.A.C.S.
16 Art. 4476-5c, Sec. 3.)

17 Source Law

18 Sec. 3. (a) A person who donates apparently
19 wholesome food to a nonprofit organization for
20 distribution to the needy is not subject to civil or
21 criminal liability that arises from the condition of
22 the food, unless an injury or death results from an act
23 or omission of the person that constitutes gross
24 negligence, recklessness, or intentional misconduct.

25 (b) A nonprofit organization that distributes
26 apparently wholesome food to the needy at no charge and
27 that substantially complies with applicable local,
28 county, state, and federal laws and rules regarding the
29 storage and handling of food for distribution to the
30 public is not subject to civil or criminal liability
31 that arises from the condition of the food, unless an
32 injury or death results from an act or omission of the
33 organization that constitutes gross negligence,
34 recklessness, or intentional misconduct.

35 (c) This Act does not create any liability.

1 CHAPTER 77. TRANSPLANTS AND TRANSFUSIONS

2 Sec. 77.001. DEFINITION

3 Sec. 77.002. POLICY

4 Sec. 77.003. LIMITATION OF LIABILITY

5 Sec. 77.004. BLOOD BANK: COMPENSATION OF SELLER

6 CHAPTER 77. TRANSPLANTS AND TRANSFUSIONS

7 Revised Law

8 Sec. 77.001. DEFINITION. In this chapter, "human body part"
9 means any tissue, organ, blood, or components thereof from a human.
10 (V.A.C.S. Art. 4590-3, Sec. 2.)

11 Source Law

12 [See the source law for revised Sections 77.002
13 and 77.003.]

14 Revisor's Note

15 The source law for Section 77.002 refers to
16 "human tissue, organs, blood and components thereof";
17 the source law for Section 77.003 contains a
18 substantially identical reference. The term "human
19 body part" is defined here for use in those sections.

20 Revised Law

21 Sec. 77.002. POLICY. It is important to the health and
22 welfare of the people of this state that scientific knowledge,
23 skills, and materials be available for the procedures of
24 transplantation, injection, transfusion, or other transfer of human
25 body parts. The imposition of strict liability on persons and
26 organizations engaged in these scientific procedures inhibits the
27 exercise of sound medical judgment and restricts the availability
28 of the knowledge, skills, and materials needed to perform them. It
29 is therefore the public policy of this state to promote the health

1 and welfare of the people by limiting the legal liability arising
2 from the transfer of human body parts to instances of negligence.
3 (V.A.C.S. Art. 4590-3, Sec. 1.)

4 Source Law

5 Art. 4590-3

6 Sec. 1. The availability of scientific
7 knowledge, skills and materials for the
8 transplantation, injection, transfusion or transfer of
9 human tissue, organs, blood and components thereof is
10 important to the health and welfare of the people of
11 this State. The imposition of legal liability without
12 fault upon the persons and organizations engaged in
13 such scientific procedures inhibits the exercise of
14 sound medical judgment and restricts the availability
15 of important scientific knowledge, skills and
16 materials. It is therefore the public policy of this
17 State to promote the health and welfare of the people
18 by limiting the legal liability arising out of such
19 scientific procedures to instances of negligence.

20 Revised Law

21 Sec. 77.003. LIMITATION OF LIABILITY. (a) A person who
22 donates, obtains, prepares, transplants, injects, tranfuses, or
23 transfers a human body part from a living or dead human to another
24 human, or a person who assists or participates in that activity, is
25 not liable as a result of that activity.

26 (b) The person remains liable for the person's own
27 negligence. (V.A.C.S. Art. 4590-3, Sec. 2.)

28 Source Law

29 Sec. 2. No physician, surgeon, hospital, blood
30 bank, tissue bank, or other person or entity who
31 donates, obtains, prepares, transplants, injects,
32 transfuses or otherwise transfers, or who assists or
33 participates in obtaining, preparing, transplanting,
34 injecting, transfusing or transferring any tissue,
35 organ, blood or component thereof from one or more
36 human beings, living or dead, to another human being,
37 shall be liable as the result of any such activity,
38 save and except that each such person or entity shall
39 remain liable for his or its own negligence.

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Revised Law

Sec. 77.004. BLOOD BANK: COMPENSATION OF SELLER. (a) This section applies only to a blood bank licensed either by the Division of Biological Standards of the National Institute of Health or by the American Association of Blood Banks.

(b) A blood bank may not pay cash for blood. A blood bank may not pay a blood seller by check unless the check is mailed to the seller after the 15th day following the day the blood is taken from the seller.

(c) If a blood bank violates Subsection (b), and the blood contains harmful substances, the blood bank is not entitled to the immunity established by this chapter. The blood bank has the burden of establishing that the blood was not purchased in violation of Subsection (b). (V.A.C.S. Art. 4590-3, Sec. 3.)

Sec. 3. (a) No blood bank may pay cash for blood. No blood bank may pay a seller for blood by check unless the check is sent to the seller by United States mail not before the expiration of 15 days following the day the blood is taken from the seller.

(b) If a blood bank purchases blood in violation of Subsection (a) of this section and the blood contains harmful substances, the blood bank is not entitled to the immunity provided in this Act.

(c) In any suit brought under the exception in Subsection (b) of this section, the burden shall be on the blood bank to show that the blood was not purchased in violation of Subsection (a) of this section.

(d) "Blood bank" means a blood bank licensed by the Division of Biological Standards of the National Institute of Health, or the American Association of Blood Banks.

Revisor's Note

Since the definition of blood bank in the source law serves only as a limitation of the application of the section, it is included in the revised law as the limitation rather than a definition.

1 CHAPTER 78. VOLUNTEER FIRE FIGHTERS

2 Sec. 78.001. LIABILITY

3 CHAPTER 78. VOLUNTEER FIRE FIGHTERS

4 Revised Law

5 Sec. 78.001. LIABILITY. A volunteer fire fighter or a
6 volunteer fire department is not liable for damage to property
7 resulting from the fire fighter's or the department's reasonable
8 and necessary action in fighting or extinguishing a fire on the
9 property. (V.A.C.S. Art. 1070.1.)

10 Source Law

11 Art. 1070.1. No volunteer fireman or volunteer
12 fire department in this state shall be liable to any
13 person for any damage done to his property resulting
14 from the volunteer fireman's or volunteer fire
15 department's reasonable and necessary action in
16 fighting or extinguishing any fire on the property.

17 Revisor's Note

18 "Fireman" is replaced by "fire fighter" in the
19 revised law because recent legislation indicates a
20 preference for the latter term to refer to an
21 individual who engages in extinguishing fires.

1 CHAPTER 79. HAZARDOUS MATERIALS
2 Sec. 79.001. DEFINITIONS
3 Sec. 79.002. LIABILITY OF PERSON GIVING ASSISTANCE

4 CHAPTER 79. HAZARDOUS MATERIALS

5 Revised Law

6 Sec. 79.001. DEFINITIONS. In this chapter:

7 (1) "Hazardous material" means:

8 (A) a substance classified as a hazardous
9 material under state or federal law or under a rule adopted
10 pursuant to state or federal law; or

11 (B) a chemical, petroleum product, gas, or other
12 substance that, if discharged or released, is likely to create an
13 imminent danger to individuals, property, or the environment.

14 (2) "Person" means an individual, association,
15 corporation, or other private legal entity. (V.A.C.S. Art. 9207,
16 Sec. 1 (part).)

17 Source Law

18 Art. 9207

19 Sec. 1. In this Act:

20 (1) "Hazardous material" means:

21 (A) a substance classified as a hazardous
22 material under state or federal law or under a rule
23 adopted pursuant to state or federal law; or

24 (B) a chemical, petroleum product, gas, or other
25 substance that, if discharged or released, will or is
26 likely to create an imminent danger to individuals,
27 property, or the environment.

28
29 (3) "Person" means an individual, association,
30 corporation, or other private legal entity.

31 Revised Law

32 Sec. 79.002. LIABILITY OF PERSON GIVING ASSISTANCE. (a)
33 Except in a case of reckless conduct or intentional, wilful, or
34 wanton misconduct, a person is immune from civil liability for an
35 act or omission that occurs in giving care, assistance, or advice

1 with respect to the management of an incident that:

2 (1) has already occurred;

3 (2) is related to the storage or transportation of a
4 hazardous material; and

5 (3) endangers or threatens to endanger individuals,
6 property, or the environment as a result of the spillage, seepage,
7 or other release of a hazardous material or as a result of fire or
8 explosion involving a hazardous material.

9 (b) This section does not apply to a person giving care,
10 assistance, or advice for, or in expectation of, compensation from
11 or on behalf of the recipient of the care, assistance, or advice in
12 excess of reimbursement for expenses incurred. (V.A.C.S. Art.
13 9207, Sec. 1 (part), Sec. 2.)

14 Source Law

15 [Sec. 1]

16 (2) "Gross negligence" means reckless, wilful,
17 or wanton misconduct.

18 Sec. 2. (a) A person is immune from civil
19 liability for any act or omission that occurs in giving
20 care, assistance, or advice with respect to the
21 prevention or management of an incident related to the
22 storage or transportation by any means of a hazardous
23 material, which incident creates or might create a
24 danger to individuals, property, or the environment as
25 a result of the spillage, seepage, or other release of
26 a hazardous material or as a result of fire or
27 explosion involving a hazardous material.

28 (b) This section does not apply to a person
29 giving care, assistance, or advice for or in
30 expectation of compensation from or on behalf of the
31 recipient of the care, assistance, or advice in excess
32 of reimbursement for expenses incurred. This section
33 shall not preclude liability for damages as a result of
34 gross negligence or intentional misconduct on the part
35 of a person.

36 (c) This section only applies when an incident
37 or accident has already occurred and there is a danger
38 or a threat of danger to individuals, property, or the
39 environment.

40 Revisor's Note

41 (1) Because the term "gross negligence" is used
42 in the chapter only once, the definition of "gross
43 negligence" provided by the source law is incorporated

1 in the text of the revised law.

2 (2) Section 2(c) of the source law provides that
3 Section 2 of the Act applies only if an incident has
4 already occurred. Section 2(a) of the source law
5 conflicts with Section 2(c) by referring to an act or
6 omission that occurs in preventing an incident.
7 Section 2(c) was added as an amendment to the bill. To
8 give effect to Section 2(c) as the more specific
9 indication of legislative intent, the revised law omits
10 the reference to the prevention of an incident.

11 [Chapters 80-100 reserved for expansion]

1 TITLE 5. GOVERNMENTAL LIABILITY

2 CHAPTER 101. TORT CLAIMS

3 SUBCHAPTER A. GENERAL PROVISIONS

4 Sec. 101.001. DEFINITIONS

5 Sec. 101.002. SHORT TITLE

6 [Sections 101.003-101.020 reserved for expansion]

7 SUBCHAPTER B. TORT LIABILITY OF GOVERNMENTAL UNITS

8 Sec. 101.021. GOVERNMENTAL LIABILITY

9 Sec. 101.022. DUTY OWED: PREMISE AND SPECIAL DEFECTS

10 Sec. 101.023. LIMITATION ON AMOUNT OF LIABILITY

11 Sec. 101.024. EXEMPLARY DAMAGES

12 Sec. 101.025. WAIVER OF GOVERNMENTAL IMMUNITY;

13 PERMISSION TO SUE

14 Sec. 101.026. INDIVIDUAL'S IMMUNITY PRESERVED

15 Sec. 101.027. LIABILITY INSURANCE

16 Sec. 101.028. WORKERS' COMPENSATION INSURANCE

17 [Sections 101.029-101.050 reserved for expansion]

18 SUBCHAPTER C. EXCLUSIONS AND EXCEPTIONS

19 Sec. 101.051. SCHOOL AND JUNIOR COLLEGE DISTRICTS

20 PARTIALLY EXCLUDED

21 Sec. 101.052. LEGISLATIVE

22 Sec. 101.053. JUDICIAL

23 Sec. 101.054. STATE MILITARY PERSONNEL

24 Sec. 101.055. CERTAIN GOVERNMENTAL FUNCTIONS

25 Sec. 101.056. DISCRETIONARY POWERS

26 Sec. 101.057. CIVIL DISOBEDIENCE AND CERTAIN INTENTIONAL TORTS

27 Sec. 101.058. MUNICIPAL PROPRIETARY FUNCTIONS

28 Sec. 101.059. ATTRACTIVE NUISANCES

29 Sec. 101.060. TRAFFIC AND ROAD CONTROL DEVICES

30 Sec. 101.061. TORT COMMITTED BEFORE JANUARY 1, 1970

31 [Sections 101.062-101.100 reserved for expansion]

32 SUBCHAPTER D. PROCEDURES

33 Sec. 101.101. NOTICE

1 Sec. 101.102. COMMENCEMENT OF SUIT
2 Sec. 101.103. LEGAL REPRESENTATION
3 Sec. 101.104. EVIDENCE OF INSURANCE COVERAGE
4 Sec. 101.105. SETTLEMENT
5 Sec. 101.106. EMPLOYEES NOT LIABLE AFTER SETTLEMENT
6 OR JUDGMENT
7 Sec. 101.107. PAYMENT AND COLLECTION OF JUDGMENT
8 Sec. 101.108. PROPERTY TAXES FOR PAYMENT OF JUDGMENT
9 Sec. 101.109. PAYMENT OF CLAIMS AGAINST CERTAIN UNIVERSITIES

10 TITLE 5. GOVERNMENTAL LIABILITY
11 CHAPTER 101. TORT CLAIMS
12 SUBCHAPTER A. GENERAL PROVISIONS

13 Revised Law

14 Sec. 101.001. DEFINITIONS. In this chapter:

15 (1) "Employee" means a person, including an officer or
16 agent, who is in the paid service of a governmental unit by
17 competent authority, but does not include an independent
18 contractor, an agent or employee of an independent contractor, or a
19 person who performs tasks the details of which the governmental
20 unit does not have the legal right to control.

21 (2) "Governmental unit" means:

22 (A) this state and all the several agencies of
23 government that collectively constitute the government of this
24 state, including other agencies bearing different designations, and
25 all departments, bureaus, boards, commissions, offices, agencies,
26 councils, and courts;

27 (B) a political subdivision of this state,
28 including any city, county, school district, junior college
29 district, levee improvement district, drainage district, irrigation
30 district, water improvement district, water control and improvement
31 district, water control and preservation district, freshwater

1 supply district, navigation district, conservation and reclamation
2 district, soil conservation district, and river authority; and

3 (C) any other institution, agency, or organ of
4 government the status and authority of which are derived from the
5 Constitution of Texas or from laws passed by the legislature under
6 the constitution.

7 (3) "Motor-driven equipment" does not include:

8 (A) equipment used in connection with the
9 operation of floodgates or water release equipment by river
10 authorities created under the laws of this state; or

11 (B) medical equipment, such as iron lungs,
12 located in hospitals.

13 (4) "Scope of employment" means the performance for a
14 governmental unit of the duties of an employee's office or
15 employment and includes being in or about the performance of a task
16 lawfully assigned to an employee by competent authority.

17 (5) "State government" means an agency, board,
18 commission, department, or office, other than a district or
19 authority created under Article XVI, Section 59, of the Texas
20 Constitution, that:

21 (A) was created by the constitution or a statute
22 of this state; and

23 (B) has statewide jurisdiction. (V.A.C.S. Art.
24 6252-19, Secs. 2, 3(a), (b) (part), 18(a) (part).)

25 Source Law

26 Sec. 2. The following words and phrases as used
27 in this Act unless a different meaning is plainly
28 required by the context shall have the following
29 meanings:

30 (1) "Unit of government" or "units of
31 government" shall mean the State of Texas and all of
32 the several agencies of government which collectively
33 constitute the government of the State of Texas,
34 specifically including, but not to the exclusion of,
35 other agencies bearing different designations, all
36 departments, bureaus, boards, commissions, offices,
37 agencies, councils and courts; all political
38 subdivisions, all cities, counties, school districts,
39 levee improvement districts, drainage districts,

1 irrigation districts, water improvement districts,
2 water control and improvement districts, water control
3 and preservation districts, fresh water supply
4 districts, navigation districts, conservation and
5 reclamation districts, soil conservation districts,
6 river authorities, and junior college districts; and
7 all institutions, agencies and organs of government
8 whose status and authority is derived either from the
9 Constitution of the State of Texas or from laws passed
10 by the Legislature pursuant to such Constitution.
11 Provided, however, no new unit or units of government
12 are hereby created.

13 (2) "Scope of employment" or "scope of office"
14 shall mean that the officer, agent or employee was
15 acting on behalf of a governmental unit in the
16 performance of the duties of his office or employment
17 or was in or about the performance of tasks lawfully
18 assigned to him by competent authority.

19 (3) "Officer, agent or employee" shall mean
20 every person who is in the paid service of any unit of
21 government by competent authority, whether full or
22 part-time, whether elective or appointive, and whether
23 supervisory or nonsupervisory, it being the intent of
24 the Legislature that this Act should apply to every
25 person in such service of a unit of government, save
26 and except as herein provided. Such definition,
27 however, shall not include an independent contractor or
28 an agent or employee of an independent contractor, or
29 any person performing tasks the details of which the
30 unit of government does not have the legal right to
31 control.

32 [Sec. 3(a)] In this section "state government" means
33 an agency, board, commission, department, or office
34 other than a district or authority created under
35 Article XVI, Section 59, of the Texas Constitution,
36 that:

37 (1) was created by the constitution or a statute
38 of this state; and

39 (2) has statewide jurisdiction.

40 [Sec. 3(b)]

41 . . . other than motor-driven equipment used in
42 connection with the operation of floodgates or water
43 release equipment by river authorities created under
44 the laws of this state

45 [Sec. 18]

46 The term "motor-driven equipment" as used herein shall
47 not be construed so as to include medical equipment,
48 such as, but not limited to iron lungs, located in
49 hospitals.

50 Revisor's Note

51 (1) In the definition of "employee" the source
52 material allowing the employment to be either "full or
53 part-time," "elective or appointive," and "supervisory
54 or nonsupervisory" is omitted because the definition is
55 not limited by any of those conditions. Also, the

1 statement of legislative intent to include "every
2 person in such service" is omitted because the
3 definition is written broadly enough to include those
4 persons except as specifically exempted.

5 (2) In the definition of "governmental unit" the
6 statement in the source law that no new units of
7 government are hereby created is omitted because the
8 definition does not create governmental units but only
9 identifies those that exist.

10 (3) In the definition of "scope of employment"
11 the word "acting" is omitted because the word is
12 repeated in Section 101.021 creating liability. "Scope
13 of office" is not defined because it means the same as
14 "scope of employment."

15 Revised Law

16 Sec. 101.002. SHORT TITLE: This chapter may be cited as the
17 Texas Tort Claims Act. (V.A.C.S. Art. 6252-19, Sec. 1.)

18 Source Law

19 Art. 6252-19
20 Sec. 1. This Act shall be known and cited as the
21 Texas Tort Claims Act.

22 [Sections 101.003-101.020 reserved for expansion]

23 SUBCHAPTER B. TORT LIABILITY OF GOVERNMENTAL UNITS

24 Revised Law

25 Sec. 101.021. GOVERNMENTAL LIABILITY. A governmental unit
26 in the state is liable for:

27 (1) property damage, personal injury, and death
28 proximately caused by the wrongful act or omission or the
29 negligence of an employee acting within his scope of employment if:

30 (A) the property damage, personal injury, or

1 death arises from the operation or use of a motor-driven vehicle or
2 motor-driven equipment; and

3 (B) the employee would be personally liable to
4 the claimant according to Texas law; and

5 (2) personal injury and death so caused by a condition
6 or use of tangible personal or real property if the governmental
7 unit would, were it a private person, be liable to the claimant
8 according to Texas law. (V.A.C.S. Art. 6252-19, Sec. 3(b)
9 (part).)

10 Source Law

11 (b) Each unit of government in the state shall
12 be liable . . . for property damage or personal
13 injuries or death when proximately caused by the
14 negligence or wrongful act or omission of any officer
15 or employee acting within the scope of his employment
16 or office arising from the operation or use of a
17 motor-driven vehicle and motor-driven
18 equipment . . . under circumstances where such officer
19 or employee would be personally liable to the claimant
20 in accordance with the law of this state, or death or
21 personal injuries so caused from some condition or some
22 use of tangible property, real or personal, under
23 circumstances where such unit of government, if a
24 private person, would be liable to the claimant in
25 accordance with the law of this state.

26 Revised Law

27 Sec. 101.022. DUTY OWED: PREMISE AND SPECIAL DEFECTS. (a)
28 If a claim arises from a premise defect, the governmental unit owes
29 to the claimant only the duty that a private person owes to a
30 licensee on private property, unless the claimant pays for the use
31 of the premises.

32 (b) The limitation of duty in this section does not apply to
33 the duty to warn of special defects such as excavations or
34 obstructions on highways, roads, or streets or to the duty to warn
35 of the absence, condition, or malfunction of traffic signs,
36 signals, or warning devices as is required by Section 101.060.
37 (V.A.C.S. Art. 6252-19, Sec. 18(b).)

Source Law

(b) As to premise defects, the unit of government shall owe to any claimant only the duty owed by private persons to a licensee on private property, unless payment has been made by the claimant for the use of the premises. Provided, however, that the limitation of duty contained in this subsection shall not apply to the duty to warn of special defects such as excavations or obstructions on highways, roads or streets, nor shall it apply to any such duty to warn of the absence, condition or malfunction of traffic signs, signals or warning devices as is required in Section 14(12) hereof.

Revised Law

Sec. 101.023. LIMITATION ON AMOUNT OF LIABILITY. (a)
Liability of the state government under this chapter is limited to
damages in a maximum amount of \$250,000 for each person and
\$250,000 for each single occurrence for bodily injury or death and
\$250,000 for each single occurrence for injury to or destruction of
property.

(b) Liability of a unit of local government under this chapter is limited to money damages in a maximum amount of \$100,000 for each person and \$300,000 for each single occurrence for bodily injury or death and \$100,000 for each single occurrence for injury to or destruction of property. (V.A.C.S. Art. 6252-19, Sec. 3(b) (part).)

Source Law

[Each unit of government . . . shall be liable for money damages . . .] Liability of the state government is limited to \$250,000 per person and \$500,000 for any single occurrence for bodily injury or death and to \$100,000 for any single occurrence for injury to or destruction of property. Liability of any unit of local government is limited to \$100,000 per person and \$300,000 for any single occurrence for bodily injury or death and to \$100,000 for any single occurrence for injury to or destruction of property.

Revised Law

Sec. 101.024. EXEMPLARY DAMAGES. This chapter does not authorize exemplary damages. (V.A.C.S. Art. 6252-19, Sec. 3(b) (part).)

1 Source Law

2 Such liability is subject to the exceptions contained
3 herein, and it shall not extend to punitive or
4 exemplary damages.

5 Revised Law

6 Sec. 101.025. WAIVER OF GOVERNMENTAL IMMUNITY; PERMISSION TO
7 SUE. (a) Sovereign immunity to suit is abolished to the extent of
8 liability created by this chapter.

9 (b) A person having a claim under this chapter may sue a
10 governmental unit for damages allowed by this chapter. (V.A.C.S.
11 Art. 6252-19, Sec. 4.)

12 Source Law

13 Sec. 4. To the extent of such liability created
14 by Section 3, immunity of the sovereign to suit, as
15 heretofore recognized and practiced in the State of
16 Texas with reference to units of government, is hereby
17 expressly waived and abolished, and permission is
18 hereby granted by the Legislature to all claimants to
19 bring suit against the State of Texas, or any and all
20 other units of government covered by this Act, for all
21 claims arising hereunder.

22 Revisor's Note

23 Only the state and its agencies have sovereign
24 immunity. The revised law omits the phrase "with
25 reference to units of government" to avoid the
26 implication that sovereign immunity applies to local
27 governmental units.

28 Revised Law

29 Sec. 101.026. INDIVIDUAL'S IMMUNITY PRESERVED. To the
30 extent an employee has individual immunity from a tort claim for
31 damages, it is not affected by this chapter. (V.A.C.S. Art.
32 6252-19, Sec. 15.)

Source Law

Sec. 15. Notwithstanding any provision hereof, the individual immunity of public officers, agents or employees of government from tort claims for damages is hereby preserved to the extent and degree that such persons presently are immunized.

Revised Law

Sec. 101.027. LIABILITY INSURANCE. (a) Each governmental unit may purchase insurance policies protecting the unit and the unit's employees against claims under this chapter.

(b) The policies may relinquish to the insurer the right to investigate, defend, compromise, and settle any claim under this chapter to which the insurance coverage extends.

(c) This state or a political subdivision of the state may not require an employee to purchase liability insurance as a condition of employment if the state or the political subdivision is insured by a liability insurance policy. (V.A.C.S. Art. 6252-19, Secs. 9 (part), 12(b).)

Source Law

[Sec. 9]

. . . provided, however, that all units of government are hereby expressly authorized to purchase policies of insurance providing protection for such units of government, their officers, agents and employees against claims brought under the provisions of this Act, and when they have acquired such insurance, they are further authorized to relinquish to the company providing such insurance coverage the right to investigate, defend, compromise and settle any such claim.

[Sec. 12]

(b) The State or a political subdivision may not require any employee to purchase liability insurance as a condition of his employment where the State or political subdivision is insured by a policy of liability insurance.

Revisor's Note

Subsection (a) of the revised law omits the reference to officers or agents of a governmental unit because the definition of "employee" in Section 101.001

1 includes officers and agents and defines all employees
2 as being employees of a governmental unit.

3 Revised Law

4 Sec. 101.028. WORKERS' COMPENSATION INSURANCE. A
5 governmental unit that has workers' compensation insurance or that
6 accepts the workers' compensation laws of this state is entitled to
7 the privileges and immunities granted by the workers' compensation
8 laws of this state to private individuals and corporations.
9 (V.A.C.S. Art. 6252-19, Sec. 19.)

10 Source Law

11 Sec. 19. Any governmental unit carrying
12 Workmen's Compensation Insurance or accepting the
13 provisions of the Workmen's Compensation Act of the
14 State of Texas shall be entitled to all of the
15 privileges and immunities granted by the Workmen's
16 Compensation Act of the State of Texas to private
17 persons and corporations.

18 Revisor's Note

19 In the revised law, "workers' compensation laws"
20 is substituted for "Workmen's Compensation Act" because
21 there is no official workmen's compensation act. The
22 workers' compensation laws appear as V.A.C.S. Article
23 8306, et seq.

24 [Sections 101.029-101.050 reserved for expansion]

25 SUBCHAPTER C. EXCLUSIONS AND EXCEPTIONS

26 Revised Law

27 Sec. 101.051. SCHOOL AND JUNIOR COLLEGE DISTRICTS PARTIALLY
28 EXCLUDED. Except as to motor vehicles, this chapter does not apply
29 to a school district or to a junior college district. (V.A.C.S.
30 Art. 6252-19, Sec. 19A.)

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2 Sec. 19A. The provisions of this Act shall not
3 apply to school districts or to junior college
4 districts except as to motor vehicles.

5

6 Sec. 101.052. LEGISLATIVE. This chapter does not apply to a
7 claim based on an act or omission of the legislature or a member of
8 the legislature acting in his official capacity or to the
9 legislative functions of a governmental unit. (V.A.C.S. Art.
0 6252-19, Sec. 14, Subdiv. (2).)

11

12 Sec. 14. The provisions of this Act shall not
13 apply to:

(2) Any claim based upon an act or omission of the Legislature, or any member thereof acting in his official capacity, or to the legislative functions of any unit of government subject to the provisions hereof.

20

21 Sec. 101.053. JUDICIAL. (a) This chapter does not apply to
22 a claim based on an act or omission of a court of this state or any
23 member of a court of this state acting in his official capacity or
24 to a judicial function of a governmental unit.

25 (b) This chapter does not apply to a claim based on an act
26 or omission of an employee in the execution of a lawful order of
27 any court. (V.A.C.S. Art. 6252-19, Sec. 14, Subdivs. (3), (4).)

28

29 Sec. 14. The provisions of this Act shall not
30 apply to:

(3) Any claim based upon an act or omission of any of the courts of the State of Texas, or any member thereof acting in his official capacity, or to the judicial functions of any unit of government subject to the provisions hereof.

(4) Any claim based upon an act or omission of an officer, agent or employee of any unit of government in the execution of the lawful orders of any court.

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1 emergency action; or

2 (3) from the failure to provide, or the method of
3 providing, police or fire protection. (V.A.C.S. Art. 6252-19, Sec.
4 14, Subdivs. (5), (8), (9) (part).)

5 Source Law

6 Sec. 14. The provisions of this Act shall not
7 apply to:

8 . . .
9 (5) Any claim arising in connection with the
10 assessment or collection of taxes by any unit of
11 government.

12 (8) Any claim arising out of the action of an
13 officer, agent or employee while responding to
14 emergency calls or reacting to emergency situations
15 when such action is in compliance with the laws and
16 ordinances applicable to emergency action.

17 [(9) Any claim] . . . arising out of the
18 failure to provide, or the method of providing, police
19 or fire protection.

20 Revised Law

21 Sec. 101.056. DISCRETIONARY POWERS. This chapter does not
22 apply to a claim based on:

23 (1) the failure of a governmental unit to perform an
24 act that the unit is not required by law to perform; or

25 (2) a governmental unit's decision not to perform an
26 act or on its failure to make a decision on the performance or
27 nonperformance of an act if the law leaves the performance or
28 nonperformance of the act to the discretion of the governmental
29 unit. (V.A.C.S. Art. 6252-19, Sec. 14, Subdiv. (7).)

30 Source Law

31 Sec. 14. The provisions of this Act shall not
32 apply to:

33 . . .
34 (7) Any claim based upon the failure of a unit
35 of government to perform any act which said unit of
36 government is not required by law to perform. If the
37 law leaves the performance or nonperformance of an act
38 to the discretion of the unit of government, its
39 decision not to do the act, or its failure to make a
40 decision thereon, shall not form the basis for a claim
41 under this Act.

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1 parties except on failure of the unit of government to
2 correct the same within such reasonable time, after
3 actual notice. Nothing herein shall give rise to
4 liability arising from the failure of any unit of
5 government to initially place any of the above signs,
6 signals, or devices when such failure is the result of
7 discretionary actions of said governmental unit. The
8 signs, signals and warning devices enumerated above are
9 those used in connection with hazards normally
10 connected with the use of the roadway, and this section
11 shall not apply to the duty to warn of special defects
12 such as excavations or roadway obstructions.

13 Revised Law

14 Sec. 101.061. TORT COMMITTED BEFORE JANUARY 1, 1970. This
15 chapter does not apply to a claim based on an act or omission that
16 occurred before January 1, 1970. (V.A.C.S. Art. 6252-19, Sec. 14,
17 Subdiv. (1).)

18 Source Law

19 Sec. 14. The provisions of this Act shall not
20 apply to:
21 (1) Any claim based upon an act or omission
22 which occurred prior to the effective date of this Act.

23 Revisor's Note

24 The date in the revised law is the effective date
25 of the source law.

26 [Sections 101.062-101.100 reserved for expansion]

27 SUBCHAPTER D. PROCEDURES

28 Revised Law

29 Sec. 101.101. NOTICE. (a) A governmental unit is entitled
30 to receive notice of a claim against it under this chapter not
31 later than six months after the day that the incident giving rise
32 to the claim occurred. The notice must reasonably describe:

- 33 (1) the damage or injury claimed;
34 (2) the time and place of the incident; and
35 (3) the incident.

1 (b) A city's charter and ordinance provisions requiring
2 notice within a charter period permitted by law are ratified and
3 approved.

4 (c) The notice requirements provided or ratified and
5 approved by Subsections (a) and (b) do not apply if the
6 governmental unit has actual notice that death has occurred, that
7 the claimant has received some injury, or that the claimant's
8 property has been damaged. (V.A.C.S. Art. 6252-19, Sec. 16.)

9 Source Law

10 Sec. 16. Except where there is actual notice on
11 the part of the governmental unit that death has
12 occurred or that the claimant has received some injury
13 or that property of the claimant has been damaged, any
14 person making a claim hereunder shall give notice of
15 the same to the governmental unit against which such
16 claim is made, reasonably describing the damage or
17 injury claimed and the time, manner and place of the
18 incident from which it arose, within six months from
19 the date of the incident. Provided, however, except
20 where there is such actual notice, charter and
21 ordinance provisions of cities requiring notice within
22 a charter period permitted by law are hereby expressly
23 ratified and approved.

24 Revised Law

25 Sec. 101.102. COMMENCEMENT OF SUIT. (a) A suit under this
26 chapter shall be brought in the county in which the cause of action
27 or a part of the cause of action arises.

28 (b) The pleadings of the suit must name as defendant the
29 governmental unit against which liability is to be established.

30 (c) In a suit against the state, citation must be served on
31 the secretary of state. In other suits, citation must be served as
32 in other civil cases unless no method of service is provided by
33 law, in which case service may be on the administrative head of the
34 governmental unit being sued. If the administrative head of the
35 governmental unit is not available, the court in which the suit is
36 pending may authorize service in any manner that affords the
37 governmental unit a fair opportunity to answer and defend the suit.
38 (V.A.C.S. Art. 6252-19, Secs. 5, 8.)

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Source Law

Sec. 5. All cases arising under the provisions of this Act shall be instituted in the county in which the cause of action or a part thereof arises.

Sec. 8. Suits instituted pursuant to the provisions of this Act shall name as defendant the unit of government against which liability is sought to be established. In suits against the state citation shall be served on the Secretary of State. In suits against other units of government citation shall be served in the manner prescribed by law for other civil cases. If no method is prescribed by law, then service may be had on the administrative head of the unit of government being sued, if available, and if not, the court in which the suit is pending may authorize service in such manner as may be calculated to afford the unit of government a fair opportunity to answer and defend the suit.

Revised Law

Sec. 101.103. LEGAL REPRESENTATION. (a) The attorney general shall defend each action brought under this chapter against a governmental unit that has authority and jurisdiction coextensive with the geographical limits of this state. The attorney general may be fully assisted by counsel provided by an insurance carrier.

(b) A governmental unit having an area of jurisdiction smaller than the entire state shall employ its own counsel according to the organic act under which the unit operates, unless the governmental unit has relinquished to an insurance carrier the right to defend against the claim. (V.A.C.S. Art. 6252-19, Sec. 9 (part).)

Source Law

Sec. 9. The Attorney General of Texas shall defend all actions brought under the provisions of this Act against any unit of government whose authority and jurisdiction is coextensive with the geographical limits of the State of Texas. All units of government whose area of jurisdiction is less than the entire State of Texas shall employ their own counsel in accordance with the organic act under which such unit of government is operating In the case of suits defended by the Attorney General, he may be fully assisted by counsel provided by insurance carrier.

1 Revisor's Note

2 See Section 101.027 for the authority of a
3 governmental unit to relinquish the right to defend the
4 suit.

5 Revised Law

6 Sec. 101.104. EVIDENCE OF INSURANCE COVERAGE. (a) Neither
7 the existence nor the amount of insurance held by a governmental
8 unit is admissible in the trial of a suit under this chapter.

9 (b) Neither the existence nor the amount of the insurance is
10 subject to discovery. (V.A.C.S. Art. 6252-19, Sec. 9 (part).)

11 Source Law

12 Neither the existence or amount of insurance shall ever
13 be admissible in evidence in the trial of any case
14 hereunder, nor shall the same be subject to discovery.

15 Revised Law

16 Sec. 101.105. SETTLEMENT. (a) A cause of action under this
17 chapter may be settled and compromised by the governmental unit if,
18 in a case involving the state the governor determines, or if, in
19 other cases the governing body of the governmental unit determines,
20 that the compromise is in the best interests of the governmental
21 unit.

22 (b) Approval is not required if the governmental unit has
23 acquired insurance under this chapter. (V.A.C.S. Art. 6252-19,
24 Sec. 10.)

25 Source Law

26 Sec. 10. Any and all causes of action brought
27 under the provisions of this Act may be settled and
28 compromised by the unit of government involved when, in
29 the judgment of the Governor, in the case of the state,
30 and in the judgment of the governing body of the unit
31 of government in other cases, such compromise would be
32 to the best interests of such government. It is
33 specifically provided, however, that such approval
34 shall not be required in those instances where
35 insurance has been procured under the provisions of

1 Section 9 hereof.

2 Revisor's Note

3 See Section 101.027 for the revised law relating
4 to insurance coverage.

5 Revised Law

6 Sec. 101.106. EMPLOYEES NOT LIABLE AFTER SETTLEMENT OR
7 JUDGMENT. A judgment in an action or a settlement of a claim under
8 this chapter bars any action involving the same subject matter by
9 the claimant against the employee of the governmental unit whose
10 act or omission gave rise to the claim. (V.A.C.S. Art. 6252-19,
11 Sec. 12(a).)

12 Source Law

13 Sec. 12. (a) The judgment or settlement in an
14 action or claim under this Act shall constitute a
15 complete bar to any action by the claimant, by reason
16 of the same subject matter, against the employee of a
17 unit of government whose act or omission gave rise to
18 the claim.

19 Revised Law

20 Sec. 101.107. PAYMENT AND COLLECTION OF JUDGMENT. (a) A
21 judgment in a suit under this chapter may be enforced only in the
22 same manner and to the same extent as other judgments against the
23 governmental unit are enforceable as provided by law, unless the
24 governmental unit has liability or indemnity insurance protection,
25 in which case the holder of the judgment may collect the judgment,
26 to the extent of the insurer's liability, as provided in the
27 insurance or indemnity contract or policy or as otherwise provided
28 by law.

29 (b) A judgment or a portion of a judgment that is not
30 payable by an insurer need not be paid by a governmental unit until
31 the first fiscal year following the fiscal year in which the

1 judgment becomes final.

2 (c) If in a fiscal year the aggregate amount of judgments
3 under this chapter against a governmental unit that become final,
4 excluding the amount payable by an insurer, exceeds one percent of
5 the unit's budgeted tax funds for the fiscal year, excluding
6 general obligation debt service requirements, the governmental unit
7 may pay the judgments in equal annual installments for a period of
8 not more than five years. If payments are extended under this
9 subsection, the governmental unit shall pay interest on the unpaid
10 balance at the rate provided by law. (V.A.C.S. Art. 6252-19, Sec.
11 11 (part).)

12 Source Law

13 Sec. 11. Judgments recovered against units of
14 government pursuant to the provisions of this Act shall
15 be enforced in the same manner and to the same extent
16 as judgments are now enforced against such units of
17 government under the statutes and law of Texas; and no
18 additional methods of collecting judgments are granted
19 by this Act. Provided, however, if the judgment is
20 obtained against a unit of government that has procured
21 a contract or policy of liability or indemnity
22 insurance protection, the holder of the judgment may
23 use such methods of collecting said judgment as are
24 provided by the policy or contract and statutes and
25 laws of Texas to the extent of the limits of coverage
26 provided therein. It is expressly provided, however,
27 that judgments under this Act becoming final during any
28 fiscal year need not be paid by such unit of government
29 until the following fiscal year except to the extent
30 that they may be payable by an insurance carrier. . . .
31 In the event that judgments arising under the
32 provisions of this Act become final against a unit of
33 government in any one fiscal year in an aggregate
34 amount, exclusive of insurance coverage, if any, in
35 excess of one percent of the budgeted tax funds,
36 exclusive of general obligation debt service
37 requirements, of such unit of government for such
38 fiscal year, then such unit of government may pay such
39 judgments over a period of not more than five years in
40 equal annual installments and shall pay interest on the
41 unpaid balance at the rate provided by law.

42 Revised Law

43 Sec. 101.108. PROPERTY TAXES FOR PAYMENT OF JUDGMENT. (a)
44 A governmental unit not fully covered by liability insurance may
45 levy property taxes for the payment of any final judgment under

1 this chapter.

2 (b) If necessary to pay the amount of a judgment, the
3 property tax rate may exceed any legal tax rate limit applicable to
4 the governmental unit except a limit imposed by the constitution.
5 (V.A.C.S. Art. 6252-19, Sec. 11 (part).)

6 Source Law

7 For the payment of any final judgment obtained under
8 the provisions of this Act, a unit of government not
9 fully covered by liability insurance is hereby
10 authorized to levy an ad valorem tax, the rate of
11 which, if found by the unit of government to be
12 necessary, may exceed any legal limit otherwise
13 applicable except as may be imposed by the Constitution
14 of the State of Texas.

15 Revised Law

16 Sec. 101.109. PAYMENT OF CLAIMS AGAINST CERTAIN
17 UNIVERSITIES. A claim under this chapter against a state-supported
18 senior college or university is payable only by a direct
19 legislative appropriation made to satisfy claims unless insurance
20 has been acquired as provided by this chapter. If insurance has
21 been acquired, the claimant is entitled to payment to the extent of
22 the coverage as in other cases. (V.A.C.S. Art. 6252-19, Sec. 17.)

23 Source Law

24 Sec. 17. No claim or judgment against a
25 state-supported senior college or university, under
26 this Act, shall be payable except by a direct
27 appropriation made by the Legislature for the purpose
28 of satisfying claims and/or judgments, except in the
29 event insurance has been acquired as provided in
30 Section 9, in which case the claimant is entitled to
31 payment to the extent of such coverage as in other
32 cases.

33 Revisor's Note

34 The reference to judgments is omitted because
35 every judgment results from the pursuit of a claim.

Revisor's Note
(End of Chapter)

(1) Section 6 of V.A.C.S. Article 6252-19, providing that the Act is cumulative in effect and not in lieu of other remedies is omitted. Except in the case of irreconcilable conflicts between acts, all acts are to be read together and harmonized. Except in the case where a judgment under the Act bars recovery against individual employees (Section 12(a) of Article 6252-19; code Section 101.106), nothing in the Act suggests that the remedies are exclusive.

(2) Section 7 of V.A.C.S. Article 6252-19 provides:

The laws and statutes of the State of Texas and the Rules of Civil Procedure, as promulgated and adopted by the Supreme Court of Texas, insofar as applicable and to the extent that such rules are not inconsistent with the provisions of this Act, shall apply to and govern all actions brought under the provisions of this Act.

This section is omitted from the code. The laws of Texas and the Texas Rules of Civil Procedure apply to the remedies provided by this Act without an express statement to that effect.

(3) Section 13 of V.A.C.S. Article 6252-19, providing that the Act shall be liberally construed to achieve its purposes is omitted. Section 3.03 of the Code Construction Act (V.A.C.S. Article 5429b-2) provides that the objects sought to be attained in a statute are among the factors to be considered in construing the statute. Also, V.A.C.S. Article 10, Subdivision 8, provides that statutes in derogation of the common law are to be liberally construed "to effect their objects and to promote justice."

(4) Sections 20 and 22 of V.A.C.S. Article 6252-19, providing respectively for a repealer and an

1 effective date, are omitted from the code as executed
2 law. Section 21 providing for severability of the Act
3 is omitted because it duplicates similar provisions in
4 the Code Construction Act and V.A.C.S. Article 11a.

1 CHAPTER 102. TORT CLAIMS PAYMENTS BY LOCAL GOVERNMENTS

2 Sec. 102.001. DEFINITIONS

3 Sec. 102.002. PAYMENT OF CERTAIN TORT CLAIMS

4 Sec. 102.003. MAXIMUM PAYMENTS

5 Sec. 102.004. DEFENSE COUNSEL

6 Sec. 102.005. SECURITY FOR COURT COSTS NOT REQUIRED

7 Sec. 102.006. OTHER LAWS NOT AFFECTED

8 CHAPTER 102. TORT CLAIMS PAYMENTS BY LOCAL GOVERNMENTS

9 Revised Law

10 Sec. 102.001. DEFINITIONS. In this chapter:

11 (1) "Employee" includes an officer or employee, a
12 former officer or employee, and the estate of an officer or
13 employee or former officer or employee of a local government.

14 (2) "Local government" means a county, city, town,
15 special purpose district, and any other political subdivision of
16 the state. (V.A.C.S. Art. 6252-19b, Secs. 1, 2(a) (part).)

17 Source Law

18 Art. 6252-19b

19 Sec. 1. In this Act "employee" includes an
20 elected official and any other officer or employee, a
21 former officer or employee or their estates, of a
22 county, city, town, special purpose district, or any
23 other political subdivision of this state.

24 Sec. 2. (a) A county, city, town, special
25 purpose district, or any other political subdivision of
26 the state

27 Revisor's Note

28 A formal definition of "local government" is
29 added to avoid the repetition of "county, city, town,
30 special purpose district, or any other political
31 subdivision."

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subdivision may settle or compromise the portion of a lawsuit that may result in liability of the county or political subdivision under this Act.

Revised Law

Sec. 102.005. SECURITY FOR COURT COSTS NOT REQUIRED. In a case defended under this chapter, neither the defendant nor a local government is required to advance security for costs or to give bond on appeal or writ of error. (V.A.C.S. Art. 6252-19b, Sec. 3(c).)

Source Law

(c) In a case defended under this Act, neither the defendant nor the political subdivision may be required to advance security for cost or give bond on appeal or on review by writ of error.

Revised Law

Sec. 102.006. OTHER LAWS NOT AFFECTED. This chapter does not affect:

(1) Chapter 101 of this code (the Texas Tort Claims Act); or

(2) a defense, immunity, or jurisdictional bar available to a local government or an employee. (V.A.C.S. Art. 6252-19b, Sec. 2(b) (part).)

Source Law

(b) This Act shall not be construed to waive, repeal, or modify any defense, immunity, or jurisdictional bar available to the political subdivision or its employees, nor shall this Act be construed to waive, repeal, or modify any provision of the Texas Tort Claims Act, as amended (Article 6252-19, Vernon's Texas Civil Statutes).

Revisor's Note
(End of Chapter)

The first sentence of Section 5 of V.A.C.S. Article 6252-19b is omitted from the code because it has expired. That sentence reads, "Section 2 of this

1 Act shall not be construed to modify or change any
2 policy of insurance providing coverage to an officer or
3 employee of a political subdivision." Those insurance
4 policies in effect on the effective date of the Act
5 (June 13, 1979) have expired.

6 See the conforming amendments to this code for
7 the disposition of the second sentence of Section 5
8 relating to the State Board of Insurance promulgating
9 rules and setting rates under V.A.C.S. Article 2372h-7.

1 CHAPTER 103. COMPENSATION TO PERSONS WRONGFULLY IMPRISONED

2 Sec. 103.001. CLAIMANTS ENTITLED TO COMPENSATION

3 Sec. 103.002. WAIVER OF IMMUNITY; FILING SUIT

4 Sec. 103.003. STANDARD OF PROOF

5 Sec. 103.004. INSUFFICIENT STATE DEFENSES

6 Sec. 103.005. ADMISSIBLE EVIDENCE

7 Sec. 103.006. DAMAGES

8 Sec. 103.007. LIMITATION OF ACTION

9 CHAPTER 103. COMPENSATION TO PERSONS WRONGFULLY IMPRISONED

10 Revised Law

11 Sec. 103.001. CLAIMANTS ENTITLED TO COMPENSATION. A person
12 is entitled to compensation if the person:

13 (1) has served, in whole or in part, a sentence in
14 prison under the laws of this state;

15 (2) pleaded "not guilty" to the charge for which he
16 was convicted and that led to the imprisonment;

17 (3) is not guilty of the crime for which he was
18 sentenced; and

19 (4) has received a full pardon for the crime and
20 punishment for which he was sentenced. (V.A.C.S. Art. 6252-25,
21 Sec. 2.)

22 Source Law

23 Sec. 2. A person is entitled to compensation
24 provided by this Act:

25 (a) if he has served, in whole or in part, a
26 sentence in prison under the laws of this State; and

27 (b) if he pleaded "not guilty" to the charge for
28 which he was convicted and which led to the
29 imprisonment; and

30 (c) if he is not guilty of the crime for which
31 he was sentenced; and

32 (d) if he has received a full pardon for the
33 crime and punishment for which he was sentenced.

Revised Law

Sec. 103.002. WAIVER OF IMMUNITY; FILING SUIT. (a) A person may bring a suit against the state under this chapter, and the state's immunity from the suit is waived.

(b) The suit must be initiated by a verified petition alleging that the petitioner is entitled to compensation.

(c) The suit shall be brought in a court of competent jurisdiction either in the county of his residence at the time the suit is commenced or in Travis County.

(d) Citation must be served on the state by serving the attorney general. The attorney general shall represent the state in the proceeding. (V.A.C.S. Art. 6252-25, Sec. 3.)

Source Law

Sec. 3. Any person who by verified petition alleges that he is entitled to compensation under this Act may bring suit against the State of Texas. This Act grants permission to such persons to sue the State and the State's immunity from suit is hereby waived as to all actions brought under this Act. A person who sues the State under this Act shall bring suit in a court of competent jurisdiction either in the county of his residence at the time such suit is commenced or in a court of competent jurisdiction for Travis County. Service of citation upon the State shall be accomplished by service upon the Attorney General. The Attorney General shall represent the State in any proceeding brought under this Act.

Revised Law

Sec. 103.003. STANDARD OF PROOF. The petitioner must establish by a preponderance of the evidence that he is entitled to compensation and the amount of compensation to which he is entitled. (V.A.C.S. Art. 6252-25, Sec. 4 (part).)

Source Law

Sec. 4. In order to obtain a judgment in his favor, a person who brings suit under this Act must establish by a preponderance of the evidence that he is entitled to compensation under this Act and the amount of compensation to which he is entitled.

1 Revised Law

2 Sec. 103.004. INSUFFICIENT STATE DEFENSES. The following
3 are not defenses to an action brought under this chapter:

4 (1) the judgment of conviction in the trial that
5 resulted in the claimant's imprisonment; or

6 (2) an indictment, information, complaint, or other
7 formal accusation. (V.A.C.S. Art. 6252-25, Sec. 4 (part).)

8 Source Law

9 The judgment of conviction in the trial which resulted
10 in the imprisonment in question is not a defense on the
11 part of the State to a suit brought under this Act, nor
12 is an indictment, information, complaint or other
13 formal accusation any defense.

14 Revised Law

15 Sec. 103.005. ADMISSIBLE EVIDENCE. (a) In the suit, the
16 court may admit as evidence the record of the trial at which the
17 petitioner was convicted and the pardon or proclamation issued to
18 him by the governor.

19 (b) The court may also admit all court papers, orders,
20 docket notations, or other writings of record in any court in this
21 state as proof of the facts set forth in the writings. (V.A.C.S.
22 Art. 6252-25, Sec. 5.)

23 Source Law

24 Sec. 5. The record of the trial at which the
25 person bringing suit under this Act was convicted, and
26 the pardon or proclamation issued to him by the
27 Governor are admissible as evidence, and all court
28 papers, orders, docket notations or other writings of
29 record in any court in this State are admissible in
30 evidence in a trial of a suit brought under this Act as
31 proof of the facts set out therein.

32 Revised Law

33 Sec. 103.006. DAMAGES. (a) If the jury, or the judge in a
34 nonjury trial, finds that the claimant is entitled to compensation,
35 the jury or judge shall assess damages to compensate the claimant

1 fairly and reasonably for:

2 (1) physical and mental pain and suffering sustained
3 by him as a proximate result of the erroneous conviction or
4 imprisonment from the time of the conviction by the trial court;
5 and

6 (2) all reasonable and necessary medical expenses
7 incurred by him as a proximate result of the erroneous conviction
8 or imprisonment from the time of the conviction by the trial court.

9 (b) Damages assessed for physical and mental pain and
10 suffering may not exceed \$25,000. Total damages assessed under
11 this chapter may not exceed \$50,000. (V.A.C.S. Art. 6252-25, Sec.
12 6.)

13 Source Law

14 Sec. 6. If the jury, or the judge where the case
15 is tried before the judge without a jury, finds that
16 the claimant is entitled to compensation, then the jury
17 or the judge, as the case may be, shall assess the
18 claimant's damages at such a sum of money as will
19 fairly and reasonably compensate him:

20 (a) for the physical and mental pain and
21 suffering sustained by him as a proximate result of the
22 erroneous conviction or imprisonment from the time of
23 conviction by the trial court;

24 (b) for all reasonable and necessary medical
25 expenses incurred by him as a proximate result of the
26 erroneous conviction or imprisonment from the time of
27 the conviction in the trial court.

28 It is provided, however, that the judge or jury,
29 as the case may be, shall not assess the claimant's
30 damages under Subsection (a) of this Section 6 at an
31 amount greater than Twenty-five Thousand Dollars
32 (\$25,000). It is further provided that the judge or
33 jury, as the case may be, shall not assess the
34 claimant's total damages under this Act at an amount
35 greater than Fifty Thousand Dollars (\$50,000).

36 Revised Law

37 Sec. 103.007. LIMITATION OF ACTION. (a) A person who
38 claims compensation for a sentence served in whole or in part after
39 August 30, 1965, must bring the action within two years after:

40 (1) the person ceased serving the sentence of
41 imprisonment;

42 (2) the person was released from custody; or

1 (3) the person discovered or should have discovered
2 the evidence substantiating his innocence.

3 (b) A person who claims compensation for a sentence served
4 before August 30, 1965, must bring the action within two years
5 after he discovered or should have discovered the evidence
6 substantiating his innocence. (V.A.C.S. Art. 6252-25, Sec. 7.)

7 Source Law

8 Sec. 7. Any person claiming compensation under
9 this Act whose claim is based upon a sentence served
10 before the effective date of this Act must bring his
11 action within two years after the effective date of
12 this Act or within two years after he discovered or
13 should have discovered the evidence substantiating his
14 innocence. Any person claiming compensation under this
15 Act whose claim is based upon a sentence served in
16 whole or in part, after the effective date of this Act
17 must bring his action within two years after he ceased
18 serving the sentence of imprisonment or after his
19 release from custody, or within two years after he
20 discovered or should have discovered the evidence
21 substantiating his innocence.

22 Revisor's Note

23 The revised law omits the source law material
24 providing for suits to be brought within two years of
25 the effective date of V.A.C.S. Article 6252-25 (August
26 30, 1965) because the two-year period has expired.

27 Revisor's Note
28 (End of Chapter)

29 The revised law omits V.A.C.S. Article 6252-25,
30 Section 1. The policy statement set forth in the
31 omitted section is essentially identical to Article
32 III, Section 51-c, of the state constitution and is
33 therefore unnecessary.

1 CHAPTER 104. STATE LIABILITY FOR CONDUCT OF PUBLIC SERVANTS

2 Sec. 104.001. STATE LIABILITY; PERSONS COVERED

3 Sec. 104.002. STATE LIABILITY; CONDUCT COVERED

4 Sec. 104.003. LIMITS ON AMOUNT OF RECOVERABLE DAMAGES

5 Sec. 104.004. DEFENSE BY ATTORNEY GENERAL

6 Sec. 104.005. SERVICE OF PROCESS OR TIMELY NOTICE TO

7 ATTORNEY GENERAL REQUIRED

8 Sec. 104.006. SECURITY OR BOND

9 Sec. 104.007. FUNDS FOR DEFENSE

10 Sec. 104.008. NO WAIVER OF DEFENSES

11 CHAPTER 104. STATE LIABILITY FOR CONDUCT OF PUBLIC SERVANTS

12 Revised Law

13 Sec. 104.001. STATE LIABILITY; PERSONS COVERED. In a cause
14 of action based on conduct described in Section 104.002, the state
15 is liable for actual damages, court costs, and attorney's fees
16 adjudged against:

17 (1) an employee, a member of the governing board, or
18 any other officer of a state agency, institution, or department;

19 (2) a former employee, former member of the governing
20 board, or any other former officer of a state agency, institution,
21 or department who was an employee or officer when the act or
22 omission on which the damages are based occurred;

23 (3) a physician licensed in this state who was
24 performing services under a contract with the Disability
25 Determination Division of the Texas Rehabilitation Commission or
26 the Texas Department of Mental Health and Mental Retardation when
27 the act or omission on which the damages are based occurred;

28 (4) a person serving on the governing board of a
29 foundation, corporation, or association at the request and on
30 behalf of The University of Texas System; or

31 (5) the estate of a person listed in this section.

Source Law

[V.A.C.S. Art. 6252-26]

Sec. 1. (a) The State of Texas is liable for and shall pay actual damages, court costs, and attorney fees adjudged against officers or employees of any agency, institution, or department of the state; against a former officer or employee of an agency, institution, or department of the state who was an officer or employee when the act or omission on which the damages are based occurred; against a physician licensed in this state who is or was performing services under a contract with the Disability Determination Division of the Texas Rehabilitation Commission or the Texas Department of Mental Health and Mental Retardation when the act or omission on which the damages are based occurred; or against the estate of such a person

Sec. 5. A member of the commission, board, or other governing body of an agency, institution, or department is an officer of the agency, institution, or department for purposes of this Act.

[Ed. Code]

Sec. 65.42. DEFENSE OF CERTAIN PERSONS. Any person serving on the governing board of any foundation, corporation, or association at the request of and on behalf of The University of Texas System is an officer or employee as those terms are used in Chapter 309, Acts of the 64th Legislature, 1975, as amended (Article 6252-26, Vernon's Texas Civil Statutes).

Revised Law

Sec. 104.002. STATE LIABILITY; CONDUCT COVERED. The state is liable under this chapter only if the damages are based on an act or omission by the person in the course and scope of the person's office, employment, or contractual performance for, or service on behalf of the agency, institution, or department, and if:

(1) the damages arise out of a cause of action for negligence, except a wilful or wrongful act or an act of gross negligence; or

(2) the damages arise out of a cause of action for deprivation of a right, privilege, or immunity secured by the

1 constitution or laws of this state or the United States, except
2 when the court in its judgment or the jury in its verdict finds
3 that the person acted in bad faith. (V.A.C.S. Art. 6252-26, Sec.
4 1(a) (part).)

5 Source Law

6 [The State of Texas is liable] . . . where the damages
7 are based on an act or omission by the person in the
8 course and scope of his office, contractual
9 performance, or employment for the institution,
10 department, or agency and:

11 (1) the damages arise out of a cause of action
12 for negligence, except a willful or wrongful act or an
13 act of gross negligence; or

14 (2) the damages arise out of a cause of action
15 for deprivation of a right, privilege, or immunity
16 secured by the constitution or laws of this state or
17 the United States, except when the court in its
18 judgment or the jury in its verdict finds that the
19 officer, contractor, or employee acted in bad faith.

20 Revised Law

21 Sec. 104.003. LIMITS ON AMOUNT OF RECOVERABLE DAMAGES. (a)

22 State liability under this chapter may not exceed:

23 (1) \$100,000 to a single person and \$300,000 for a
24 single occurrence in the case of personal injury, death, or
25 deprivation of a right, privilege, or immunity; and

26 (2) \$10,000 for a single occurrence of damage to
27 property.

28 (b) The state is not liable under this chapter to the extent
29 that damages are recoverable under a contract of insurance or under
30 a plan of self-insurance authorized by statute. (V.A.C.S. Art.
31 6252-26, Sec. 1(b) (part).)

32 Source Law

33 The state is not liable under this Act to the extent
34 that damages are recoverable under a contract of
35 insurance or under a plan of self-insurance authorized
36 by statute. State liability under this Act is limited
37 to \$100,000 to a single person and \$300,000 for a
38 single occurrence, in the case of personal injury or
39 death or the deprivation of a right, privilege, or
40 immunity, and to \$10,000 for a single occurrence of
41 injury of or damage to property.

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The state is not liable for the defense of an action or for the damages, court costs, or attorney fees unless either the attorney general has been served in the case and the state has been given an opportunity to defend the suit, or the officer, contractor, or employee, former officer, contractor, or employee, or estate against whom the action is brought has delivered to the attorney general all process served on him or it not later than 10 days after the service.

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Sec. 104.006. SECURITY OR BOND. In a cause of action defended by the attorney general under this chapter, the attorney general or the individual or estate represented may not be required to advance security for cost or to give bond on appeal or on review by writ of error. (V.A.C.S. Art. 6252-26, Sec. 3(b).)

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(b) In a case defended by the attorney general under this Act, neither the officer, contractor, employee, former officer, contractor, or employee, estate, or attorney general may be required to advance security for cost or give bond on appeal or on review by writ of error.

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Sec. 104.007. FUNDS FOR DEFENSE. (a) Only funds appropriated from the general revenue fund to the attorney general may be used to conduct the defense of an action that the attorney general is required to defend under this chapter.

(b) Conducting the defense of an action covered by this chapter includes investigating, taking depositions, making discovery, preparing for trial, preparing exhibits or other evidence, and participating in actual trial. (V.A.C.S. Art. 6252-26, Sec. 4.)

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Sec. 4. No funds other than those appropriated by the legislature from the General Revenue Fund to the attorney general may be used to conduct the defense or

1 prosecution of any action that the attorney general is
2 required to defend or prosecute under the provisions of
3 this Act. The term "conduct of the defense of any
4 action" as used in this section includes, but is not
5 limited to, any steps in the investigation, preparation
6 for trial, and participation in actual trial, including
7 depositions or other discovery, and the preparation of
8 any exhibits or other evidence.

9 Revisor's Note

10 The revised law omits the reference to
11 prosecutions because the source law requires the
12 attorney general only to defend, not prosecute, certain
13 actions.

14 Revised Law

15 Sec. 104.008. NO WAIVER OF DEFENSES. This chapter does not
16 waive a defense, immunity, or jurisdictional bar available to the
17 state or its officers, employees, or contractors. (V.A.C.S. Art.
18 6252-26, Sec. 1(b) (part).)

19 Source Law

20 (b) This Act shall not be construed as a waiver
21 of any defense, immunity, or jurisdictional bar
22 available to the state or its officers, contractors, or
23 employees.

24 Revisor's Note
25 (End of Chapter)

26 The revised law omits V.A.C.S. Article 6252-26,
27 Section 2, relating to judgments to which the Act
28 applies, because the provision is no longer necessary.
29 The omitted provision read:

30 Sec. 2. This Act applies to
31 judgments in all cases filed on or after
32 the effective date of this Act and to all
33 judgments in cases pending or on appeal on
34 the effective date of the Act.

1 CHAPTER 105. FRIVOLOUS CLAIM BY STATE AGENCY
2 Sec. 105.001. DEFINITIONS
3 Sec. 105.002. RECOVERY OF FEES, EXPENSES, AND ATTORNEY'S FEES
4 Sec. 105.003. MOTION OF FRIVOLOUS CLAIM
5 Sec. 105.004. PAYMENT OF COSTS

6 CHAPTER 105. FRIVOLOUS CLAIM BY STATE AGENCY

7 Revised Law

8 Sec. 105.001. DEFINITIONS. In this chapter:

9 (1) "Fees and other expenses" means:

10 (A) the reasonable expenses of witnesses
11 incurred in preparing to testify or in attending or testifying;

12 (B) a reasonable fee for the professional
13 services of an expert witness; and

14 (C) the reasonable costs of a study, analysis,
15 engineering report, test, or other project the court finds to be
16 necessary for the preparation of the party's case.

17 (2) "Party" means an individual, partnership,
18 corporation, association, or public or private organization other
19 than a state agency.

20 (3) "State agency" means a board, commission,
21 department, office, or other agency that:

22 (A) is in the executive branch of state
23 government;

24 (B) was created by the constitution or a statute
25 of this state; and

26 (C) has statewide jurisdiction. (V.A.C.S. Art.
27 2226b, Sec. 1.)

28 Source Law

29 Art. 2226b

30 Sec. 1. DEFINITIONS. In this Act:

31 (1) "State agency" means a department,
32 commission, board, office, or other agency that:

1 (A) is in the executive branch of state
2 government;

3 (B) has authority that is not limited to a
4 geographical portion of the state; and

5 (C) was created by the constitution or a statute
6 of this state.

7 (2) "Party" means an individual, partnership,
8 corporation, association, or a public or private
9 organization other than a state agency.

10 (3) "Fees and other expenses" means the
11 reasonable expenses of witnesses incurred in preparing
12 to testify or in attending or testifying, a reasonable
13 fee for the professional services of an expert witness,
14 and the reasonable costs of a study, analysis,
15 engineering report, test, or other project the court
16 finds to be necessary for the preparation of the
17 party's case.

18 Revised Law

19 Sec. 105.002. RECOVERY OF FEES, EXPENSES, AND ATTORNEY'S
20 FEES. A party to a civil suit in a court of this state brought by
21 or against a state agency in which the agency asserts a cause of
22 action against the party, either originally or as a counterclaim or
23 cross claim, is entitled to recover, in addition to all other costs
24 allowed by law or rule, fees, expenses, and reasonable attorney's
25 fees incurred by the party in defending the agency's action if:

26 (1) the court finds that the action is frivolous,
27 unreasonable, or without foundation; and

28 (2) the action is dismissed or judgment is awarded to
29 the party. (V.A.C.S. Art. 2226b, Secs. 2 (part), 4.)

30 Source Law

31 Sec. 2. MOTION OF FRIVOLOUS CLAIM. In a civil
32 suit in a court of this state brought by or against a
33 state agency in which the agency asserts a cause of
34 action against a party, either originally or as a
35 counterclaim or cross-claim, the party

36 Sec. 4. AWARD OF COSTS. In a civil action
37 brought by or against a state agency in which the
38 agency asserts a cause of action against a party,
39 either originally or as a counterclaim or cross-claim,
40 on the dismissal of that action or the award of
41 judgment to the party, the court, on motion of that
42 party and on a finding by the court that the agency's
43 action was frivolous, unreasonable, or without
44 foundation, shall order the agency that brought the
45 action to pay, in addition to all other costs allowed
46 by law or by rule, the party's fees, expenses, and
47 reasonable attorney's fees, in an amount determined by

1 the court.

2 Revised Law

3 Sec. 105.003. MOTION OF FRIVOLOUS CLAIM. (a) To recover
4 under this chapter, the party must file a written motion alleging
5 that the agency's claim is frivolous, unreasonable, or without
6 foundation. The motion may be filed at any time after the filing
7 of the pleadings in which the agency's cause of action is alleged.

8 (b) The motion must set forth the facts that justify the
9 party's claim.

10 (c) The motion must state that if the action is dismissed or
11 judgment is awarded to the party, the party intends to submit a
12 motion to the court to recover fees, expenses, and reasonable
13 attorney's fees. (V.A.C.S. Art. 2226b, Secs. 2 (part), 3.)

14 Source Law

15 [Sec. 2]

16 . . . at any time after the filing of the pleadings in
17 which the cause of action is alleged, may file a motion
18 with the court stating that the agency's claim is
19 frivolous, unreasonable, or without foundation.

20 Sec. 3. CONTENTS OF MOTION. The written motion
21 filed with the court shall set forth the facts
22 justifying the party's claim that the action is
23 frivolous, unreasonable, or without foundation, and
24 shall state that if the action is dismissed or judgment
25 is awarded to the party, the party intends to submit a
26 motion to the court to require the agency to pay all
27 reasonable fees, expenses, and attorney's fees incurred
28 by the party in defending against the action.

29 Revisor's Note

30 In the revised law "reasonable" modifies only
31 "attorney's fees" since "fees and expenses" are, by
32 definition, "reasonable." See Section 105.001(1).

33 Revised Law

34 Sec. 105.004. PAYMENT OF COSTS. The agency shall pay the
35 fees and expenses from funds appropriated for operation of the

1 agency, funds appropriated for the payment of fees and expenses
2 under this chapter, or other funds available for that purpose.
3 (V.A.C.S. Art. 2226b, Sec. 5.)

4 Source Law

5 Sec. 5. PAYMENT OF COSTS. The agency shall pay
6 the fees and expenses from funds appropriated for
7 operation of the agency, funds appropriated for the
8 payment of fees and expenses under this Act, or other
9 funds available for that purpose.

1 CHAPTER 106. DISCRIMINATION BECAUSE OF RACE, RELIGION, COLOR,
2 SEX, OR NATIONAL ORIGIN

3 Sec. 106.001. PROHIBITED ACTS

4 Sec. 106.002. REMEDIES

5 Sec. 106.003. PENALTIES

6 CHAPTER 106. DISCRIMINATION BECAUSE OF RACE, RELIGION, COLOR,
7 SEX, OR NATIONAL ORIGIN

8 Revised Law

9 Sec. 106.001. PROHIBITED ACTS. (a) An officer or employee
10 of the state or of a political subdivision of the state who is
11 acting or purporting to act in an official capacity may not,
12 because of a person's race, religion, color, sex, or national
13 origin:

14 (1) refuse to issue to the person a license, permit,
15 or certificate;

16 (2) revoke or suspend the person's license, permit, or
17 certificate;

18 (3) refuse to permit the person to use facilities open
19 to the public and owned, operated, or managed by or on behalf of
20 the state or a political subdivision of the state;

21 (4) refuse to permit the person to participate in a
22 program owned, operated, or managed by or on behalf of the state or
23 a political subdivision of the state;

24 (5) refuse to grant a benefit to the person;

25 (6) impose an unreasonable burden on the person; or

26 (7) refuse to award a contract to the person.

27 (b) This section does not apply to a public school official
28 who is acting under a plan reasonably designed to end
29 discriminatory school practices. (V.A.C.S. Art. 6252-16, Sec. 1.)

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Sec. 1. (a) No officer or employee of the state or a political subdivision of the state, when acting or purporting to act in his official capacity, may:

(2) revoke or suspend the license, permit, or certificate of a person because of the person's race, religion, color, sex, or national origin;

(4) refuse to permit a person to participate in a program owned, operated, or managed by or on behalf of the state or a political subdivision of the state, on the basis of the person's race, religion, color, sex, or national origin;

(6) refuse to let a bid to a person because of person's race, religion, color, sex, or national origin.

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Sec. 106.002. REMEDIES. (a) If a person has violated or are reasonable grounds to believe a person is about to e Section 106.001, the person aggrieved by the violation or ened violation may sue for preventive relief, including a ent or temporary injunction, a restraining order, or any order.

(V.A.C.S. Art. 6252-16, Sec. 2.)

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1 about to engage in an act or practice prohibited by
2 Section 1 of this Act, a civil action for preventive
3 relief, including an application for a permanent or
4 temporary injunction, restraining order, or other
5 order, may be instituted by the person aggrieved. In
6 an action commenced under this Section, the court, in
7 its discretion, may allow the prevailing party, other
8 than the state, a reasonable attorney's fee as part of
9 the costs, and the state is liable for costs the same
10 as a private person.

11 Revised Law

12 Sec. 106.003. PENALTIES. (a) A person commits an offense
13 if the person knowingly violates Section 106.001.

14 (b) An offense under this section is a misdemeanor
15 punishable by:

16 (1) a fine of not more than \$1,000;

17 (2) confinement in the county jail for not more than
18 one year; or

19 (3) both the fine and confinement. (V.A.C.S. Art.
20 6252-16, Sec. 3.)

21 Source Law

22 Sec. 3. A person who knowingly violates a
23 provision of this Act is guilty of a misdemeanor and
24 upon conviction is punishable by a fine of not more
25 than One Thousand Dollars (\$1,000) or by imprisonment
26 in the county jail for not more than one year or by
27 both.

28 Revisor's Note
29 (End of Chapter)

30 Section 4 of V.A.C.S. Article 6252-16 is omitted
31 as impliedly repealed by the Commission on Human Rights
32 Act (V.A.C.S. Article 5221k). The omitted section
33 designates county and district attorneys as deferral
34 officers for purposes of Title VII of the Civil Rights
35 Act of 1964 (42 U.S.C. 2000e et seq.). The section is
36 without continuing effect because:

37 (1) employment discrimination is no longer
38 covered by Article 6252-16;

1 (2) deferral by the Equal Employment Opportunity
2 Commission (EEOC) to a state or local authority is
3 required only in employment discrimination cases; and

4 (3) the Commission on Human Rights Act clearly
5 intends to establish the commission as the deferral
6 authority in this state.

7 Under the law in effect prior to enactment of the
8 Commission on Human Rights Act, the only state law
9 prohibiting discrimination in employment was Article
10 6252-16, which provided a criminal penalty for refusing
11 to employ or discharging a person on the basis of race,
12 religion, color, sex, or national origin. If a
13 discrimination charge filed with the EEOC claimed
14 either of those prohibited acts, the EEOC sent notice
15 of deferral to the appropriate county or district
16 attorney in compliance with 42 U.S.C. 2000e-5(c) and
17 Section 4 of Article 6252-16. The EEOC was required to
18 defer action for 60 days in those circumstances.

19 The Commission on Human Rights Act amended
20 Article 6252-16 to remove employment discrimination
21 from the scope of the article (Sections 10.02,
22 10.03(a)), specifically provided that a purpose of the
23 Act was "to create an authority that meets the criteria
24 under 42 U.S.C. Section 2000e-5(c)" (Section 1.02(1)),
25 and authorized the commission to administer the Act as
26 necessary "to qualify for deferral status" (Section
27 10.05).

28 Under these circumstances, it is clear that
29 Section 4 of Article 6252-16 is without continuing
30 effect. The omitted section reads:

31 Sec. 4. The District Attorneys
32 and/or County Attorneys of this state are
33 hereby designated as the appropriate state
34 or local official to receive the notice of
35 an alleged unlawful employment practice
36 occurring in this state from the Equal

1 Employment Opportunity Commission as
2 provided for in Public Law 88-352, Title
3 VII, Section 706(c); 78 Stat. 241 (42
4 U.S.C. 2000e-5).

5 [Chapters 107-120 reserved for expansion]

1 TITLE 6. MISCELLANEOUS PROVISIONS

2 CHAPTER 121. ACKNOWLEDGMENTS AND PROOFS OF WRITTEN INSTRUMENTS

3 Sec. 121.001. OFFICERS WHO MAY TAKE ACKNOWLEDGMENTS

4 OR PROOFS

5 Sec. 121.002. CORPORATE ACKNOWLEDGMENTS

6 Sec. 121.003. AUTHORITY OF OFFICERS

7 Sec. 121.004. METHOD OF ACKNOWLEDGMENT

8 Sec. 121.005. PROOF OF IDENTITY OF ACKNOWLEDGING PERSON

9 Sec. 121.006. ALTERATION OF AUTHORIZED FORMS; DEFINITION

10 Sec. 121.007. FORM FOR ORDINARY CERTIFICATE OF ACKNOWLEDGMENT

11 Sec. 121.008. SHORT FORMS FOR CERTIFICATES OF ACKNOWLEDGMENT

12 Sec. 121.009. PROOF OF ACKNOWLEDGMENT BY WITNESS

13 Sec. 121.010. FORM OF CERTIFICATE FOR PROOF BY WITNESS

14 Sec. 121.011. PROOF OF ACKNOWLEDGMENT BY HANDWRITING

15 Sec. 121.012. RECORD OF ACKNOWLEDGMENT

16 Sec. 121.013. SUBPOENA OF WITNESS; ATTACHMENT

17 Sec. 121.014. ACTION FOR DAMAGES

18 TITLE 6. MISCELLANEOUS PROVISIONS

19 CHAPTER 121. ACKNOWLEDGMENTS AND PROOFS OF WRITTEN INSTRUMENTS

20 Revised Law

21 Sec. 121.001. OFFICERS WHO MAY TAKE ACKNOWLEDGMENTS OR
22 PROOFS. (a) An acknowledgment or proof of a written instrument
23 may be taken in this state by:

24 (1) a clerk of a district court;

25 (2) a judge or clerk of a county court; or

26 (3) a notary public.

27 (b) An acknowledgment or proof of a written instrument may
28 be taken outside this state, but inside the United States or its
29 territories, by:

30 (1) a clerk of a court of record having a seal;

31 (2) a commissioner of deeds appointed under the laws

1 of this state; or

2 (3) a notary public.

3 (c) An acknowledgment or proof of a written instrument may
4 be taken outside the United States and its territories by:

5 (1) a minister, commissioner, or charge d'affaires of
6 the United States who is a resident of and is accredited in the
7 country where the acknowledgment or proof is taken;

8 (2) a consul-general, consul, vice-consul, commercial
9 agent, vice commercial agent, deputy consul, or consular agent of
10 the United States who is a resident of the country where the
11 acknowledgment or proof is taken; or

12 (3) a notary public.

13 (d) A commissioned officer of the United States armed forces
14 or of a United States armed forces auxiliary may take an
15 acknowledgment or proof of a written instrument of a member of the
16 armed forces, a member of an armed forces auxiliary, or a member's
17 spouse. If an acknowledgment or a proof is taken under this
18 subsection, it is presumed, absent pleading and proof to the
19 contrary, that the commissioned officer who signed was a
20 commissioned officer on the date that the officer signed, and that
21 the acknowledging person was a member of the authorized group of
22 military personnel or spouses. The failure of the commissioned
23 officer to attach an official seal to the certificate of
24 acknowledgment or proof of an instrument does not invalidate the
25 acknowledgment or proof. (V.A.C.S. Art. 6602.)

26 Source Law

27 Art. 6602. 1. The acknowledgment or proof of an
28 instrument of writing for record may be made within
29 this state before:

- 30 a. A Clerk of the District Court.
31 b. A Judge or Clerk of the County Court.
32 c. A Notary Public.

33 2. The acknowledgment or proof of such
34 instrument may be made without this state, but within
35 the physical limits of the United States of America or
36 its territories before:

- 37 a. A Clerk of some court of record having a
38 seal.

1 b. A Commissioner of Deeds duly appointed under
2 the laws of this state.

3 c. A Notary Public.

4 3. The acknowledgment or proof of such
5 instrument may be made without the physical limits of
6 the United States and its territories before:

7 a. A Minister, a Commissioner or Charge
8 D'affairs of the United States, resident and accredited
9 in the country where the proof or acknowledgment is
10 made.

11 b. A Consul-General, Consul, Vice-Consul,
12 Commercial Agent, Vice-Commercial Agent, Deputy Consul
13 or Consular Agent of the United States, resident in the
14 country where proof of acknowledgment is made.

15 c. A Notary Public.

16 4. In addition to the methods above provided,
17 the acknowledgment or proof of an instrument of writing
18 for record may be made by a member of the Armed Forces
19 of the United States or any auxiliary thereto, or by
20 the husband or wife of a member of the Armed Forces of
21 the United States or any auxiliary thereto, before any
22 Commissioned Officer in the Armed Forces of the United
23 States of America or the auxiliaries thereto.

24 In the absence of pleading and proof to the
25 contrary, it shall be presumed when any such
26 acknowledgment is offered in evidence that the person
27 signing such as a Commissioned Officer was such on the
28 date signed, and that the person whose acknowledgment
29 he took was one of those with respect to whom such
30 action is hereby authorized.

31 No certificate of acknowledgment or proof of
32 instrument taken in accordance with the provisions of
33 this Subsection 4 of this Article shall be held invalid
34 by reason of the failure of the officer certifying to
35 such acknowledgment or proof of instrument to attach an
36 official seal thereto.

37 Revised Law

38 Sec. 121.002. CORPORATE ACKNOWLEDGMENTS. (a) An employee
39 of a corporation is not disqualified because of his employment from
40 taking an acknowledgment or proof of a written instrument in which
41 the corporation has an interest.

42 (b) An officer who is a shareholder in a corporation is not
43 disqualified from taking an acknowledgment or proof of an
44 instrument in which the corporation has an interest unless:

45 (1) the corporation has 1,000 or fewer shareholders;

46 and

47 (2) the officer owns more than one-tenth of one
48 percent of the issued and outstanding stock. (V.A.C.S. Art.
49 6602a.)

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1 includes an affirmation.

2 (2) The power to punish for contempt is provided
3 by Section 121.013, and it is not necessary to restate
4 it in this section.

5 Revised Law

6 Sec. 121.004. METHOD OF ACKNOWLEDGMENT. (a) To acknowledge
7 a written instrument for recording, the grantor or person who
8 executed the instrument must appear before an officer and must
9 state that he executed the instrument for the purposes and
10 consideration expressed in it.

11 (b) The officer shall:

12 (1) make a certificate of the acknowledgment;

13 (2) sign the certificate; and

14 (3) seal the certificate with the seal of office.

15 (V.A.C.S. Arts. 6603, 6606.)

16 Source Law

17 Art. 6603. The acknowledgment of an instrument
18 of writing for the purpose of being recorded shall be
19 by the grantor or person who executed the same
20 appearing before some officer authorized to take such
21 acknowledgment, and stating that he had executed the
22 same for the consideration and purposes therein stated;
23 and the officer taking such acknowledgment shall make a
24 certificate thereof, sign and seal the same with his
25 seal of office.

26 Art. 6606. An officer taking the acknowledgment
27 of a deed, or other instrument of writing, must place
28 thereon his official certificate, signed by him and
29 given under his seal of office, substantially in form
30 as hereinafter prescribed.

31 Revisor's Note

32 Substantial compliance with authorized forms is
33 required by Section 121.007 and the requirement is
34 therefore omitted from this section.

1 personally appeared before the officer taking the acknowledgment
2 and acknowledged executing the instrument for the purposes and
3 consideration expressed in it;

4 (2) in the case of a person as principal by an
5 attorney-in-fact for the principal, that the attorney-in-fact
6 personally appeared before the officer taking the acknowledgment
7 and that the attorney-in-fact acknowledged executing the instrument
8 as the act of the principal for the purposes and consideration
9 expressed in it;

10 (3) in the case of a partnership by a partner or
11 partners acting for the partnership, that the partner or partners
12 personally appeared before the officer taking the acknowledgment
13 and acknowledged executing the instrument as the act of the
14 partnership for the purposes and consideration expressed in it;

15 (4) in the case of a corporation by a corporate
16 officer or agent, that the corporate officer or agent personally
17 appeared before the officer taking the acknowledgment and that the
18 corporate officer or agent acknowledged executing the instrument in
19 the capacity stated, as the act of the corporation, for the
20 purposes and consideration expressed in it; and

21 (5) in the case of a person acknowledging as a public
22 officer, trustee, executor or administrator of an estate, guardian,
23 or other representative, that the person personally appeared before
24 the officer taking the acknowledgment and acknowledged executing
25 the instrument by proper authority in the capacity stated and for
26 the purposes and consideration expressed in it. (V.A.C.S. Art.
27 6607a, Secs. 1 (part), 2, 4.)

28 Source Law

29 [Sec. 1] They may be altered as circumstances require,
30 and the authorization of these forms does not prevent
31 the use of other forms. A person's marital status or
32 other status may be shown after the person's name.

33 Sec. 2. In the forms of acknowledgment provided
34 by this article, the words "was acknowledged" mean:

35 (1) in the case of the acknowledgment of a
36 natural person, that the person personally appeared

1 before the officer taking the acknowledgment and
2 acknowledged executing the acknowledged instrument for
3 the purposes and consideration expressed in the
4 instrument;

5 (2) in the case of the acknowledgment of a
6 person as principal by an attorney-in-fact for the
7 principal, that the attorney-in-fact personally
8 appeared before the officer taking the acknowledgment
9 and that the attorney-in-fact acknowledged executing
10 the acknowledged instrument as the act of the principal
11 for the purposes and consideration expressed in the
12 instrument;

13 (3) in the case of the acknowledgment of a
14 partnership by a partner or partners acting for the
15 partnership, that the partner or partners personally
16 appeared before the officer taking the acknowledgment
17 and acknowledged executing the acknowledged instrument
18 as the act of the partnership for the purposes and
19 consideration expressed in the instrument;

20 (4) in the case of the acknowledgment of a
21 corporation by an officer or agent acting for the
22 corporation, that the acknowledging officer or agent
23 personally appeared before the officer taking the
24 acknowledgment and that the officer or agent
25 acknowledged executing the acknowledged instrument in
26 the capacity stated as the act of the corporation for
27 the purposes and consideration expressed in the
28 instrument; and

29 (5) in the case of a person acknowledging as a
30 public officer, trustee, executor, administrator,
31 guardian, or other representative, that the public
32 officer, trustee, executor, administrator, guardian, or
33 other representative personally appeared before the
34 officer taking the acknowledgment and acknowledged
35 executing the acknowledged instrument by proper
36 authority and in the capacity stated and for the
37 purposes and consideration expressed in the instrument.

38 Sec. 4. To avoid the unnecessary use of words in
39 acknowledgments whether the statutory form or another
40 form is used, the rules and definitions in this article
41 shall apply to all instruments executed or delivered on
42 or after the effective date of this article.

43 Revisor's Note

44 The rules and definitions of V.A.C.S. Article
45 6607a apply to all acknowledgments, not just the short
46 form; therefore, the revised law states them
47 separately.

48 Revised Law

49 Sec. 121.007. FORM FOR ORDINARY CERTIFICATE OF
50 ACKNOWLEDGMENT. The form of an ordinary certificate of
51 acknowledgment must be substantially as follows:

1 "The State of _____,
2 "County of _____,
3 "Before me _____ (here insert the name and
4 character of the officer) on this day personally appeared
5 _____, known to me (or proved to me on the oath of
6 _____) to be the person whose name is subscribed
7 to the foregoing instrument and acknowledged to me that he executed
8 the same for the purposes and consideration therein expressed.
9 (Seal) "Given under my hand and seal of office this _____
10 day of _____, A.D., _____." (V.A.C.S. Art.
11 6607.)

12 Source Law

13 Art. 6607. The form of an ordinary certificate
14 of acknowledgment must be substantially as follows:

15 "The State of _____,
16 "County of _____,
17 "Before me _____ (here insert the name
18 and character of the officer) on this day personally
19 appeared _____, known to me (or proved
20 to me on the oath of _____) to be the
21 person whose name is subscribed to the foregoing
22 instrument and acknowledged to me that he executed the
23 same for the purposes and consideration therein
24 expressed.
25 (Seal) "Given under my hand and seal of office
26 this _____ day of _____, A.D.,
27 _____."

28 Revised Law

29 Sec. 121.008. SHORT FORMS FOR CERTIFICATES OF
30 ACKNOWLEDGMENT. (a) The forms for certificates of acknowledgment
31 provided by this section may be used as alternatives to other
32 authorized forms. They may be referred to as "statutory forms of
33 acknowledgment."

34 (b) Short forms for certificates of acknowledgment include:

35 (1) For a natural person acting in his own right:

36 State of Texas

37 County of _____

38 This instrument was acknowledged before me on (date) by

1 (name or names of person or persons acknowledging).

2 (Signature of officer)

3 (Title of officer)

4 My commission expires: _____

5 (2) For a natural person as principal acting by
6 attorney-in-fact:

7 State of Texas

8 County of _____

9 This instrument was acknowledged before me on (date) by
10 (name of attorney-in-fact) as attorney-in-fact on behalf of (name
11 of principal).

12 (Signature of officer)

13 (Title of officer)

14 My commission expires: _____

15 (3) For a partnership acting by one or more partners:

16 State of Texas

17 County of _____

18 This instrument was acknowledged before me on (date) by
19 (name of acknowledging partner or partners), partner(s) on behalf
20 of (name of partnership), a partnership.

21 (Signature of officer)

22 (Title of officer)

23 My commission expires: _____

24 (4) For a corporation:

25 State of Texas

26 County of _____

27 This instrument was acknowledged before me on (date) by
28 (name of officer), (title of officer) of (name of corporation
29 acknowledging) a (state of incorporation) corporation, on behalf of
30 said corporation.

1 (Signature of officer)
2 (Title of officer)
3 My commission expires: _____
4 (5) For a public officer, trustee, executor,
5 administrator, guardian, or other representative:
6 State of Texas
7 County of _____
8 This instrument was acknowledged before me on (date) by
9 (name of representative) as (title of representative) of (name of
10 entity or person represented).
11 (Signature of officer)
12 (Title of officer)
13 My commission expires: _____
14 (V.A.C.S. Art. 6607a, Secs. 1 (part), 3.)

15 Source Law
16 Art. 6607a
17 Sec. 1. The forms of acknowledgment set forth in
18 Section 3 of this article may be used as alternatives
19 to other authorized forms. They shall be known as and
20 may be referred to as "statutory forms of
21 acknowledgment."
22 Sec. 3. Short forms of acknowledgment include:
23 (1) For a natural person acting in his or her
24 own right:
25 State of Texas
26 County of _____
27 This instrument was acknowledged before me on
28 (date) by (name or names of person or persons
29 acknowledging).
30 (Signature of officer)
31 (Title of officer)
32 My commission expires: _____
33 (2) For a natural person as principal acting by
34 attorney-in-fact:
35 State of Texas
36 County of _____
37 This instrument was acknowledged before me on
38 (date) by (name of attorney-in-fact) as
39 attorney-in-fact on behalf of (name of principal).
40 (Signature of officer)
41 (Title of officer)
42 My commission expires: _____
43 (3) For a partnership acting by one or more
44 partners:
45 State of Texas
46 County of _____
47 This instrument was acknowledged before me on
48 (date) by (name of acknowledging partner or partners),

1 partner(s) on behalf of (name of partnership), a
2 partnership.

3 (Signature of officer)

4 (Title of officer)

5 My commission expires: _____

6 (4) For a corporation:

7 State of Texas

8 County of _____

9 This instrument was acknowledged before me on
10 (date) by (name of officer), (title of officer) of
11 (name of corporation acknowledging) a (state of
12 incorporation) corporation, on behalf of said
13 corporation.

14 (Signature of officer)

15 (Title of officer)

16 My commission expires: _____

17 (5) For a public officer, trustee, executor,
18 administrator, guardian, or other representative:

19 State of Texas

20 County of _____

21 This instrument was acknowledged before me on
22 (date) by (name of representative) as (title of
23 representative) of (name of entity or person
24 represented).

25 (Signature of officer)

26 (Title of officer)

27 My commission expires: _____

28 Revised Law

29 Sec. 121.009. PROOF OF ACKNOWLEDGMENT BY WITNESS. (a) To
30 prove a written instrument for recording, at least one of the
31 witnesses who signed the instrument must personally appear before
32 an officer who is authorized by this chapter to take
33 acknowledgments or proofs and must swear:

34 (1) either that he saw the grantor or person who
35 executed the instrument sign it or that that person acknowledged in
36 the presence of the witness that he executed the instrument for the
37 purposes and consideration expressed in it; and

38 (2) that he signed the instrument at the request of
39 the grantor or person who executed the instrument.

40 (b) The officer must make a certificate of the testimony of
41 the witness and must sign and officially seal the certificate.

42 (c) The officer may take the testimony of a witness only if
43 the officer personally knows or has satisfactory evidence on the
44 oath of a credible witness that the individual testifying is the
45 person who signed the instrument as a witness. If evidence is used

1 to identify the witness who signed the instrument, the officer must
2 note the use of the evidence in the certificate of acknowledgment.
3 (V.A.C.S. Arts. 6609, 6610.)

4 Source Law

5 Art. 6609. The proof of any instrument of
6 writing for the purpose of being recorded shall be by
7 one or more of the subscribing witnesses personally
8 appearing before some officer authorized to take such
9 proof, and stating on oath that he or they saw the
10 grantor or person who executed such instrument of
11 writing subscribe the same or that the grantor or
12 person who executed such instrument of writing
13 acknowledged in his or their presence that he had
14 executed the same for the purposes and consideration
15 therein stated; and that he or they had signed the same
16 as witnesses at the request of the grantor or person
17 who executed such instrument; and the officer taking
18 such proof shall make a certificate thereof, sign and
19 seal the same with his official seal.

20 Art. 6610. The proof by a subscribing witness
21 must be by some one personally known to the officer
22 taking the proof to be the person whose name is
23 subscribed to the instrument as a witness, or must be
24 proved to be such by the oath of a credible witness,
25 which fact shall be noted in the certificate.

26 Revised Law

27 Sec. 121.010. FORM OF CERTIFICATE FOR PROOF BY WITNESS.

28 When the execution of a written instrument is proved by a witness,
29 the certificate of the officer must be substantially as follows:

30 "The State of _____,

31 "County of _____.

32 "Before me, _____ (here insert the name and character of
33 the officer), on this day personally appeared _____,
34 known to me (or proved to me on the oath of _____), to
35 be the person whose name is subscribed as a witness to the
36 foregoing instrument of writing, and after being duly sworn by me
37 stated on oath that he saw _____, the grantor or person
38 who executed the foregoing instrument, subscribe the same (or that
39 the grantor or person who executed such instrument of writing
40 acknowledged in his presence that he had executed the same for the
41 purposes and consideration therein expressed), and that he had

1 signed the same as a witness at the request of the grantor (or
2 person who executed the same.)

3 (Seal) "Given under my hand and seal of office this _____
4 day of _____, A.D., _____." (V.A.C.S. Art.
5 6611.)

6 Source Law

7 Art. 6611. The certificate of the officer, where
8 the execution of the instrument is proved by a witness,
9 must be substantially in the following form:

10 "The State of _____,

11 "County of _____.

12 "Before me, _____ (here insert the name and
13 character of the officer), on this day personally
14 appeared _____, known to me (or proved to me
15 on the oath of _____), to be the person
16 whose name is subscribed as a witness to the foregoing
17 instrument of writing, and after being duly sworn by me
18 stated on oath that he saw _____, the
19 grantor or person who executed the foregoing
20 instrument, subscribe the same (or that the grantor or
21 person who executed such instrument of writing
22 acknowledged in his presence that he had executed the
23 same for the purposes and consideration therein
24 expressed), and that he had signed the same as a
25 witness at the request of the grantor (or person who
26 executed the same.)

27 (Seal) "Given under my hand and seal of office
28 this _____ day of _____, A.D.,
29 _____."

30 Revised Law

31 Sec. 121.011. PROOF OF ACKNOWLEDGMENT BY HANDWRITING. (a)

32 The execution of an instrument may be established for recording by
33 proof of the handwriting of persons who signed the instrument only
34 if:

35 (1) the grantor of the instrument and all of the
36 witnesses are dead;

37 (2) the grantor and all of the witnesses are not
38 residents of this state;

39 (3) the residences of the grantor and the witnesses
40 are unknown to the person seeking to prove the instrument and
41 cannot be ascertained;

42 (4) the witnesses have become legally incompetent to

1 testify; or

2 (5) the grantor of the instrument refuses to
3 acknowledge the execution of the instrument, and all of the
4 witnesses are dead, not residents of this state, or legally
5 incompetent or their places of residence are unknown.

6 (b) If the grantor or person who executed the instrument
7 signed his name to the instrument, its execution must be proved by
8 evidence of the handwriting of that person and at least one witness
9 who signed the instrument. If the grantor or person who executed
10 the instrument signed the instrument by making his mark, its
11 execution must be proved by the handwriting of at least two of the
12 witnesses who signed the instrument.

13 (c) Evidence taken for proof of handwriting must give the
14 residence of the testifying witness. A testifying witness must
15 have known the person whose handwriting is being proved and must be
16 well acquainted with the handwriting in question and recognize it
17 as genuine.

18 (d) Evidence offered for proof of handwriting must be given
19 in writing by the deposition or affidavit of two or more
20 disinterested persons. The evidence must satisfactorily prove to
21 the officer each of the requirements provided by this section. The
22 officer taking the proof must certify the witnesses' testimony.
23 The officer must sign, officially seal, and attach this certificate
24 to the instrument with the depositions or affidavits of the
25 witnesses. (V.A.C.S. Arts. 6612, 6613, 6614, 6615.)

26 Source Law

27 Art. 6612. The execution of an instrument may be
28 established for record by proof of the handwriting of
29 the grantor and of at least one of the subscribing
30 witnesses in the following cases:

31 1. When the grantor and all the subscribing
32 witnesses are dead.

33 2. When the grantor and all the subscribing
34 witnesses are non-residents of this State.

35 3. When the place of their residence is unknown
36 to the party desiring the proof, and cannot be
37 ascertained.

38 4. When the subscribing witnesses have been

1 convicted of felony, or have become of unsound mind, or
2 have otherwise become incompetent to testify.

3 5. When all the subscribing witnesses to an
4 instrument are dead or are non-residents of this State,
5 or when their residence is unknown, or when they are
6 incompetent to testify, and the grantor in such
7 instrument refuses to acknowledge the execution of the
8 same for record.

9 Art. 6613. The evidence taken under the
10 preceding article must satisfactorily prove to the
11 officer the following facts:

12 1. The existence of one or more of the
13 conditions mentioned therein; and,

14 2. That the witness testifying knew the person
15 whose name purports to be subscribed to the instrument
16 as a party, and is well acquainted with his signature,
17 and that it is genuine; and,

18 3. That the witness testifying personally knew
19 the person who subscribed the instrument as a witness,
20 and is well acquainted with his signature, and that it
21 is genuine; and,

22 4. The place of residence of the witness
23 testifying.

24 Art. 6614. When the grantor or person who
25 executed the instrument signed the same by making his
26 mark, and when also any one or more of the conditions
27 mentioned in Article 6612 exists, the execution of any
28 such instrument may be established by proof of the
29 handwriting of two subscribing witnesses and of the
30 place of residence of such witnesses testifying.

31 Art. 6615. The proof mentioned in the three
32 preceding articles must be made by the deposition or
33 affidavit of two or more disinterested persons in
34 writing; and the officer taking such proof shall make
35 a certificate thereof, and sign and seal the same with
36 his official seal; which proofs and certificates shall
37 be attached to such instrument.

38 Revised Law

39 Sec. 121.012. RECORD OF ACKNOWLEDGMENT. (a) An officer
40 authorized by law to take an acknowledgment or proof of a written
41 instrument required or permitted by law to be recorded must enter
42 in a well-bound book and officially sign a short statement of each
43 acknowledgment or proof. The statement must contain the date that
44 the acknowledgment or proof was taken, the date of the instrument,
45 and the names of the grantor and grantee of the instrument.

46 (b) If the execution of the instrument is acknowledged by
47 the grantor of the instrument, the statement must also contain:

48 (1) the grantor's known or alleged residence;

49 (2) whether the grantor is personally known to the
50 officer; and

1 (3) if the grantor is unknown to the officer, the name
2 and residence of the person who introduced the grantor to the
3 officer, if any.

4 (c) If the execution of the instrument is proved by a
5 witness who signed the instrument, the statement must also contain:

6 (1) the name of the witness;

7 (2) the known or alleged residence of the witness;

8 (3) whether the witness is personally known to the
9 officer; and

10 (4) if the witness is unknown to the officer, the name
11 and known or alleged residence of the person who introduced the
12 witness to the officer, if any.

13 (d) If land is charged or conveyed by the instrument, the
14 statement must also contain:

15 (1) the name of the original grantee; and

16 (2) the name of the county in which the land is
17 located.

18 (e) The statements of acknowledgment recorded by the officer
19 are original public records, open for public inspection and
20 examination at all reasonable times. The officer must deliver the
21 book to his successor in office. (V.A.C.S. Arts. 6619, 6620, 6621,
22 6622.)

23 Source Law

24 Art. 6619. All officers authorized or permitted
25 by law to take the acknowledgment or proof of any deed,
26 bond, mortgage, bill of sale or any other written
27 instrument required or permitted by law to be placed on
28 record shall procure a well bound book, in which they
29 shall enter and record a short statement of each
30 acknowledgment or proof taken by them, which statement
31 shall be by them signed officially.

32 Art. 6620. Such statement shall recite the true
33 date on which such acknowledgment or proof was taken,
34 the name of the grantor and grantee of such instrument,
35 its date, if proved by a subscribing witness, the name
36 of the witness, the known or alleged residence of the
37 witness and whether personally known or unknown to the
38 officer; if personally unknown, this fact shall be
39 stated, and by whom such person was introduced to such
40 officer, if by any one, and the known or alleged
41 residence of such person.

1 Art. 6621. Such statement shall also recite, if
2 the instrument is acknowledged by the grantor, his then
3 place of residence, if known to the officer; if
4 unknown, his alleged residence, and whether such
5 grantor is personally known to the officer; if
6 personally unknown, by whom such grantor was
7 introduced, if by any one, and his place of residence.
8 If land is conveyed or charged by the instrument, the
9 name of the original grantee shall be mentioned, and
10 the county where the same is situated.

11 Art. 6622. The book herein required to be
12 procured and kept, and the statements herein required
13 to be recorded in the same shall be an original public
14 record, and shall be delivered to his successor, and
15 the same shall be open to the inspection and
16 examination of any citizen at all reasonable times.

17 Revised Law

18 Sec. 121.013. SUBPOENA OF WITNESS; ATTACHMENT. (a) On the
19 sworn application of a person interested in the proof of an
20 instrument required or permitted by law to be recorded, stating
21 that a witness to the instrument refuses to appear and testify
22 regarding the execution of the instrument and that the instrument
23 cannot be proven without the evidence of the witness, an officer
24 authorized to take proofs of instruments shall issue a subpoena
25 requiring the witness to appear before the officer and testify
26 about the execution of the instrument.

27 (b) If the witness fails to obey the subpoena, the officer
28 has the same powers to enforce the attendance and compel the
29 answers of the witness as does a district judge. Attachment may
30 not be issued, however, unless the witness receives or is tendered
31 the same compensation that is made to witnesses in other cases. An
32 officer may not require the witness to leave his county of
33 residence, but if the witness is temporarily present in the county
34 where the execution of the instrument is sought to be proven for
35 registration, he may be required to appear. (V.A.C.S. Arts. 6617,
36 6618.)

37 Source Law

38 Art. 6617. Upon the sworn application of any
39 person interested in the proof of any instrument
40 required or permitted by law to be recorded, stating

1 that any witness to the instrument refuses to appear
2 and testify touching the execution thereof, and that
3 such instrument cannot be proved without his evidence,
4 any officer authorized to take the proof of said
5 instrument shall issue a subpoena requiring such
6 witness to appear and testify before such officer
7 touching the execution of such instrument.

8 Art. 6618. When a witness shall fail to obey a
9 subpoena, said officer shall have the same power to
10 enforce his attendance and to compel his answers as a
11 judge of the district court has to compel the
12 attendance and answers of witnesses; but no attachment
13 shall issue unless the same compensation is made or
14 tendered to each witness as is allowed to witnesses in
15 other cases; and no witness shall be required to go
16 beyond the limits of the county of his residence,
17 unless he shall, for the time being, be found in the
18 county where the execution of such instrument is sought
19 to be proved for registration.

20 Revised Law

21 Sec. 121.014. ACTION FOR DAMAGES. A person injured by the
22 failure, refusal, or neglect of an officer to comply with a
23 provision of this chapter has a cause of action against the officer
24 to recover damages resulting from the failure, refusal, or neglect
25 of the officer. (V.A.C.S. Art. 6623.)

26 Source Law

27 Art. 6623. Any person injured by the failure,
28 refusal or neglect of any officer whose duty it is to
29 comply with any provision of this chapter shall have a
30 right of action against such officer so failing,
31 refusing or neglecting, before any court of competent
32 jurisdiction, for the recovery of all damages resulting
33 from such neglect, failure or refusal.

1 CHAPTER 122. JUROR'S RIGHT TO REEMPLOYMENT

2 Sec. 122.001. JUROR'S RIGHT TO REEMPLOYMENT; NOTICE OF
3 INTENT TO RETURN

4 Sec. 122.002. DAMAGES AND ATTORNEY'S FEES

5 Sec. 122.003. DEFENSE

6 CHAPTER 122. JUROR'S RIGHT TO REEMPLOYMENT

7 Revised Law

8 Sec. 122.001. JUROR'S RIGHT TO REEMPLOYMENT; NOTICE OF
9 INTENT TO RETURN. (a) A private employer may not terminate the
10 employment of a permanent employee because the employee serves as a
11 juror.

12 (b) An employee whose employment is terminated in violation
13 of this section is entitled to return to the same employment that
14 the employee held when summoned for jury service if the employee,
15 as soon as practical after release from jury service, gives the
16 employer actual notice that the employee intends to return.
17 (V.A.C.S. Art. 5207b, Secs. (a), (b).)

18 Source Law

19 Art. 5207b. (a) No private employer may
20 terminate the employment of a permanent employee
21 because such employee serves as a juror. The employee
22 is entitled to return to the same employment that he or
23 she held at the time he or she was summoned for jury
24 service.

25 (b) To be entitled to take advantage of the
26 right to reemployment granted in Subsection (a) of this
27 section, the employee must, as soon as practical upon
28 his or her release from jury service, give actual
29 notice of his or her intention to return to his or her
30 employment.

31 Revised Law

32 Sec. 122.002. DAMAGES AND ATTORNEY'S FEES. (a) A person
33 who is injured because of a violation of this chapter is entitled
34 to damages, but the damages may not exceed an amount equal to six
35 months' compensation at the rate at which the person was

1 compensated when summoned for jury service.

2 (b) In addition to damages, the injured person is entitled
3 to reasonable attorney's fees in an amount approved by the court.
4 (V.A.C.S. Art. 5207b, Sec. (c).)

5 Source Law

6 (c) A person who is injured because of a
7 violation of this section is entitled to just damages,
8 recoverable at law, in an amount not to exceed six
9 months' compensation at the rate at which he or she was
10 compensated at the time he or she was summoned for jury
11 duty. In addition to damages, the injured person is
12 entitled to recover reasonable attorney's fees, to be
13 approved by the court.

14 Revised Law

15 Sec. 122.003. DEFENSE. It is a defense to an action brought
16 under this chapter that the employer's circumstances changed while
17 the employee served as a juror so that reemployment was impossible
18 or unreasonable. (V.A.C.S. Art. 5207b, Sec. (d).)

19 Source Law

20 (d) It is a defense in an action brought under
21 this section that the employer's circumstances changed
22 to such an extent during the time that the employee
23 served as a juror that reemployment was impossible or
24 unreasonable.

1 CHAPTER 123. INTERCEPTION OF COMMUNICATION

2 Sec. 123.001. DEFINITIONS

3 Sec. 123.002. CAUSE OF ACTION

4 Sec. 123.003. DEFENSE

5 Sec. 123.004. DAMAGES

6 CHAPTER 123. INTERCEPTION OF COMMUNICATION

7 Revised Law

8 Sec. 123.001. DEFINITIONS. In this chapter:

9 (1) "Communication" means speech uttered by a person
10 or information including speech that is transmitted in whole or in
11 part with the aid of a wire or cable.

12 (2) "Interception" means the aural acquisition of the
13 contents of a communication through the use of an electronic,
14 mechanical, or other device that is made without the consent of a
15 party to the communication, but does not include the ordinary use
16 of:

17 (A) a telephone or telegraph instrument or
18 facility or telephone and telegraph equipment;

19 (B) a hearing aid designed to correct subnormal
20 hearing to not better than normal;

21 (C) a radio, television, or other wireless
22 receiver; or

23 (D) a cable system that relays a public wireless
24 broadcast from a common antenna to a receiver. (V.A.C.S. Art.
25 9019, Sec. 1.)

26 Source Law

27 Art. 9019

28 Sec. 1. In this Act:

29 (a) "Communication" means speech uttered by any
30 person and any information including speech transmitted
31 in whole or in part with the aid of wire or cable.

32 (b) "Interception" means the aural acquisition
33 of the contents of any communication through the use of
34 an electronic, mechanical, or other device without the

consent of a party to the communication. Interception does not include the ordinary use of:

- (1) a telephone or telegraph instrument, facility, or equipment;
- (2) a hearing aid designed to correct subnormal hearing to not better than normal;
- (3) a radio, television, or other wireless receiver; or
- (4) a cable system that relays public wireless broadcasts from a common antenna to one or more receivers.

Revised Law

Sec. 123.002. CAUSE OF ACTION. (a) A party to a communication may sue a person who:

(1) intercepts, attempts to intercept, or employs or obtains another to intercept or attempt to intercept the communication;

(2) uses or divulges information that he knows or reasonably should know was obtained by interception of the communication; or

(3) as a landlord, building operator, or communication common carrier, either personally or through an agent or employee, aids or knowingly permits interception or attempted interception of the communication.

(b) This section does not apply to a party to a communication if an interception or attempted interception of the communication is authorized by Title 18, United States Code, Section 2516. (V.A.C.S. Art. 9019, Secs. 2(a), (d).)

Source Law

(a) A party to a communication may bring a civil action in a court of competent jurisdiction against any person, including a corporation or association, who:

(1) intercepts, attempts to intercept, or employs or obtains the services of another person to intercept or attempt to intercept the communication;

(2) uses or divulges information that he knows, or reasonably should have known, was obtained by intercepting the communication; or

(3) in his capacity as a landlord, building operator, telephone company or other communication common carrier through its agents or employees aids or knowingly permits the actual or attempted interception.

. . .

1 (d) It is further provided that no cause of
2 action will arise under this section with respect to
3 surveillance authorized under the provisions of Title
4 18, United States Code, Section 2516, as amended.

5 Revisor's Note

6 (1) The revised law omits the words "including a
7 corporation or association" because those entities are
8 included in the definition of "person" under the Code
9 Construction Act (V.A.C.S. Article 5429b-2).

10 (2) The words "telephone company" are omitted
11 from the revised law because they are included in the
12 phrase "communication common carrier."

13 Revised Law

14 Sec. 123.003. DEFENSE. (a) A switchboard operator or an
15 officer, employee, or agent of a communication common carrier whose
16 facilities are used in the transmission of a wire communication may
17 intercept, disclose, or use a communication in the normal course of
18 employment if engaged in an activity that is necessary to service
19 or for the protection of the carrier's rights or property. A
20 communication common carrier may not use service observation or
21 random monitoring except for mechanical or service quality control
22 checks.

23 (b) It is a defense to an action under Section 123.002 that
24 an interception, disclosure, or use of a communication is permitted
25 by this section.

26 (c) A defendant must establish by a preponderance of the
27 evidence a defense raised under this section. (V.A.C.S. Art. 9019,
28 Sec. 2(c).)

29 Source Law

30 (c) It shall not be unlawful for an operator of
31 a switchboard or an officer, employee, or agent of any
32 telephone company or other communication common
33 carrier, whose facilities are used in the transmission
34 of a wire communication, to intercept, disclose, or use

1 that communication in the normal course of his
2 employment while engaged in any activity which is a
3 necessary incident to the rendition of his service or
4 to the protection of the rights or property of the
5 telephone company or other communication common
6 carrier, provided that said communication common
7 carriers shall not utilize service observing or random
8 monitoring except for mechanical or service quality
9 control checks. In any civil action under this
10 article, it shall be the burden of any defendant
11 relying upon this defense to establish by a
12 preponderance of the evidence that every such
13 interception, disclosure, or use was a necessary
14 incident to the rendition of service.

15 Revisor's Note

16 The words "telephone company" are omitted from
17 the revised law because they are included in the phrase
18 "communication common carrier."

19 Revised Law

20 Sec. 123.004. DAMAGES. A person who establishes a cause of
21 action under this chapter is entitled to:

22 (1) an injunction prohibiting a further interception,
23 attempted interception, or divulgence or use of information
24 obtained by an interception;

25 (2) statutory damages of \$1,000;

26 (3) all actual damages in excess of \$1,000;

27 (4) punitive damages in an amount determined by the
28 court or jury; and

29 (5) reasonable attorney's fees and costs. (V.A.C.S.
30 Art. 9019, Sec. 2(b).)

31 Source Law

32 (b) In a suit filed under this section, a person
33 who establishes a cause of action is entitled to:

34 (1) an injunction prohibiting further
35 interceptions, attempted interceptions, or divulgence
36 or use of information obtained by interception;

37 (2) statutory damages of \$1,000;

38 (3) all actual damages in excess of \$1,000;

39 (4) any punitive damages the court or jury may
40 award; and

41 (5) reasonable attorney's fees and costs.

1 Revisor's Note
2 (End of Chapter)

3 (1) For the disposition of Section 3, V.A.C.S.
4 Article 9019, see the conforming amendments to this
5 code. Section 3 creates a criminal offense and
6 penalties for the interception of a communication.

7 (2) Chapter 275, Acts of the 67th Legislature,
8 Regular Session, 1981 (Article 18.20, Code of Criminal
9 Procedure, 1965, and Section 16.02, Penal Code), is a
10 comprehensive Act that: (1) establishes a procedure
11 for authorized electronic surveillance of certain
12 persons by law enforcement officers; (2) creates a
13 cause of action for a party whose communication is
14 intercepted in violation of the Act; and (3) creates a
15 criminal offense and provides penalties for a person
16 who intercepts the communication of another in
17 violation of the Act.

18 The Act has an expiration date of September 2,
19 1985. The Act does not expressly repeal any other law.
20 It is arguable, however, that to the extent of any
21 conflict, the Act does impliedly repeal V.A.C.S.
22 Article 9019. If the Act does not impliedly repeal
23 Article 9019, it does probably suspend the effect of
24 the article, to the extent of any conflict, until the
25 expiration date of the Act.

1 CHAPTER 124. PRIVILEGE TO INVESTIGATE THEFT

2 Sec. 124.001. DETENTION

3 CHAPTER 124. PRIVILEGE TO INVESTIGATE THEFT

4 Revised Law

5 Sec. 124.001. DETENTION. A person who reasonably believes
6 that another has stolen or is attempting to steal property is
7 privileged to detain that person in a reasonable manner and for a
8 reasonable time to investigate ownership of the property.
9 (V.A.C.S. Art. 1d.)

10 Source Law

11 Art. 1d. A person reasonably believing another
12 has stolen or is attempting to steal property is
13 privileged to detain the person in a reasonable manner
14 and for a reasonable period of time for the purpose of
15 investigating ownership of the property.

1 CHAPTER 125. COMMON AND PUBLIC NUISANCES

2 SUBCHAPTER A. SUIT TO ABATE CERTAIN COMMON NUISANCES

3 Sec. 125.001. COMMON NUISANCE

4 Sec. 125.002. SUIT TO ABATE COMMON NUISANCE; BOND

5 Sec. 125.003. SUIT ON BOND

6 Sec. 125.004. EVIDENCE

7 [Sections 125.005-125.020 reserved for expansion]

8 SUBCHAPTER B. SUIT TO ABATE CERTAIN PUBLIC NUISANCES

9 Sec. 125.021. PUBLIC NUISANCE

10 Sec. 125.022. SUIT TO ABATE PUBLIC NUISANCE

11 CHAPTER 125. COMMON AND PUBLIC NUISANCES

12 SUBCHAPTER A. SUIT TO ABATE CERTAIN COMMON NUISANCES

13 Revised Law

14 Sec. 125.001. COMMON NUISANCE. A person who knowingly
15 maintains a place to which persons habitually go for the purpose of
16 prostitution or gambling in violation of the Penal Code maintains a
17 common nuisance. (V.A.C.S. Art. 4664 (part).)

18 Source Law

19 Art. 4664. Any hotel, rooming house or boarding
20 house, country club, garage, rent car stand or other
21 place . . . where persons habitually resort for the
22 purpose of prostitution or to gamble as prohibited by
23 the Penal Code, is hereby declared to be a common
24 nuisance. Any person who knowingly maintains such a
25 place is guilty of maintaining a nuisance.

26 Revisor's Note

27 (1) The revised law omits the reference to a
28 "hotel, rooming house or boarding house, country club,
29 garage, [or] rent car stand" because all are included
30 within "place."

31 (2) The revised law omits provisions of V.A.C.S.
32 Article 4664 that relate to intoxicating liquors

1 because they were impliedly repealed by enactment of
2 the Texas Liquor Control Act, now codified as the
3 Alcoholic Beverage Code. See State v. Parker, 212
4 S.W.2d 132 (Tex. 1948). Although the provisions were
5 amended and reenacted in 1973 as part of the bill
6 enacting the Penal Code, revival of the impliedly
7 repealed provisions was probably not intended.
8 Regardless, enactment of the Alcoholic Beverage Code in
9 1977 again worked the implied repeal. See Section
10 1.06, Alcoholic Beverage Code, providing that the code
11 exclusively governs alcoholic beverages and their use,
12 and Section 101.70, Alcoholic Beverage Code, providing
13 for abatement of common nuisances relating to alcoholic
14 beverages. The omitted provisions read:

15 [Any place] to which the public commonly
16 resort for board or lodging or commonly
17 congregate for business or pleasure, where
18 intoxicating liquors are kept, possessed,
19 sold, manufactured, bartered or given away,
20 or where intoxicating liquors are furnished
21 to minors or to students of any educational
22 institution, or . . . [is hereby declared
23 to be a common nuisance].

24 Revised Law

25 Sec. 125.002. SUIT TO ABATE COMMON NUISANCE; BOND. (a) If
26 a county or district attorney or the attorney general has reliable
27 information that a common nuisance exists, the county or district
28 attorney or the attorney general shall sue the person maintaining
29 the nuisance for an injunction to abate and enjoin the nuisance.
30 The suit is in the name of the state and shall be filed in the
31 county in which the nuisance is alleged to exist.

32 (b) If judgment is in favor of the state, the court shall
33 grant an injunction ordering the defendant to abate the nuisance
34 and enjoining the defendant from maintaining the nuisance. The
35 judgment must order that the place where the nuisance exists be
36 closed for one year after the date of judgment unless the defendant

1 or the owner, lessee, or tenant of the property posts bond.

2 (c) The bond must:

3 (1) be payable to the state at the county seat of the
4 county in which the nuisance exists;

5 (2) be in the penal sum of not less than \$1,000 nor
6 more than \$5,000;

7 (3) have sufficient sureties approved by the court;
8 and

9 (4) be conditioned that the property will not be used
10 or permitted to be used for prostitution or gambling in violation
11 of the Penal Code. (V.A.C.S. Art. 4666 (part).)

12 Source Law

13 Art. 4666. Whenever the Attorney General, or the
14 district or county attorney has reliable information
15 that such a nuisance exists, either of them shall file
16 suit in the name of this State in the county where the
17 nuisance is alleged to exist against whoever maintains
18 such nuisance to abate and enjoin the same. If
19 judgment be in favor of the State, then judgment shall
20 be rendered abating said nuisance and enjoining the
21 defendants from maintaining the same, and ordering that
22 said house be closed for one year from the date of said
23 judgment, unless the defendants in said suit, or the
24 owner, tenant or lessee of said property make bond
25 payable to the State at the county seat of the county
26 where such nuisance is alleged to exist, in the penal
27 sum of not less than one thousand nor more than five
28 thousand dollars, with sufficient sureties to be
29 approved by the judge trying the case, conditioned that
30 the acts prohibited in this law shall not be done or
31 permitted to be done in said house.

32 Revised Law

33 Sec. 125.003. SUIT ON BOND. If a condition of a bond filed
34 under this subchapter is violated, the district or county attorney
35 of the county in which the property is located shall sue on the
36 bond in the name of the state. In that suit, the whole sum may be
37 recovered as a penalty. (V.A.C.S. Art. 4666 (part).)

38 Source Law

39 On violation of any condition of such bond, the whole
40 sum may be recovered as a penalty in the name and for

1 the State in the county where such conditions are
2 violated, all such suits to be brought by the district
3 or county attorney of such county.

4 Revised Law

5 Sec. 125.004. EVIDENCE. (a) Proof that prostitution or
6 gambling in violation of the Penal Code is frequently committed at
7 the place involved is prima facie evidence that the proprietor
8 knowingly permitted the act.

9 (b) Evidence that persons have been convicted of gambling or
10 committing prostitution in the place involved is admissible to show
11 knowledge on the part of the defendant that the act occurred. The
12 originals or certified copies of the papers and judgments of those
13 convictions are admissible in the suit for injunction, and oral
14 evidence is admissible to show that the offense for which a person
15 was convicted was committed at the place involved.

16 (c) Evidence of the general reputation of the place involved
17 is admissible to show the existence of the nuisance. (V.A.C.S.
18 Art. 4665.)

19 Source Law

20 Art. 4665. Proof that any of said prohibited
21 acts are frequently committed in any of said places
22 shall be prima facie evidence that the proprietor
23 knowingly permitted the same, and evidence that persons
24 have been convicted of committing any said act in a
25 hotel, boarding house or rooming house, is admissible
26 to show knowledge on the part of the defendants that
27 this law is being violated in the house. The original
28 papers and judgments or certified copies thereof in
29 such cases of convictions may be used in evidence in
30 the suit for injunction and oral evidence is admissible
31 to show that the offense for which said parties were
32 convicted was committed in said house. Evidence of
33 general reputation of said houses shall also be
34 admissible to prove the existence of said nuisance.

35 [Sections 125.005-125.020 reserved for expansion]

36 SUBCHAPTER B. SUIT TO ABATE CERTAIN PUBLIC NUISANCES

37 Revised Law

38 Sec. 125.021. PUBLIC NUISANCE. The habitual use, or the

1 threatened or contemplated habitual use, of any place for any of
2 the following purposes is a public nuisance:

3 (1) gambling, gambling promotion, or communicating
4 gambling information prohibited by law;

5 (2) promotion or aggravated promotion of prostitution;

6 (3) compelling prostitution;

7 (4) commercial manufacture, commercial distribution,
8 or commercial exhibition of obscene material;

9 (5) commercial exhibition of live dances or other acts
10 depicting real or simulated sexual intercourse or deviate sexual
11 intercourse; or

12 (6) engaging in a voluntary fight between a man and a
13 bull if the fight is for a thing of value or a championship, if a
14 thing of value is wagered on the fight, or if an admission fee for
15 the fight is directly or indirectly charged, as prohibited by law.
16 (V.A.C.S. Art. 4667(a) (part).)

17 Source Law

18 Art. 4667. (a) The habitual use, actual,
19 threatened or contemplated, of any premises, place or
20 building or part thereof, for any of the following uses
21 shall constitute a public nuisance . . .

22 (1) For gambling, gambling promotion, or
23 communicating gambling information prohibited by law;

24 (2) For the promotion or aggravated promotion of
25 prostitution, or compelling prostitution;

26 (3) For the commercial manufacturing, commercial
27 distribution, or commercial exhibition of obscene
28 material;

29 (4) For the commercial exhibition of live dances
30 or exhibition which depicts real or simulated sexual
31 intercourse or deviate sexual intercourse;

32 (5) For the voluntary engaging in a fight
33 between a man and a bull for money or other thing of
34 value, or for any championship, or upon result of which
35 any money or anything of value is bet or wagered, or to
36 see which any admission fee is charged either directly
37 or indirectly, as prohibited by law.

38 Revised Law

39 Sec. 125.022. SUIT TO ABATE PUBLIC NUISANCE. (a) A
40 district, county, or city attorney, the attorney general, or a
41 citizen of the state may sue to enjoin the use of a place for

1 purposes constituting a nuisance under this subchapter.

2 (b) If the suit is brought by the state, the petition does
3 not require verification. If the suit is brought by a citizen, the
4 citizen is not required to show personal injury.

5 (c) Any person who uses, is about to use, or is a party to
6 the use of premises for purposes constituting a nuisance under this
7 subchapter may be made a defendant in the suit. (V.A.C.S. Arts.
8 4667(a) (part), (b).)

9 Source Law

10 [(a)] . . . and shall be enjoined at the suit of
11 either the State or any citizen thereof:

12 . . .
13 (b) Any person who may use or be about to use,
14 or who may be a party to the use of any such premises
15 for any purpose mentioned in this Article may be made a
16 party defendant in such suit. The Attorney General or
17 any District or County Attorney or City Attorney may
18 bring and prosecute all suits that either may deem
19 necessary to enjoin such uses, and need not verify the
20 petition; or any citizen of this State may sue in his
21 own name and shall not be required to show that he is
22 personally injured by the acts complained of.

1 CHAPTER 126. CHURCHES

2 SUBCHAPTER A. RECEIVERSHIP FOR DEFUNCT CHURCH

3 Sec. 126.001. DEFINITION

4 Sec. 126.002. APPOINTMENT OF RECEIVER

5 Sec. 126.003. QUALIFICATIONS

6 Sec. 126.004. POWERS AND DUTIES

7 [Sections 126.005-126.010 reserved for expansion]

8 SUBCHAPTER B. TRUSTEES

9 Sec. 126.011. RECORD

10 Sec. 126.012. CERTIFIED COPY TO COURT

11 Sec. 126.013. CHANGE IN TRUSTEES

12 CHAPTER 126. CHURCHES

13 SUBCHAPTER A. RECEIVERSHIP FOR DEFUNCT CHURCH

14 Revised Law

15 Sec. 126.001. DEFINITION. In this subchapter, "church"
16 means a local congregation of believers in Christ, but does not
17 include a denomination or communion as a whole. (V.A.C.S. Art.
18 2293a, Sec. 5.)

19 Source Law

20 Sec. 5. The term "church or congregation" is
21 meant to refer to a local congregation of believers in
22 Christ, and not to a denomination or communion as a
23 whole.

24 Revisor's Note

25 Where it appears in the source law for this
26 subchapter, the revised law omits "congregation"
27 because it is synonymous with "church" under this
28 definition.

29 Revised Law

30 Sec. 126.002. APPOINTMENT OF RECEIVER. (a) The judge of a

1 district court or another court of jurisdiction shall on
2 application appoint a receiver for any church that:

3 (1) formerly maintained regular forms of work and
4 worship, such as Bible school, communion, and preaching, in a given
5 community at regular intervals; and

6 (2) has ceased to function as a church in those or
7 similar capacities for at least one year.

8 (b) The judge shall hear and determine the application in
9 term or in vacation.

10 (c) Before appointing a receiver, the judge shall apply to
11 the secretary of state for a certified copy of the record of church
12 trustees required by this chapter. (V.A.C.S. Art. 2293a, Secs. 1,
13 6; Art. 4331a (part).)

14 Source Law

15 Art. 2293a

16 Sec. 1. That the judge of any district court, or
17 other court having jurisdiction, is hereby authorized
18 and required in term, time, or on vacation, to appoint
19 a receiver or receivers for any defunct or disorganized
20 church or congregation when the fact of such condition
21 is brought to the attention of such court by an
22 application for the appointment of a receiver or
23 receivers for such defunct or disorganized church or
24 congregation.

25 Sec. 6. The terms "defunct or disorganized" are
26 meant to apply to an organization which formerly
27 maintained regular forms of work and worship in a given
28 community such as the Bible School, Communion Services,
29 Preaching Services, etc., a regular interval, [sic] and
30 which has ceased to function in these and similar
31 capacities as a church for a period of one or more
32 years.

33 [Art. 4331a]

34 . . . and it shall be the duty of the judge of any
35 court before making the appointment of any receiver, to
36 apply to the Secretary of the State to be furnished
37 with such certified copy before such appointments are
38 made.

1 Revised Law

2 Sec. 126.003. QUALIFICATIONS. (a) To be appointed receiver
3 for the church, a person must be:

4 (1) a member of an active church of like faith and
5 order; or

6 (2) a recognized missionary or ecclesiastical body of
7 like faith and order, denomination, or communion.

8 (b) If the denomination or communion of like faith and order
9 has a state missionary society or an organization similarly formed
10 and named and the society or organization is authorized to act as
11 receiver or trustee for the denomination or communion, the court
12 shall appoint the society or organization to serve as receiver.
13 (V.A.C.S. Art. 2294a.)

14 Source Law

15 Art. 2294a. That the receiver or receivers
16 appointed for any such defunct or disorganized church
17 or congregation, shall be a member or members of an
18 active church or congregation of like faith and order,
19 or shall be a recognized missionary or ecclesiastical
20 body of like faith and order, denomination or
21 communion; and in case any such denomination or
22 communion of like faith and order, shall have a State
23 Missionary Society, or shall hereafter appoint, elect
24 or organize, or cause to be appointed, elected or
25 organized, such a State Missionary Society, and shall
26 authorize the same to act as a receiver or trustee for
27 such denomination or communion, then such State
28 Missionary Society, or other similar organization so
29 formed and named, shall be appointed to serve as
30 receiver or trustee by said court.

31 Revised Law

32 Sec. 126.004. POWERS AND DUTIES. (a) The receiver shall
33 take charge of all property belonging to the church and administer
34 that property under the direction of the court for the best
35 interests of the church.

36 (b) If necessary to preserve the property, the receiver may
37 sell it under order of the court.

38 (c) The court shall order the public or private sale of
39 property belonging to a church that may not be revived or

1 reorganized within a reasonable time. The proceeds of the sale
2 shall be delivered to the receiver, who shall use them for a
3 church, denomination, communion, or organization of like faith and
4 order. (V.A.C.S. Art. 2297a.)

5 Source Law

6 Art. 2297a. That it shall be the duty of such
7 trustee or trustees when so appointed, to take charge
8 of all property, real, personal or mixed, and choses in
9 action, belonging to such defunct or disorganized
10 church or congregation and administer the same under
11 the direction of the court making the appointment, for
12 the best interest of such defunct or disorganized
13 church or congregation; and where necessary to preserve
14 the property, to sell the same under the order of said
15 court; and in case said court shall be of the opinion
16 that said church or congregation may not be revived or
17 reorganized within a reasonable time, it shall be the
18 duty of said court to order all of said property sold
19 at public or private sale, and the proceeds received
20 from such sale or sales shall be turned over and
21 delivered to said trustee or trustees to be used by
22 them for a church or congregation, denomination or
23 communion or organization of like faith and order.

24 [Sections 126.005-126.010 reserved for expansion]

25 SUBCHAPTER B. TRUSTEES

26 Revised Law

27 Sec. 126.011. RECORD. (a) On receipt of \$2.50, the
28 secretary of state shall record the names of all trustees appointed
29 by any state organization of a church communion in this state.

30 (b) The appointment must be duly authenticated by an officer
31 authorized to acknowledge deeds in this state.

32 (c) The secretary of state shall keep the record in a
33 well-bound book in the secretary of state's office. (V.A.C.S. Art.
34 4331a (part).)

35 Source Law

36 Art. 4331a. That it shall be the duty of the
37 Secretary of State, on the payment of the sum of two
38 dollars and fifty cents, to record in a well bound book
39 to be kept in his office, the names of all trustees
40 appointed by any State organization of any church

1 communion in the State, provided such appointment is
2 duly authenticated by some officer authorized by law in
3 this State to take acknowledgment of deeds

4 Revised Law

5 Sec. 126.012. CERTIFIED COPY TO COURT. (a) The secretary
6 of state shall furnish a certified copy of the appointments to any
7 court in this state on application by the judge or court clerk.

8 (b) If the certified copy is used in a proceeding, \$1.50
9 shall be taxed as costs to be collected and paid as other costs.
10 (V.A.C.S. Art. 4331a (part).)

11 Source Law

12 . . . and it shall be the further duty of the Secretary
13 of State to furnish a certified copy of said
14 appointments to any court in this State on application
15 for the same by any judge or clerk of any court in this
16 State, and the sum of one dollar and fifty cents shall
17 be taxed as cost for copy in any proceeding in which
18 such copy may be used, to be collected and paid for as
19 any other costs

20 Revised Law

21 Sec. 126.013. CHANGE IN TRUSTEES. This chapter does not
22 affect a communion's right to change, appoint, or elect its
23 trustees. (V.A.C.S. Art. 4331a (part).)

24 Source Law

25 That any communion shall have the right from time to
26 time to change, appoint or elect its trustee or
27 trustees.

1 CHAPTER 127. INDEMNITY PROVISIONS IN CERTAIN
2 MINERAL AGREEMENTS

3 Sec. 127.001. DEFINITIONS

4 Sec. 127.002. FINDING; AGREEMENTS AGAINST PUBLIC POLICY

5 Sec. 127.003. AGREEMENT VOID AND UNENFORCEABLE

6 Sec. 127.004. EXCLUSIONS

7 Sec. 127.005. INSURANCE COVERAGE

8 Sec. 127.006. INSURANCE CONTRACT; WORKERS' COMPENSATION

9 Sec. 127.007. OWNER OF SURFACE ESTATE

10 Sec. 127.008. PARTIES RESPONSIBLE

11 CHAPTER 127. INDEMNITY PROVISIONS IN CERTAIN
12 MINERAL AGREEMENTS

13 Revised Law

14 Sec. 127.001. DEFINITIONS. In this chapter:

15 (1) "Agreement pertaining to a well for oil, gas, or
16 water or to a mine for a mineral" means:

17 (A) a written or oral agreement or understanding
18 concerning the rendering of well or mine services; or

19 (B) an agreement to perform a part of those
20 services or an act collateral to those services, including
21 furnishing or renting equipment, incidental transportation, or
22 other goods and services furnished in connection with the services.

23 (2) "Well or mine service" includes:

24 (A) drilling, deepening, reworking, repairing,
25 improving, testing, treating, perforating, acidizing, logging,
26 conditioning, or otherwise rendering services in connection with a
27 well drilled to produce or dispose of oil, gas, other minerals, or
28 water; and

29 (B) designing, excavating, constructing,
30 improving, or otherwise rendering services in connection with a
31 mine shaft, drift, or other structure intended for use in exploring

1 for or producing a mineral.

2 (3) "Wild well" means a well from which the escape of
3 oil or gas is not intended and cannot be controlled by equipment
4 used in normal drilling practice. (V.A.C.S. Art. 2212b, Secs. 3,
5 4(a) (part).)

6 Source Law

7 Sec. 3. The term "agreement pertaining to a well
8 for oil, gas, or water, or mine for any mineral" as
9 used in Section 2 of this Act, means any agreement or
10 understanding, written or oral, concerning any
11 operations related to drilling, deepening, reworking,
12 repairing, improving, testing, treating, perforating,
13 acidizing, logging, conditioning, altering, plugging,
14 or otherwise rendering services in or in connection
15 with any well drilled for the purpose of producing or
16 disposing of oil, gas, or other minerals, or water, or
17 designing, excavating, constructing, improving, or
18 otherwise rendering services in or in connection with
19 any mine shaft, drift, or other structure intended for
20 use in the exploration for or production of any
21 mineral, or an agreement to perform any portion of any
22 such work or services or any act collateral thereto,
23 including the furnishing or rental of equipment,
24 incidental transportation, and other goods and services
25 furnished in connection with any such service or
26 operation.

27 [Sec. 4(a)(4)]

28 The term "wild well" as used in this section means any
29 well from which the escape of oil and/or gas is
30 unintended and cannot be controlled by the equipment
31 used in normal drilling practice.

32 Revised Law

33 Sec. 127.002. FINDING; AGREEMENTS AGAINST PUBLIC POLICY.

34 (a) The legislature finds that an inequity is fostered on certain
35 contractors by the indemnity provisions in some agreements
36 pertaining to wells for oil, gas, or water or to mines for other
37 minerals.

38 (b) Certain agreements that provide for indemnification of a
39 negligent indemnitee are against the public policy of this state.
40 (V.A.C.S. Art. 2212b, Sec. 1.)

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1 independent contractor who is directly responsible to
2 the indemnitee.

3 Revised Law

4 Sec. 127.004. EXCLUSIONS. This chapter does not apply to
5 loss or liability for damages or an expense arising from:

6 (1) personal injury, death, or property injury that
7 results from radioactivity;

8 (2) property injury that results from pollution;

9 (3) property injury that results from reservoir or
10 underground damage; or

11 (4) personal injury, death, or property injury that
12 results from the performance of services to control a wild well to
13 protect the safety of the general public or to prevent depletion of
14 vital natural resources. (V.A.C.S. Art. 2212b, Sec. 4(a) (part).)

15 Source Law

16 Sec. 4. (a) The provisions of this Act do not
17 apply to loss or liability for damages, or any other
18 expenses, arising from:

19 (1) death or bodily injury to persons or injury
20 to property resulting from radioactivity;

21 (2) injury to property resulting from pollution;

22 (3) injury to property resulting from reservoir
23 or underground damage; or

24 (4) death or bodily injury or injury to property
25 resulting from the performance of services to control a
26 wild well so as to protect the safety of the general
27 public and/or to prevent depletion of vital natural
28 resources.

29 Revised Law

30 Sec. 127.005. INSURANCE COVERAGE. (a) This chapter does
31 not apply to an agreement that provides for indemnity with respect
32 to claims for personal injury or death to the indemnitor's
33 employees or agents or to the employees or agents of the
34 indemnitor's subcontractors if the parties agree in writing that
35 the indemnity obligation will be supported by available liability
36 insurance coverage to be furnished by the indemnitor.

37 (b) The indemnity obligation is limited to the extent of the

1 coverage and dollar limits of insurance the indemnitor has agreed
2 to furnish.

3 (c) The amount of insurance required may not exceed 12 times
4 the state's basic limits for personal injury, as approved by the
5 State Board of Insurance in accordance with Article 5.15, Insurance
6 Code. (V.A.C.S. Art. 2212b, Sec. 4(c).)

7 Source Law

8 (c) The provisions of Section 2 of this Act
9 shall not apply to any agreement providing for
10 indemnity with respect to claims for personal injury or
11 death to indemnitor's employees or agents, or the
12 employees or agents of indemnitor's sub-contractors if
13 the parties agree in writing that such indemnity
14 obligation will be supported by available liability
15 insurance coverage to be furnished by indemnitor;
16 provided, however, that such indemnity obligation shall
17 be only to the extent of the coverages and dollar
18 limits of insurance agreed to be furnished; but in no
19 event shall said insurance be required in an amount in
20 excess of twelve times state basic limits for bodily
21 injury, approved by the Board of Insurance
22 Commissioners in accordance with Article 5.15 of the
23 Texas Insurance Code.

24 Revisor's Note

25 Under Article 1.02, Insurance Code, the former
26 Board of Insurance Commissioners is now the State Board
27 of Insurance.

28 Revised Law

29 Sec. 127.006. INSURANCE CONTRACT; WORKERS' COMPENSATION.

30 This chapter does not affect:

- 31 (1) the validity of an insurance contract; or
32 (2) a benefit conferred by the workers' compensation
33 statutes of this state. (V.A.C.S. Art. 2212b, Sec. 4(b) (part).)

34 Source Law

35 (b) The provisions of this Act do not affect the
36 validity of any insurance contract or any benefit
37 conferred by the Workmen's Compensation Law of this
38 state

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1 CHAPTER 128. UNAUTHORIZED USE OF TELEVISION

2 DECODING AND INTERCEPTION DEVICES

3 Sec. 128.001. ACTION TO ENJOIN VIOLATION

4 Sec. 128.002. ATTORNEY'S FEES; DAMAGES

5 CHAPTER 128. UNAUTHORIZED USE OF TELEVISION

6 DECODING AND INTERCEPTION DEVICES

7 Revised Law

8 Sec. 128.001. ACTION TO ENJOIN VIOLATION. (a) A provider
9 of a subscription television service may bring an action to enjoin
10 a violation or a threatened violation of Section 31.12 or 31.13,
11 Penal Code. The plaintiff is entitled to an injunction on a
12 showing that a violation has occurred or will occur.

13 (b) The plaintiff does not need to show an irreparable
14 injury, an inadequate remedy at law, and a probability of recovery
15 to prove a prima facie right to the injunction. (Sec. 3(a), Ch.
16 29, Acts 67th Legis., Reg. Sess., 1981.)

17 Source Law

18 Sec. 3. (a) A provider of subscription
19 television service may bring an action to enjoin a
20 violation or threatened violation of Section 31.12 or
21 31.13 of the Penal Code. A party bringing such an
22 action shall be entitled to issuance of such an
23 injunction upon a showing that a violation of Section
24 31.12 or 31.13 of the Penal Code has occurred or will
25 occur. Irreparable injury, inadequate remedy at law,
26 and probability of recovery need not be shown to prove
27 a prima facie right to such an injunction.

28 Revised Law

29 Sec. 128.002. ATTORNEY'S FEES; DAMAGES. The court shall
30 award reasonable attorney's fees and three times actual damages to
31 a prevailing plaintiff in an action under this chapter. (Sec.
32 3(b), Ch. 29, Acts 67th Legis., Reg. Sess., 1981.)

Source Law

(b) The court shall award three times actual damages and reasonable attorney's fees to a prevailing plaintiff in an action under this section.

Revisor's Note
(End of Chapter)

Section 3, Chapter 29, Acts of the 67th Legislature, Regular Session, 1981, was printed by Vernon's Annotated Civil Statutes as a footnote to Section 31.12, Penal Code. Section 31.12 reads as follows:

Sec. 31.12. (a) A person commits an offense if, with the intent to intercept and decode a transmission by a subscription television service without the authorization of the provider of the service, the person intentionally or knowingly attaches to, causes to be attached to, or incorporates in a television set, video tape recorder, or other equipment designed to receive a television transmission a device that intercepts and decodes the transmission.

(b) "Subscription television service" in this section shall mean a service whereby television broadcast programs intended to be received in an intelligible form by members of the public only for a fee or charge are transmitted pursuant to the grant of subscription television authority by the Federal Communications Commission. The term shall not include cable television service or community antenna television service.

(c) An offense under this section is a Class B misdemeanor unless the actor committed the offense for remuneration, in which event it is a Class A misdemeanor.

1 CHAPTER 129. AGE OF MAJORITY

2 Sec. 129.001. AGE OF MAJORITY

3 Sec. 129.002. RIGHTS, PRIVILEGES, OR OBLIGATIONS

4 Sec. 129.003. ALCOHOLIC BEVERAGE CODE PREVAILS

5 CHAPTER 129. AGE OF MAJORITY

6 Revised Law

7 Sec. 129.001. AGE OF MAJORITY. The age of majority in this
8 state is 18 years. (V.A.C.S. Art. 5923b, Sec. 1.)

9 Source Law

10 Art. 5923b
11 Sec. 1. The age of majority in this state is 18
12 years.

13 Revised Law

14 Sec. 129.002. RIGHTS, PRIVILEGES, OR OBLIGATIONS. A law,
15 rule, or ordinance enacted or adopted before August 27, 1973, that
16 extends a right, privilege, or obligation to an individual on the
17 basis of a minimum age of 19, 20, or 21 years shall be interpreted
18 as prescribing a minimum age of 18 years. (V.A.C.S. Art. 5923b,
19 Sec. 2.)

20 Source Law

21 Sec. 2. A law, rule, or ordinance enacted or
22 adopted before August 27, 1973, that extends a right,
23 privilege, or obligation to an individual on the basis
24 of a minimum age of 19, 20, or 21 years shall be
25 interpreted as prescribing a minimum age of 18 years.

26 Revised Law

27 Sec. 129.003. ALCOHOLIC BEVERAGE CODE PREVAILS. The minimum
28 age provisions of the Alcoholic Beverage Code prevail to the extent
29 of any conflict with this chapter. (V.A.C.S. Art. 5923b, Sec. 4.)

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Source Law

Sec. 4. The minimum age provisions of the
Alcoholic Beverage Code prevail to the extent of any
conflict with this Act.

APPENDIX A

CONFORMING AMENDMENTS AND SAVING PROVISION

SECTION 2. CONFORMING AMENDMENT. Sections 1, 2, and 3, Chapter 195, Acts of the 47th Legislature, Regular Session, 1941 (Article 1970-325, Vernon's Texas Civil Statutes), are amended to read as follows:

Sec. 1. ~~The [judge-of-the-County-Court-at-Law-of-any--county having--a-County-Court-at-Law,--is-authorized-to-appoint-an-official interpreter--for--such--County--Court--at--Law.---And--the]~~ County Commissioners shall by resolution fix the salary of an [said] official interpreter appointed under Section 21.031, Civil Practice and Remedies Code, and provide for the payment of such salary.~~[, and-shall-prescribe-the-duties-of-such-official-interpreter.]~~

~~[Sec.-2.---The--judge--of--the-County-Court-at-Law-shall-have authority-to-terminate-such-employment-of-such-interpreter--at--any time.]~~

~~[Sec.-3.---The-official-interpreter-so-appointed-by-the-judge of-the-County-Court-at-Law-shall-take-the--constitutional--oath--of office,--and--in--addition--thereto--shall--make--oath-that-as-such official-interpreter-he-will--faithfully--interpret--all--testimony given--in-the-County-Court-at-Law,--and-which-oath-shall-suffice-for his-service-as-official-interpreter-of--such--court--in--all--cases before-such-court-during-his-term-of-office.]~~

SECTION 3. CONFORMING AMENDMENT. Chapter 7, Probate Code, is amended by adding Section 233A to read as follows:

Sec. 233A. SUITS BY EXECUTORS, ADMINISTRATORS, OR GUARDIANS. Suits for the recovery of personal property, debts, or damages, and suits for title or possession of lands, or for any right attached to, or growing out of the same, or for injury or damage done thereto, may be instituted by executors, administrators, or guardians appointed in this state; and judgment in such cases shall be conclusive, but may be set aside by any person interested for fraud or collusion on the part of such executor or administrator.

1 (V.A.C.S. Art. 1981.)

2 SECTION 4. CONFORMING AMENDMENT. Section 12, Probate Code,
3 is amended by adding Subsection (c) to read as follows:

4 (c) Suit for Fiduciary. No security for costs shall be
5 required of an executor, administrator, or guardian appointed by a
6 court of this state in any suit brought by him in his fiduciary
7 character. (V.A.C.S. Art. 2072 (part).)

8 SECTION 5. CONFORMING AMENDMENT. Section 1, Chapter 653,
9 Acts of the 65th Legislature, Regular Session, 1977 (Article
10 2372h-7, Vernon's Texas Civil Statutes), is amended to read as
11 follows:

12 Sec. 1. A county may insure such of its officers and
13 employees, including county and precinct peace officers as may be
14 designated by the county commissioners court, against liability
15 arising from the performance of official duties or duties of
16 employment by purchasing policies of liability insurance from an
17 insurer authorized to do business in this state. The State Board
18 of Insurance shall promulgate rules and set rates to implement this
19 section.

20 Revisor's Note

21 The source law for the amendatory language is
22 Section 5, V.A.C.S. Article 6252-19b, revised as
23 Chapter 102 of this code. Under V.A.C.S. Article
24 6252-19b, political subdivisions may pay damages for
25 certain claims against employees. Under V.A.C.S.
26 Article 2372h-7, counties may insure against those
27 claims.

28 SECTION 6. CONFORMING AMENDMENT. Sections 1 and 2, Chapter
29 323, Acts of the 54th Legislature, Regular Session, 1955 (Article
30 3737d-1, Vernon's Texas Civil Statutes), are amended to read as
31 follows:

1 Sec. 1. An interpreter appointed under Subchapter B, Chapter
2 21, Civil Practice and Remedies Code, [In any county, which is a
3 part of two (2) or more Judicial Districts and in which there are
4 two (2) or more District Courts, having regular terms, one (1)
5 county of said district bordering on the International Boundary
6 between the United States and the Republic of Mexico, or in any
7 county bordering on the International Boundary of the United States
8 and the Republic of Mexico, which said county forms a part of a
9 Judicial District composed of four (4) counties, or in any county
10 bordering on the International Boundary of the United States and
11 the Republic of Mexico, and which county has three (3) or more
12 District Courts or Judicial Districts wholly within said county, or
13 in any county bordering on the Gulf of Mexico, and which said
14 county has four (4) or more District Courts or Judicial Districts
15 of which two (2) or more are wholly within said county, the
16 Commissioners Court of said county, upon request of the District
17 Judge, or District Judges, after determination by said Judges of
18 the need therefor, shall appoint such court interpreters on a full
19 or part-time basis as may be necessary to properly carry out the
20 function of said courts, that such interpreters shall be well
21 versed in and competent to speak the Spanish language, as well as
22 the English language, and] shall [each] receive a salary as fixed
23 by the Commissioners Court of said county, [but not to exceed Four
24 Thousand, Eight Hundred Dollars (\$4,800) per year,] payable in
25 equal monthly payments, out of the General Fund of such county.

26 [Sec. 2. The Commissioners Court shall appoint such
27 interpreter or interpreters as shall be designated by the District
28 Judges requesting such appointment.]

1 Revisor's Note

2 This conforming amendment omits the salary level
3 because it was repealed by V.A.C.S. Article 3912k,
4 which authorizes the commissioners court to fix the
5 salary level of county employees.

6 SECTION 7. CONFORMING AMENDMENT. Chapter 35, Business &
7 Commerce Code, is amended by adding Section 35.42 to read as
8 follows:

9 Sec. 35.42. DELIVERY OF UNSOLICITED GOODS. (a) Unless
10 otherwise agreed, if unsolicited goods are delivered to a person,
11 the person:

12 (1) is entitled to refuse to accept delivery of the
13 goods; and

14 (2) is not required to return the goods to the sender.

15 (b) If unsolicited goods are either addressed to or intended
16 for the recipient, the goods are considered a gift to the
17 recipient, who may use them or dispose of them in any manner
18 without obligation to the sender.

19 (c) Unsolicited goods received due to a bona fide mistake
20 must be returned, but the burden of proof of the error is on the
21 sender.

22 (d) This section does not apply to goods substituted for
23 goods ordered or solicited by the recipient. (V.A.C.S. Art.
24 29c-1.)

25 Revisor's Note

26 The source law for this section is V.A.C.S.
27 Article 29c-1, which reads as follows:

28 Art. 29c-1. Unless otherwise agreed,
29 where unsolicited goods are delivered to a
30 person, he has a right to refuse to accept
31 delivery of the goods and is not bound to
32 return such goods to the sender. Goods
33 received due to a bona fide mistake are to
34 be returned, but the burden of proof of the
35 error shall be upon the sender. If such

1 unsolicited goods are either addressed to
2 or intended for the recipient, they shall
3 be deemed a gift to the recipient, who may
4 use them or dispose of them in any manner
5 without any obligation to the sender.
6 Provided, however, the provisions of this
7 Act shall not apply to goods substituted
8 for goods ordered or solicited by the
9 recipient.

10 SECTION 8. CONFORMING AMENDMENT. Chapter 16, Penal Code, is
11 amended by adding Section 16.021 to read as follows:

12 Sec. 16.021. ILLEGAL INTERCEPTION. (a) In this section,
13 "communication" and "interception" have the same meanings as are
14 given those terms in Section 123.01, Civil Practice and Remedies
15 Code.

16 (b) A person, including a landlord, building operator, or
17 employee of a communication common carrier, commits an offense if
18 the person knowingly aids in or permits an interception or
19 attempted interception.

20 (c) It is a defense to prosecution under this section that
21 the interception is authorized by state or federal law.

22 (d) An offense under this section is a Class A misdemeanor,
23 unless the actor has been previously convicted under this section,
24 in which event the offense is a felony of the third degree.

25 (V.A.C.S. Art. 9019, Sec. 3.)

26 Revisor's Note

27 The source law for this section is Section 3,
28 V.A.C.S. Article 9019, which reads as follows:

29 Sec. 3. A landlord, building
30 operator, employee of a telephone company
31 or other communication common carrier, or
32 any other person who knowingly aids or
33 permits the actual or attempted
34 interception of communications, as defined
35 in this Act, shall on first conviction be
36 guilty of a Class A misdemeanor, and on
37 second or subsequent conviction be guilty
38 of a third-degree felony, except that no
39 criminal liability shall arise under the
40 provisions of this Act with respect to
41 surveillance authorized under state or
42 federal law.

1 The revised law omits "telephone company" because
2 it is included in the phrase "communication common
3 carrier."

4 SECTION 9. REPEALER. The following laws are repealed:

5 (1) The following articles and acts as compiled in Vernon's
6 Texas Civil Statutes: 1, 1a, 1b, 1d, 29c-1, 275, 276, 277, 278,
7 279, 279a, 281, 282, 287, 288, 290, 291, 300, 301, 302, 320c, 941,
8 960, 1070.1, 1840-A, 1975, 1976, 1981, 1982, 1986, 1987, 1991,
9 1995, 1996, 2027, 2028, 2029, 2030, 2031b, 2032, 2033, 2033a,
10 2033b, 2033c, 2039a, 2039b, 2040, 2041a, 2041b, 2072, 2072a, 2088,
11 2090, 2168a, 2212, 2212a, 2212b, 2214, 2218a, 2218b, 2223, 2224,
12 2226, 2226a, 2226b, 2248, 2249, 2249a, 2250, 2251, 2255, 2276,
13 2276a, 2286a, 2287, 2290, 2293, 2293a, 2294, 2294a, 2295, 2296,
14 2297, 2297a, 2298, 2299, 2300, 2301, 2302, 2303, 2304, 2305, 2306,
15 2307, 2308, 2309, 2310, 2311, 2312, 2313, 2314, 2315, 2316, 2317,
16 2318, 2319, 2320a, 2320b, 2320c, 2328b-5, 2328b-6, 2390, 2391,
17 2392, 2393, 2451, 2454, 2455, 2455-1, 2460, 2524-1, 3708, 3710,
18 3712a, 3717, 3733, 3735, 3737h, 3746, 3748, 3757, 3769a, 3769b,
19 3773, 3775, 3785, 3786, 3787, 3792, 3798, 3799, 3799a, 3800, 3805,
20 3806, 3807, 3816, 3817, 3818, 3819, 3820, 3824, 3825, 3826, 3827,
21 3827a, 3829, 3830, 4076, 4084, 4093, 4096, 4099, 4331a, 4476-5c,
22 4590-3, 4642, 4643, 4644, 4645, 4646, 4646a, 4656, 4660, 4662,
23 4663, 4664, 4665, 4666, 4667, 4671, 4672, 4673, 4674, 4675, 4675a,
24 4676, 4677, 4678, 5207b, 5430, 5431, 5432, 5433, 5433a, 5507, 5508,
25 5509, 5510, 5511, 5512, 5513, 5514, 5515, 5516, 5517, 5518, 5519,
26 5519a, 5520, 5522, 5523a, 5523b, 5524, 5525, 5526, 5526a, 5526b,
27 5527, 5528, 5529, 5530, 5531, 5532, 5533, 5534, 5535, 5536, 5536a,
28 5537, 5538, 5539, 5539a, 5539b, 5539c, 5539d, 5542, 5543, 5544,
29 5545, 5546, 5923b, 6252-16, 6252-19, 6252-19b, 6252-25, 6252-26,
30 6253, 6257, 6582, 6583, 6584, 6585, 6586, 6587, 6588, 6589, 6602,
31 6602a, 6603, 6604, 6606, 6607, 6607a, 6609, 6610, 6611, 6612, 6613,
32 6614, 6615, 6616, 6617, 6618, 6619, 6620, 6621, 6622, 6623, 6662,

1 6701b, 6840, 6844, 6846, 6847, 6848, 6858, 9019, 9207;

2 (2) Section 65.42, Education Code; and

3 (3) Section 3, Chapter 29, Acts of the 67th Legislature,
4 Regular Session, 1981.

5 SECTION 10. LEGISLATIVE INTENT. This Act is enacted
6 pursuant to Article III, Section 43, of the Texas Constitution.
7 This Act is intended as a recodification only, and no substantive
8 change in the law is intended by this Act.

9 SECTION 11. EFFECTIVE DATE. This Act takes effect
10 _____.

11 SECTION 12. EMERGENCY. The importance of this legislation
12 and the crowded condition of the calendars in both houses create an
13 emergency and an imperative public necessity that the
14 constitutional rule requiring bills to be read on three several
15 days in each house be suspended, and this rule is hereby suspended.

A

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APPENDIX D

V.A.C.S. Art. 5429b-2. CODE CONSTRUCTION ACT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1.01. PURPOSE. This Act provides rules to aid in the construction of codes (and amendments to them) enacted pursuant to the state's continuing statutory revision program. The rules set out in this Act are not intended to be exclusive but are meant to describe and clarify common situations in order to guide the preparation and construction of the codes.

Sec. 1.02. APPLICABILITY. This Act applies to

(1) each code enacted by the 60th or a subsequent Legislature as part of the state's continuing statutory revision program;

(2) each amendment, repeal, revision, and reenactment of a code, or provision thereof, which amendment, repeal, revision, or reenactment is enacted by the 60th or a subsequent Legislature;

(3) each repeal of a statute by a code; and

(4) each rule promulgated under a code.

Sec. 1.03. CITATION OF CODES. A code may be cited by its name followed by the specific part concerned. For example:

(1) Business & Commerce Code, Tit. 1;

(2) Business & Commerce Code, Ch. 5;

(3) Business & Commerce Code, Sec. 9.304;

(4) Business & Commerce Code, Sec. 15.06(a);

(5) Business & Commerce Code, Sec. 17.18(b)(1)(B)(ii).

Sec. 1.04. GENERAL DEFINITIONS. The following definitions apply unless the statute or context in which the word or phrase is used requires a different definition:

(1) "oath" includes affirmation;

(2) "person" includes corporation, organization, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity;

(3) "population" means that shown by the most recent federal

decennial census;

(4) "property" means real and personal property;

(5) "rule" includes regulation;

(6) "signed" includes any symbol executed or adopted by a person with present intention to authenticate a writing;

(7) "state", when referring to a part of the United States, includes any state, district, commonwealth, territory, insular possession of the United States, and any area subject to the legislative authority of the United States of America;

(8) "swear" includes affirm;

(9) "United States" includes department, bureau, and any other agency of the United States of America;

(10) "week" means seven consecutive days;

(11) "written" includes any representation of words, letters, symbols, or figures; and

(12) "year" means 12 consecutive months.

SUBCHAPTER B. CONSTRUCTION OF WORDS AND PHRASES

Sec. 2.01. COMMON AND TECHNICAL USAGE OF WORDS. Words and phrases shall be read in context and construed according to the rules of grammar and common usage. Words and phrases that have acquired a technical or particular meaning, whether by legislative definition or otherwise, shall be construed accordingly.

Sec. 2.02. TENSE, NUMBER, AND GENDER. (a) Words in the present tense include the future tense.

(b) The singular includes the plural, and the plural includes the singular.

(c) Words of one gender include the other genders.

Sec. 2.03. AUTHORITY AND QUORUM OF PUBLIC BODY. (a) A grant of authority to three or more persons as a public body confers the authority upon a majority of the number of members fixed by statute.

(b) A quorum of a public body is a majority of the number of members fixed by statute.

Sec. 2.04. COMPUTATION OF TIME. (a) In computing a period

of days, the first day is excluded and the last day is included.

(b) If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day which is not a Saturday, Sunday, or legal holiday.

(c) If a number of months is to be computed by counting the months from a particular day, the period ends on the same numerical day in the concluding month as the day of the month from which the computation is begun, unless there are not that many days in the concluding month, in which case the period ends on the last day of that month.

Sec. 2.05. REFERENCE TO A SERIES. If a statute refers to a series of numbers or letters, the first and last numbers or letters are included.

SUBCHAPTER C. CONSTRUCTION OF STATUTES

Sec. 3.01. INTENTIONS IN ENACTMENT OF STATUTES. In enacting a statute, it is presumed that

- (1) compliance with the constitutions of this state and the United States is intended;
- (2) the entire statute is intended to be effective;
- (3) a just and reasonable result is intended;
- (4) a result feasible of execution is intended; and
- (5) public interest is favored over any private interest.

Sec. 3.02. PROSPECTIVE OPERATION OF STATUTES. A statute is presumed to be prospective in its operation unless expressly made retrospective.

Sec. 3.03. CONSTRUCTION AIDS. In construing a statute, whether or not the statute is considered ambiguous on its face, a court may consider among other matters the

- (1) object sought to be attained;
- (2) circumstances under which the statute was enacted;
- (3) legislative history;
- (4) common law or former statutory provisions, including laws upon the same or similar objects;
- (5) consequences of a particular construction;

- (6) administrative construction of the statute; and
- (7) title, preamble, and emergency provision.

Sec. 3.04. CAPTIONS NOT PART OF STATUTE. Title, subtitle, chapter, subchapter, and section captions do not limit or expand the meaning of any statute.

Sec. 3.05. IRRECONCILABLE STATUTES AND AMENDMENTS. (a) Except as provided in Section 3.11(d) of this Act, if statutes enacted at the same or different sessions of the legislature are irreconcilable, the statute latest in date of enactment prevails.

(b) Except as provided in Section 3.11(d) of this Act, if amendments to the same statute are enacted at the same session of the legislature, one amendment without reference to another, the amendments shall be harmonized, if possible, so that effect may be given to each. If the amendments are irreconcilable, the latest in date of enactment prevails.

Sec. 3.06. SPECIAL OR LOCAL PROVISION PREVAILS OVER GENERAL. If a general provision conflicts with a special or local provision, they shall be construed, if possible, so that effect is given to both. If the conflict between the provisions is irreconcilable, the special or local provision prevails as an exception to the general provision, unless the general provision is the later enactment and the manifest intent is that the general provision prevail.

Sec. 3.07. STATUTORY REFERENCES. Unless expressly provided otherwise, a reference to any portion of a statute applies to all reenactments, revisions, or amendments of the statute.

Sec. 3.08. UNIFORM CONSTRUCTION OF UNIFORM ACTS. A uniform act included in a code shall be construed to effectuate its general purpose to make uniform the law of those states which enact it.

Sec. 3.09. ENROLLED BILL CONTROLS. If the language of the enrolled bill version of a statute conflicts with the language of any subsequent printing or reprinting of the statute, the language of the enrolled bill version controls.

Sec. 3.10. REPEAL OF REPEALING STATUTE. The repeal of a

repealing statute does not revive the statute originally repealed nor impair the effect of any saving provision in it.

Sec. 3.11. SAVING PROVISIONS. (a) Except as provided in Subsection (b) of this section, the reenactment, revision, amendment, or repeal of a statute does not affect

(1) the prior operation of the statute or any prior action taken under it;

(2) any validation, cure, right, privilege, obligation, or liability previously acquired, accrued, accorded, or incurred under it;

(3) any violation of the statute, or any penalty, forfeiture, or punishment incurred in respect to it, prior to the amendment or repeal; or

(4) any investigation, proceeding, or remedy in respect to any privilege, obligation, liability, penalty, forfeiture, or punishment; and the investigation, proceeding, or remedy may be instituted, continued, or enforced, and the penalty, forfeiture, or punishment imposed, as if the statute had not been repealed or amended.

(b) If the penalty, forfeiture, or punishment for any offense is reduced by a reenactment, revision, or amendment of a statute, the penalty, forfeiture, or punishment (if not already imposed) shall be imposed according to the statute as amended.

(c) The repeal of a statute by a code does not affect an amendment, revision, or reenactment of the statute by the same legislature which enacted the code. The amendment, revision, or reenactment is preserved and given effect as part of the code provision which revised the statute so amended, revised, or reenacted.

(d) If any provision of a code conflicts with a statute enacted by the same legislature which enacted the code, the statute controls.

Sec. 3.12. SEVERABILITY OF STATUTES. If any Act passed by the Legislature shall contain a provision for severability, such

provision shall prevail in the interpretation of such statute. If any Act passed by the Legislature shall contain a provision for non-severability, such provision shall prevail in the interpretation of such statute. In the absence of such determination by the Legislature in a particular Act for severability or non-severability, the following construction of such Act shall prevail: If any provision of a statute or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the statute which can be given effect without the invalid provision or application, and to this end the provisions of the statute are severable.

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